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**PROPOSAL**

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from: European Commission  
dated: 28 January 2008

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Subject: Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading system of the Community

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Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Javier SOLANA, Secretary-General/High Representative.

Encl.: COM(2008) 16 final



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.1.2008  
COM(2008) 16 final

2008/0013 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Directive 2003/87/EC so as to improve and extend the greenhouse gas  
emission allowance trading system of the Community**

(presented by the Commission)

{COM(2008) 30 final}  
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## EXPLANATORY MEMORANDUM

### 1. INTRODUCTION

On 1 January 2005, the European Emission Trading System (EU ETS) started operation. It represents the spearhead and “one of the most important instruments”<sup>1</sup> of EU climate policy due to its ability to achieve absolute emission reductions in an economically efficient manner.

The 1<sup>st</sup> phase of the EU ETS (2005 to 2007) successfully established free trade of emission allowances across the EU, set up the necessary infrastructure for monitoring, reporting, verification including registries and has so far successfully concluded two compliance cycles. It developed into the world’s largest single carbon market accounting for 67% in terms of volume and 81% in terms of value of the global carbon market<sup>2</sup> and also worked as the driver of the global credit market and in that triggered investments in emission reduction projects today indirectly linking 147 countries to the EU ETS through JI/CDM projects.

However, the environmental outcome of the 1<sup>st</sup> phase of the EU ETS could have been more significant but was limited due to excessive allocation of allowances in some Member States and some sectors, which must mainly be attributed to reliance on projections and a lack of verified emission data. Once such data became available, it swiftly corrected the market price of allowances demonstrating convincingly that the carbon market is working.

The principles and mechanisms resulting in problems during the 1<sup>st</sup> trading period recurred in most 2<sup>nd</sup> phase National Allocation Plans (NAP) of Member States. However, thanks to verified emission data and experience gathered, the Commission could much better ensure that national allocation plans result in real emission reductions. Approved NAP decisions show an absolute emission reduction of 6.5% compared to 2005 verified emissions, thus ensuring that the EU ETS, designed as a cap-and-trade system, will deliver real emission reductions. However, experience of the 1<sup>st</sup> period and the NAP assessment of the 2<sup>nd</sup> period gave strong reason to believe that the overall functioning of the EU ETS could be improved in a number of aspects.

Against this background and responding to Article 30 of the EU ETS Directive<sup>3</sup>, the Commission, in November 2006, issued a Communication “Building a global carbon market – Report pursuant to Article 30 of Directive 2003/87/EC”<sup>4</sup>, where it identified the main subjects to be reviewed with a view to streamlining the EU ETS.

In March 2007, the European Council endorsed an EU objective of a 30% reduction in greenhouse gas emissions (GHG) by 2020 provided that other developed countries would commit themselves to comparable emission reductions and economically more advanced developing countries contribute adequately according to their responsibilities and respective capabilities. The Council also made a firm independent commitment of at least a 20% reduction of GHG emissions by 2020, irrespective of any international agreement. In the

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<sup>1</sup> Emissions Trading Scheme – Council Conclusions of 26 June 2007, available from <http://register.consilium.europa.eu/pdf/en/07/st11/st11429.en07.pdf>

<sup>2</sup> The World Bank, State and Trends of the Carbon Market, May 2007.

<sup>3</sup> Directive 2003/87/EC.

<sup>4</sup> COM(2006) 676, 13.11.2006.

longer term, by 2050, the European Council reaffirmed that developed countries should collectively reduce their emissions by 60% to 80% by 2050 compared to 1990<sup>5</sup>.

Against this background and with a view to enhancing the certainty and predictability of the emissions trading system, the Directive should provide for automatic and predictable adjustments upon the conclusion of a future international agreement. They should increase the level of contribution of the EU ETS to achieving the reduction of 30% and should concern the allocation mechanism, the adjustment of the EU-wide cap, the use of credits from JI/CDM and potentially additional types of credits and/or mechanisms foreseen under the agreement.

In its conclusions of 20 February 2007, the Council emphasised the EU commitment of transforming Europe into a highly energy efficient and low greenhouse-gas-emitting economy. It also called on the Commission to “bring forward proposals which create the right incentives for forward-looking, low-carbon investment decisions”<sup>6</sup>.

All these elements have been discussed in the framework of the European Climate Change Program (ECCP) Working Group on Emissions Trading, which met four times for eight days between March and June 2007. The outcome of these meetings provided major input to the review of the EU ETS Directive<sup>7</sup>. The provisions of the proposed amendments to the EU ETS Directive are guided by three overall objectives to be achieved:

1. Fully exploiting the potential of the EU ETS to contribute to the EU's overall greenhouse gas reduction commitments in an economically efficient manner.
2. Refining and improving the EU ETS in the light of experience gathered.
3. Contributing to transforming Europe into a low greenhouse-gas-emitting economy and creating the right incentives for forward looking low carbon investment decisions by reinforcing a clear, undistorted and long-term carbon price signal.

## **2. SCOPE**

### **Streamlining and increasing the scope of the EU ETS...**

Codifying the interpretation of combustion installation set out in the 2<sup>nd</sup> NAP guidance document of the Commission would end the inconsistent application of the scope of the Directive and would broadly reflect the approach taken by the Commission in the assessment of the National Allocation Plans in the 2<sup>nd</sup> period. In combination with an explicit definition of "combustion installation", which encompasses all stationary combustion apparatuses, the operation of which would result in the release of greenhouse gases, it would provide the necessary legal and technical clarity for a consistent application of the Directive. An explicit list of activities, also in Annex I of the Directive, should supplement this approach, in order to clarify the coverage of process emissions possibly not clearly addressed by codification of the

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<sup>5</sup> ibid

<sup>6</sup> EU objectives for the further development of the international climate regime beyond 2012, Council Conclusions of 20 February 2007, available from:  
<http://register.consilium.europa.eu/pdf/en/07/st06/st06621.en07.pdf>

<sup>7</sup> The reports reflecting the issues discussed and the outcome of the discussions are available from:  
[http://ec.europa.eu/environment/climat/emission/review\\_en.htm](http://ec.europa.eu/environment/climat/emission/review_en.htm)

above interpretation of combustion installation. New sectors and gases, currently not covered by the EU ETS (see below), should also be covered by the activity list.

Expanding the coverage of the EU ETS by inclusion of new sectors and gases would enhance the environmental effectiveness of the system and would introduce new and additional abatement opportunities to the system, thereby offering a higher abatement potential and potentially lower abatement costs<sup>8</sup>.

The level of abatement potential or costs may not strictly represent a criterion for including a certain sector in the EU ETS, since there are already sectors included the abatement potential of which might be limited, but which include considerable GHG emission sources. Furthermore, it is important to highlight the need to attach an economic value to the emission of GHG. This has to be seen in the light of the new emission reduction objectives set by the European Council. They will only be achieved, if forward-looking, low-carbon investments are triggered by the necessary economic signals emerging from a clear and undistorted carbon price applicable to as many industrial sectors as possible.

For these reasons, CO<sub>2</sub> emissions from petrochemicals, ammonia and aluminium should be included in the EU ETS. This also goes for N<sub>2</sub>O emissions from the production of nitric, adipic and glyoxalic acid production and PFC emissions from the aluminium sector, all of which can be measured and verified with sufficient accuracy.

Inclusion of these sectors and gases would increase the coverage of the EU ETS by up to roughly estimated 100 MtCO<sub>2</sub> or up to 4.6% of Phase II allowances. In combination with streamlining the scope of the EU ETS through a codified interpretation of combustion installation, overall coverage of the EU ETS would roughly increase by up to 140 to 150 MtCO<sub>2</sub> or 6.6 to 7.1% compared to Phase II allowances<sup>9</sup>.

The emissions trading system should only be extended to emissions which are capable of being monitored, reported and verified with the same level of accuracy as applies under the monitoring, reporting and verification requirements currently applicable under the Directive. This is the case for shipping, which is not included in this proposal but might be included at a later stage following a full fledged dedicated impact assessment. It is not the case for emissions from agriculture or forestry, although the EU ETS considers the combustion of biomass to be emission-neutral. The European Parliament and the Council have endorsed the use of proceeds from auctioning of allowances within the EU ETS to be used for reducing emissions, in particular by avoiding deforestation<sup>10</sup>.

In addition, expansion of the scope will be further facilitated by enabling the Commission, in its approval of an application for unilateral inclusion of additional activities and gases not listed in Annex I of the Directive to authorise other Member States to also undertake the inclusion of such additional activities and gases.

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<sup>8</sup> It has been suggested that compliance costs could potentially be reduced by up to 30-40% through the inclusion of new sectors and gases provided, however, that certain conditions including accurate monitoring, reporting and verification issues are met. See Final Report of the 1<sup>st</sup> meeting of the ECCP Working Group on Emissions Trading on the Review of the EU ETS on the Scope of the Directive, [http://ec.europa.eu/environment/climat/emission/review\\_en.htm](http://ec.europa.eu/environment/climat/emission/review_en.htm)

<sup>9</sup> These figures are estimations, which can be refined further.

<sup>10</sup> First reading opinion of the European Parliament and political agreement of the Council, on the Commission proposal to include aviation in the EU ETS.

**... while potentially lowering its overall costs through allowing alternative measures for small emitters...**

Since the contribution of small and large emitters to the overall emissions covered by the EU ETS is uneven: the largest 7% of installations represent 60% of total emissions, while the 1 400 smallest installations (approximately 14%) only account for 0.14%. For this reason, the cost-effectiveness of small installations' contributions to emission reductions might be improved. While the currently applicable threshold of 20 MW of rated thermal input for combustion installations will be maintained, it should be combined with an emission threshold of 10 000 tCO<sub>2</sub>/yr (but excluding emissions from biomass), as long as their rated thermal input does not exceed 25 MW. This means that combustion installations with a rated thermal input of more than 20 MW, but less than 25 MW and an annual emission of less than 10 000 tonnes of carbon dioxide in each of the three years preceding the year of application, can be excluded from the EU ETS, if

- (1) as a matter of fairness, and in order to ensure that the internal market will not be distorted, there are measures (such as taxation) in place that will achieve an equivalent contribution of installations excluded from the system to the overall emission reduction objectives;
- (2) Member States apply to the Commission for excluding installations and continuing such measures and monitoring, and the Commission does not object within a period of six months.

The threshold of 10 000 tonnes of carbon dioxide offers, in relative terms, the maximum gain in terms of reduction of administrative costs for each tonne (potentially) excluded from the system. This would lead to saving administrative costs under the EU ETS in the order of € 4.2 for each tonne excluded with unknown administrative costs to equivalent administrative measures. Around 4 200 installations could be opted out accounting for approximately 0.70% of total ETS emissions.

A change of the aggregation rule, in line with the second guidance document of the Commission, resulting in excluding installations with less than 3 MW rated thermal input from the scope of the aggregation clause may lead to the exclusion of another (roughly estimated) 800 very small installations, currently covered under the system.

**... with new opportunities offered by Carbon Capture and Storage ...**

In view of the long-term potential for emissions reductions from CCS, and pending the entry into force of Directive 2008/xx/EC on the geological storage of carbon dioxide, installations undertaking the capture, transport and geological storage of greenhouse gases should be included in the Community system. While Article 24 offers the appropriate legal framework for unilateral inclusion of such installations pending the entry into force of the said Directive, activities concerning capture, transport and geological storage of greenhouse gas emissions should be explicitly mentioned in Annex I of the Directive, in order to provide clarity.

With a view to providing the necessary incentives for geological storage of emissions, there would be no need to surrender allowances for emissions stored. However, no free allocation should be given for capture, transport or storage of greenhouse gas emissions.

### **... but without replacing other transport measures...**

Although greenhouse gas emissions from road transport and shipping, are still increasing, more detailed analysis including a comprehensive cost-benefit analysis is necessary, in order to allow the Commission to decide on whether emissions trading is the most appropriate means to deal with these issues. Emissions from road transport and shipping are therefore not included in this proposal.

## **3. MONITORING, REPORTING, VERIFICATION**

### **Improvements of monitoring and reporting rules...**

Experience with monitoring and reporting so far showed some degree of divergence of Member States' practices. In order to improve overall performance of the monitoring and reporting system across the EU, a regulation adopted through comitology should replace the current guidelines.

### **... in combination with harmonised rules for verification and accreditation ...**

The current Directive and its Annexes only regulate some fundamental requirements and aspects of the verification process. As a consequence, verification practices in Member States differ and may not necessarily ensure the level playing field required to maintain the overall credibility of verification. A regulation adopted through comitology should provide common requirements for verification, in order to guarantee a certain level of quality of the verification process, while further improvements should be enabled through amendments to Annexes IV and V of the Directive.

This regulation should also enable Community-wide accreditation for verifiers for the benefit of the internal market.

### **... and updated compliance provisions ...**

In order to ensure that the penalties for non-compliance remain sufficiently high to ensure that the market functions properly, the excess emissions penalty should be indexed to the annual inflation rate of the Eurozone. This provision would ensure the deterrent effect of the current provision without having to review it frequently.

### **... increases confidence in and credibility of the EU ETS...**

Monitoring, reporting and verification play a fundamental role for the functioning and overall credibility of the EU ETS, inside and outside the EU. Its environmental effectiveness and integrity and thus its overall reputation and acceptance depends to a large extent on a robust, reliable and trustworthy monitoring, reporting and verification system that ensures a sufficient degree of accuracy of the respective level of emissions of each installation covered by the system.

Against this background, potentially higher administrative costs in the short-term accruing from a regulation for the Commission seem to be justified, as administrative costs in the longer term would be much lower. In addition, it would provide greater certainty, transparency and reliability with respect to the actual emission levels and thus enhance the trust of the market in the system. In the longer term, these benefits are expected to largely

offset any short-term higher administrative costs and indeed will reduce overall costs for monitoring, reporting and verification for operators and national authorities, once electronic tools play a more important role.

**... with a simple and robust registry system**

Allowances must be transferable between persons within the Community without any restriction. For this reason and due to the technical, political and administrative risks related to the current registry system and in the light of the uncertainty concerning the future development of the UN registry system, EU ETS allowances issued from 1 January 2013 onwards should be held in the Community registry. As well as simplifying the system, this is also necessary to ensure that the EU ETS can link to other emissions trading systems in third countries and administrative entities.

**4. FURTHER HARMONISATION AND INCREASED PREDICTABILITY**

**An EU-wide cap ensures achieving the 20% reduction target and a linear reduction provides long-term predictability ...**

A system based on national cap-setting does not provide sufficient guarantees that the emission reduction objectives endorsed by the European Council in March 2007 will be achieved. Moreover, such a system is not likely to lead to minimise overall cost of emissions reductions than necessary. Therefore, in order to achieve these objectives, an EU-wide cap should be determined in the Directive.

It also provides a long-term perspective and increased predictability, which is required for long-term investments in efficient abatement. This can be best achieved by an 8-year trading period until 2020 and a linear reduction of the cap that continues the reduction path beyond 2020, thereby giving a clear message to investors.

The level of the EU-wide cap for the EU ETS needs to be cost-effective and consistent with the EU's commitment of an overall reduction in emissions of 20% by 2020. The linear reduction which is consistent with this principle amounts to 1.74% per year, arriving at a reduction of 21% below reported 2005 emissions. This path has been calculated by starting at the mid-point of the 2008-12 period average annual total quantity of allowances issued by Member States pursuant to Commission Decisions on Member States' national allocation plans for the period 2008-12.

**... while auctioning is the basic principle for allocation subject to the need to avoid carbon leakage ...**

Auctioning best ensures efficiency of the ETS, transparency and simplicity of the system and avoids undesirable distributional effects. Auctioning also best complies with the polluter-pays principle and rewards early action to reduce emissions. For these reasons auctioning should be the basic principle for allocation. The efforts to be made by the European economy to reach the greenhouse gas reduction targets set for 2020 will, however, be more significant than those currently required by 2012 and in the absence of comparable constraints for industry in third countries, there may arise a risk of "carbon leakage", i.e. relocation of greenhouse gas emitting activities from the EU to third countries and thereby increasing global emissions.



In this context, taking into account their ability to pass through opportunity costs, full auctioning should be the rule from 2013 onwards for the power sector and carbon capture and storage. In order to encourage a more efficient generation of electricity, electricity generators could however receive free allowances for heat delivered to district heating or industrial installations.

For installations in other sectors, a gradual transition is appropriate, starting with free allocation at a level of 80% of their share in the total quantity of allowances to be issued, decreasing by equal amounts each year, arriving at zero free allocation by 2020.

In the event that other developed countries and other major emitters of greenhouse gases do not participate in an international agreement that will achieve the objective of limiting global temperature increase to 2°C, certain energy-intensive sectors and sub-sectors in the Community subject to international competition could be exposed to the risk of carbon leakage. This could undermine the environmental integrity and benefit of actions by the Community. The European industry should receive a clear commitment that the Community will take appropriate action. The Commission will review the situation by June 2011 at the latest, consult with all relevant social partners, and, in the light of the outcome of the international negotiations, submit a report accompanied by appropriate proposals. In this context, the Commission will identify by 30 June 2010 which energy intensive sectors or sub-sectors are likely to be subject to carbon leakage. It will base its analysis on the assessment of the inability to pass through the cost of required allowances in product prices without significant loss of market share to installations outside the EU not taking comparable action to reduce emissions. Energy-intensive industries which are determined to be exposed to significant risk of carbon leakage could receive up to 100% of allowances free of charge or an effective carbon equalisation system could be introduced with a view to putting installations from the Community which are at a significant risk of carbon leakage and those from third countries on a comparable footing. Such a system could apply requirements to importers that would be no less favourable than those applicable to installations within the EU, for example by requiring the surrender of allowances. Any action taken would need to be in conformity with the principles of the UNFCCC, in particular the principle of common but differentiated responsibilities and respective capabilities, taking into account the particular situation of Least Developed Countries. It would also need to be in conformity with the international obligations of the Community including the WTO agreement.

Overall, it is estimated that, at least two thirds of the total quantity of allowances will be auctioned in 2013.

The Directive determines the shares of the total quantity of allowances that Member States will auction. The proposal foresees that 90% of the total quantity of allowances to be auctioned is distributed according to the relative share of 2005 emissions in the EU ETS<sup>11</sup>. For reasons of fairness and solidarity, and taking into account national circumstances, 10% of the total quantity of allowances to be auctioned should be redistributed from Member States with an average level of income per head that is more than 20% above the EU average. Redistribution is higher with low income levels per head and high growth prospects.

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<sup>11</sup> When complete emission figures are available for 2006, the Commission would be willing to consider using the average emissions in 2005 and 2006 in the EU ETS as the basis for this distribution.

Auctioning of allowances should be carried out without distorting competition in the internal market and without distorting the allowances market. The Directive therefore provides a legal basis for a regulation on the design and execution of auctions.

Auctioning will generate significant revenues. In line with the precautionary principle laid down in Article 174(2) of the Treaty establishing the European Community, a certain percentage of the proceeds from the auctioning of allowances should be used to reduce greenhouse gas emissions, to adapt to the impacts of climate change, to fund research and development for reducing emissions and adapting, to develop renewable energies to meet the EU's commitment to using 20% renewable energies by 2020, for the capture and geological storage of greenhouse gases, to contribute to the Global Energy Efficiency and Renewable Energy Fund, for measures to avoid deforestation and facilitate adaptation in developing countries, and for addressing social aspects such as possible increases in electricity prices in lower and middle incomes.

In December 2006, the Commission made a legislative proposal to reduce the climate impact attributable to aviation by including carbon dioxide emissions from aviation in the Community system for greenhouse gas emission allowance trading. While the Commission made clear in its impact assessment that the aviation industry was expected to be able to pass on, to a large extent or even in full, the costs of participating in the system to their customers, the Commission did not take a position on the appropriate percentage of allowances to be auctioned beyond 2012, stating instead that, for future periods, the percentage to be auctioned shall take into account the general review of this Directive. This review has now been completed. Aviation should be treated as other industries which receive transitional free allocation rather than as electricity generators, which means that from 2013 onwards, 80% of allowances should be allocated for free in 2013, and thereafter the free allocation to aviation should decrease each year by equal amounts resulting in no free allocation in 2020. The Community and its Member States should continue to seek to reach an agreement on global measures to reduce greenhouse gas emissions from aviation.

**...any transitional allocation for free, also for new entrants, is to be based on Community-wide rules ...**

In order to avoid distortions of competition, the transitional free allocation should be based on harmonised Community-wide rules. These rules should take account of the most greenhouse gas and energy efficient techniques, substitutes, alternative production processes, use of biomass and greenhouse gas capture and storage. Any such rules must avoid perverse incentives to increase emissions.

Installations that have closed shall no longer receive any allowances for free. The proposal foresees the creation of a Community-wide new entrants' reserve. Allocations from this reserve should mirror the allocation rules for existing installations.

## **5. LINKING WITH EMISSIONS TRADING SYSTEMS IN THIRD COUNTRIES, AND APPROPRIATE MEANS TO INVOLVE DEVELOPING COUNTRIES AND COUNTRIES IN ECONOMIC TRANSITION**

### **Linking with other emission trading systems to build a global carbon market...**

The EU ETS should be able to link to other mandatory emission trading systems capping absolute emissions in third countries or administrative entities by means of arrangements and agreements to provide for the recognition of allowances between the EU ETS and the emission trading system to be linked to the EU ETS.

In line with the conclusions of the European Council of March 2007, the EU is committed to reduce its greenhouse gas emissions by 30% in the event of an international agreement. The terms of such an agreement will affect the combined number of allowances available in the EU ETS linked with another emission trading systems. For this reason, enabling provisions must be foreseen to provide for the necessary adjustments, where needed and appropriate.

### **... which exists already in terms of project credits, but there is a need for harmonisation...**

Project credits allow EU operators to meet obligations under the ETS by investing in projects to reduce emissions outside the EU. This can be an incentive for countries to come within an international agreement and a short term cost-efficient way for companies to meet their obligations.

Under the conditions for phase 2 around 1 400 million tonnes of credits are allowed to enter the EU ETS, or a yearly average of 280 million tonnes. Relative to 2005 emissions the estimated phase 2 cap represents a reduction of approximately 130 million tonnes. If full use of credits is made by operators, few domestic reductions would occur and in an extreme case emissions in the EU ETS could even increase making it more difficult to achieve the EU's overall 2020 reduction targets. Therefore, CDM credits up to the remainder of the level which they were allowed in the 2<sup>nd</sup> trading period (2008-12) should be allowed in the 3<sup>rd</sup> trading period. Accordingly, operators should be given certainty about their potential after 2013 to use them by requiring Member States to allow operators to exchange certain CERs issued in respect of emission reductions before 2012 for allowances valid from 2013 onwards. This should also apply to high quality CERs issued in respect of emission reductions from 2013 onwards from projects that have been established before 2013.

In order to ensure equal conditions of competition within the Community, the use of credits for emission reductions by operators within the Community emissions trading system should be harmonised. Upon the conclusion by the Community of a satisfactory international agreement, access to credits from projects in third countries should be increased in tandem with the increase in the level of emission reductions to be achieved through the EU emissions trading system (i.e. from 20% rising to 30%). In the absence of such agreement, providing for further use of CERs would undermine this incentive and make it more difficult to achieve the EU's objectives on increasing renewable energy use.

While ERUs cannot exist in respect of emissions reductions from 2013 onwards before the entry into force of a future international agreement on climate change, projects which generated ERUs beforehand could continue to be recognised through bilateral or multilateral agreements with third countries. Once a future international agreement on climate change has

been reached, CDM credits shall only be accepted in the EU ETS from third countries that have ratified the international agreement. Provisions should be included to discourage 'free-riding' by companies in States which have not concluded an international agreement, except where those companies are based in third countries or administrative entities which are linked to the EU emissions trading system.

The use of CERs should be consistent with the EU's goal of generating 20% of energy from renewable sources by 2020, and promoting energy efficiency, innovation and technological development. Where it is consistent with achieving these goals, the possibility should be foreseen to conclude agreements with third countries to trigger investments in these countries which bring about real, additional reductions in greenhouse gas emissions while stimulating innovation in European companies and technological development in third countries. Such agreements may be ratified by more than one country.

Projects that reduce greenhouse gas emissions in the Community should be allowed to issue allowances provided they comply with certain conditions necessary to safeguard the proper functioning of the EU ETS. Such conditions would encompass adoption of harmonised rules for these projects at Community level, exclude double-counting of emission reductions and any impediment of the scope of the Community emissions allowance trading system as well as the undertaking of other policy measures to reduce emissions not covered by the EU ETS. Finally, these projects must not entail a huge administrative burden, but should be based on simple, easily administered rules.

## **6. ENTRY INTO FORCE**

The requirement to submit national allocation plans will be superseded by this proposal when it enters into force. In the event that this were delayed, Member States are required, under the EU ETS as it stands, to draw up and submit national allocation plans by June 2011 for the period 2013-17. From 2013 onwards, the current Directive allows all allowances to be auctioned. Allocation for free would constitute state aid which must be justified under Article 87 and 88 of the EC Treaty. With a view to enhancing certainty and predictability, at this stage, the Commission considers that national allocation plans would only be acceptable, if the total quantity were to decrease at least in line with this proposal and free allocations proposed do not exceed the amount either set out in this proposal or developed under it.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading system of the Community**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission<sup>12</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>13</sup>,

Having regard to the opinion of the Committee of the Regions<sup>14</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>15</sup>,

Whereas:

- (1) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC<sup>16</sup> established a system for greenhouse gas emission allowance trading within the Community in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner.
- (2) The ultimate objective of the United Nations Framework Convention on Climate Change, which was approved on behalf of the European Community by Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change (UNFCCC)<sup>17</sup>, is to stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. In order to meet that objective, the overall global annual mean surface temperature increase should not

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<sup>12</sup> OJ C , , p. .

<sup>13</sup> OJ C , , p. .

<sup>14</sup> OJ C , , p. .

<sup>15</sup> OJ C , , p. .

<sup>16</sup> OJ L 275, 25.10.2003, p. 32. Directive as amended by Directive 2004/101/EC (OJ L 338, 13.11.2004, p. 18).

<sup>17</sup> OJ L 33, 7.2.1994, p. 11.

exceed 2°C above pre-industrial levels. The latest Intergovernmental Panel on Climate Change Assessment (IPCC) report<sup>18</sup> shows that, in order to reach that objective, global emissions of greenhouse gases must peak by 2020. This implies the increasing of efforts by the Community and the quick involvement of developed countries and encouraging the participation of developing countries in the emission reduction process.

- (3) The European Council<sup>19</sup> has made a firm commitment to reduce the overall greenhouse gas emissions of the Community by at least 20% below 1990 levels by 2020, and by 30% provided that other developed countries commit themselves to comparable emission reductions and economically more advanced developing countries contribute adequately according to their responsibilities and respective capabilities. By 2050, global greenhouse gas emissions should be reduced by at least 50% below their 1990 levels. All sectors of the economy should contribute to achieving these emission reductions.
- (4) In order to contribute to achieving those long-term objectives, it is appropriate to set out a predictable path according to which the emissions of installations covered by the Community scheme should be reduced. To achieve cost-effectively the commitment of the Community to at least a 20% reduction in greenhouse gas emissions below 1990 levels, emission allowances allocated in respect of those installations should be 21% below their 2005 emission levels by 2020.
- (5) In order to enhance the certainty and predictability of the Community scheme, provisions should be specified to increase the level of contribution of the Community scheme to achieving an overall reduction of more than 20%, in particular in view of the objective of the European Council for a 30% reduction by 2020 that is considered scientifically necessary to avoid dangerous climate change.
- (6) Once the Community and third countries conclude an international agreement according to which appropriate global action will be taken beyond 2012, considerable support should be given to credit emission reductions made in those countries. In advance of such an agreement, greater certainty should nonetheless be given on the continued use of credits from outside the Community.
- (7) While experience gathered during the first trading period shows the potential of the Community scheme and the finalisation of national allocation plans for the second trading period will deliver significant emission reductions by 2012, the review has confirmed that a more harmonised emission trading system is imperative, in order to better exploit the benefits of emission trading, to avoid distortions in the internal market and to facilitate the linking of emissions trading systems. Furthermore, more predictability should be ensured and the scope of the system should be extended by including new sectors and gases with a view to both reinforcing a carbon price signal necessary to trigger the necessary investments and offering new abatement opportunities, which will lead to lower overall abatement costs and increased efficiency of the system.

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<sup>18</sup> Intergovernmental Panel on Climate Change 4th Assessment report, adopted on 17 November 2007 in Valencia, Spain, and available at [www.ipcc.ch](http://www.ipcc.ch)

<sup>19</sup> Conclusions of the meeting of the European Council of 8-9 March 2007 in Brussels.

- (8) The definition of greenhouse gases should be aligned with the definition contained in the UNFCCC, and greater clarity should be given on the setting and updating of global warming potentials for individual greenhouse gases.
- (9) The Community scheme should be extended to other installations whose emissions are capable of being monitored, reported and verified with the same level of accuracy as applies under the monitoring, reporting and verification requirements currently applicable.
- (10) Where equivalent measures to reduce greenhouse gas emissions, in particular taxation, are in place for small installations whose emissions do not exceed a threshold of 10 000 tonnes of CO<sub>2</sub> per year, there should be a procedure for enabling Member States to exclude such small installations from the emissions trading system for so long as those measures are applied. This threshold relatively offers the maximum gain in terms of reduction of administrative costs for each tonne excluded from the system, for reasons of administrative simplicity. As a consequence of the move from five-year allocation periods, and in order to increase certainty and predictability, provisions should be set on the frequency of revision of greenhouse gas emission permits.
- (11) The Community-wide quantity of allowances should decrease in a linear manner calculated from the mid-point of the period 2008 to 2012, ensuring that the emissions trading system delivers gradual and predictable reductions of emissions over time. The annual decrease of allowances should be equal to 1.74% of the allowances issued by Member States pursuant to Commission Decisions on Member States' national allocation plans for the period 2008 to 2012, so that the Community scheme contributes cost-effectively to achieving the commitment of the Community to an overall reduction in emissions of at least 20% by 2020.
- (12) This contribution is equivalent to a reduction of emissions in 2020 in the Community scheme of 21% below reported 2005 levels, including the effect of the increased scope from the period 2005 to 2007 to the period 2008 to 2012 and the 2005 emission figures for the trading sector used for the assessment of the Bulgarian and Romanian national allocation plan for the period 2008 to 2012, leading to an issue of a maximum of 1 720 million allowances in the year 2020. Exact quantities of emissions will be calculated once Member States have issued allowances pursuant to Commission Decisions on their national allocation plans for the period 2008 to 2012, as the approval of allocations to some installations was contingent upon their emissions having been substantiated and verified. Once the issue of allowances for the period 2008 to 2012 has taken place, the Commission will publish the Community-wide quantity. Adjustments should be made to the Community-wide quantity in relation to installations which are included in the Community scheme during the period 2008 to 2012 or from 2013 onwards.
- (13) The additional effort to be made by the European economy requires *inter alia* that the revised Community scheme operate with the highest possible degree of economic efficiency and on the basis of fully harmonised conditions of allocation within the Community. Auctioning should therefore be the basic principle for allocation, as it is the simplest and generally considered to be the most economically efficient system. This should also eliminate windfall profits and put new entrants and higher than average growing economies on the same competitive footing as existing installations.

- (14) All Member States will need to make substantial investments to reduce the carbon intensity of their economies by 2020 and those Member States where income *per capita* is still significantly below the Community average and whose economies are in the process of catching up with the richer Member States will need to make a significant effort to improve energy efficiency. The objectives of eliminating distortions to intra-Community competition and of ensuring the highest degree of economic efficiency in the transformation of the EU economy towards a low carbon economy make it inappropriate to treat economic sectors differently under the Community scheme in individual Member States. It is therefore necessary to develop other mechanisms to support the efforts of those Member States with relatively lower income *per capita* and higher growth prospects. 90% of the total quantity of allowances to be auctioned should be distributed amongst Member States according to their relative share of 2005 emissions in the Community scheme. 10% of this quantity should be distributed to the benefit of those Member States for the purpose of solidarity and growth in the Community, to be used to reduce emissions and adapt to the effects of climate change. This distribution of this 10% should take into account levels of income *per capita* in the year 2005 and the growth prospects of Member States, and be higher for Member States with low income levels per head and high growth prospects. Member States with an average level of income *per capita* that is more than 20% higher than the average in the Community should contribute to this distribution, except where the direct costs of the overall package estimated in SEC(2008) 85 exceed 0.7% of GDP.
- (15) Given the considerable efforts of combating climate change and of adapting to its inevitable effects, it is appropriate that at least 20% of the proceeds from the auctioning of allowances should be used to reduce greenhouse gas emissions, to adapt to the impacts of climate change, to fund research and development for reducing emissions and adaptation, to develop renewable energies to meet the EU's commitment to using 20% renewable energies by 2020, to meet the commitment of the Community to increase energy efficiency by 20% by 2020, for the capture and geological storage of greenhouse gases, to contribute to the Global Energy Efficiency and Renewable Energy Fund<sup>20</sup>, for measures to avoid deforestation and facilitate adaptation in developing countries, and for addressing social aspects such as possible increases in electricity prices in lower and middle income households. This proportion is significantly below the expected net revenues for public authorities from auctioning, taking into account potentially reduced income from corporate taxes. In addition, proceeds from auctioning of allowances should be used to cover administrative expenses of the management of the Community scheme. Provisions should be included on monitoring the use of funds from auctioning for these purposes. Such notification does not release Member States from the obligation laid down in Article 88(3) of the Treaty, to notify certain national measures. The Directive does not prejudice the outcome of any future State aid procedures that may be undertaken in accordance with Articles 87 and 88 of the Treaty.
- (16) Consequently, full auctioning should be the rule from 2013 onwards for the power sector, taking into account their ability to pass on the increased cost of CO<sub>2</sub>, and no free allocation should be given for carbon capture and storage as the incentive for this arises from allowances not being required to be surrendered in respect of emissions

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<sup>20</sup> COM(2006) 583, 6.10.2006.



which are stored. Electricity generators may receive free allowances for heat produced through high efficiency cogeneration as defined by Directive 2004/8/EC in the event that such heat produced by installations in other sectors were to be given free allocations, in order to avoid distortions of competition.

- (17) For other sectors covered by the Community scheme, a transitional system should be foreseen for which free allocation in 2013 would be 80% of the amount that corresponded to the percentage of the overall Community-wide emissions throughout the period 2005 to 2007 that those installations emitted as a proportion of the annual Community-wide total quantity of allowances. Thereafter, the free allocation should decrease each year by equal amounts resulting in no free allocation in 2020.
- (18) Transitional free allocation to installations should be provided for through harmonised Community-wide rules ("benchmarks") in order to minimise distortions of competition with the Community. These rules should take account of the most greenhouse gas and energy efficient techniques, substitutes, alternative production processes, use of biomass, renewables and greenhouse gas capture and storage. Any such rules should not give incentives to increase emissions and ensure that an increasing proportion of these allowances is auctioned. Allocations must be fixed prior to the trading period so as to enable the market to function properly. They shall also avoid undue distortions of competition on the markets for electricity and heat supplied to industrial installations. These rules should apply to new entrants carrying out the same activities as existing installations receiving transitional free allocations. To avoid any distortion of competition within the internal market, no free allocation should be made in respect of the production of electricity by new entrants. Allowances which remain in the set-aside for new entrants in 2020 should be auctioned.
- (19) The Community will continue to take the lead in the negotiation of an ambitious international agreement that will achieve the objective of limiting global temperature increase to 2°C and is encouraged by the progress made in Bali<sup>21</sup> towards this objective. In the event that other developed countries and other major emitters of greenhouse gases do not participate in this international agreement, this could lead to an increase in greenhouse gas emissions in third countries where industry would not be subject to comparable carbon constraints ("carbon leakage"), and at the same time could put certain energy-intensive sectors and sub-sectors in the Community which are subject to international competition at an economic disadvantage. This could undermine the environmental integrity and benefit of actions by the Community. To address the risk of carbon leakage, the Community will allocate allowances free of charge up to 100% to sectors or sub-sectors meeting the relevant criteria. The definition of these sectors and sub-sectors and the measures required will be subject to re-assessment to ensure that action is taken where necessary and to avoid overcompensation. For those specific sectors or sub-sectors where it can be duly substantiated that the risk of carbon leakage cannot be prevented otherwise, where electricity constitutes a high proportion of production costs and is produced efficiently, the action taken may take into account the electricity consumption in the production process, without changing the total quantity of allowances.

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<sup>21</sup> 13<sup>th</sup> Conference of the Parties to the UNFCCC, and 3<sup>rd</sup> Meeting of the Parties to the Kyoto Protocol, held in Bali, Indonesia from 3-14 December 2007.

- (20) The Commission should therefore review the situation by June 2011 at the latest, consult with all relevant social partners, and, in the light of the outcome of the international negotiations, submit a report accompanied by any appropriate proposals. In this context, the Commission should identify which energy intensive industry sectors or sub-sectors are likely to be subject to carbon leakage not later than 30 June 2010. It should base its analysis on the assessment of the inability to pass on the cost of required allowances in product prices without significant loss of market share to installations outside the Community not taking comparable action to reduce emissions. Energy-intensive industries which are determined to be exposed to a significant risk of carbon leakage could receive a higher amount of free allocation or an effective carbon equalisation system could be introduced with a view to putting installations from the Community which are at significant risk of carbon leakage and those from third countries on a comparable footing. Such a system could apply requirements to importers that would be no less favourable than those applicable to installations within the EU, for example by requiring the surrender of allowances. Any action taken would need to be in conformity with the principles of the UNFCCC, in particular the principle of common but differentiated responsibilities and respective capabilities, taking into account the particular situation of Least Developed Countries. It would also need to be in conformity with the international obligations of the Community including the WTO agreement.
- (21) In order to ensure equal conditions of competition within the Community, the use of credits for emission reductions outside the Community to be used by operators within the Community scheme should be harmonised. The Kyoto Protocol to the UNFCCC sets out quantified emission targets for developed countries for the period 2008 to 2012, and provides for the creation of Certified Emission Reductions (CERs) and Emission Reduction Units (ERUs) from Clean Development Mechanism (CDM) and Joint Implementation projects respectively and their use by developed countries to meet part of these targets. While the Kyoto framework does not enable ERUs to be created from 2013 onwards without new quantified emission targets being in place for host countries, CDM credits can potentially continue to be generated. Additional use of Certified Emission Reductions (CERs) and Emission Reduction Units (ERUs) should be provided for once there is an international agreement on climate change, from countries which have concluded that agreement. In the absence of such agreement, providing for further use of CERs and ERUs would undermine this incentive and make it more difficult to achieve the objectives of the Community on increasing renewable energy use. The use of CERs and ERUs should be consistent with the goal set by the Community of generating 20% of energy from renewable sources by 2020, and promoting energy efficiency, innovation and technological development. Where it is consistent with achieving these goals, the possibility should be foreseen to conclude agreements with third countries to provide incentives for reductions in emissions in these countries which bring about real, additional reductions in greenhouse gas emissions while stimulating innovation by companies established within the Community and technological development in third countries. Such agreements may be ratified by more than one country. Upon the conclusion by the Community of a satisfactory international agreement, access to credits from projects in third countries should be increased simultaneously with the increase in the level of emission reductions to be achieved through the Community scheme.

- (22) In order to provide predictability, operators should be given certainty about their potential after 2012 to use CERs and ERUs up to the remainder of the level which they were allowed to use in the period 2008 to 2012, from project types which were accepted by all Member States in the Community scheme during the period 2008 to 2012. As carry-over by Member States of CERs and ERUs held by operators between commitments periods under international agreements ('banking' of CERs and ERUs) cannot take place before 2015, and only if Member States choose to allow the banking of those CERs and ERUs within the context of limited rights to bank such credits, this certainty should be given by requiring Member States to allow operators to exchange such CERs and ERUs issued in respect of emission reductions before 2012 for allowances valid from 2013 onwards. However, as Member States should not be obliged to accept CERs and ERUs which it is not certain they will be able to use towards their existing international commitments, this requirement should not extend beyond 31 December 2014. Operators should be given the same certainty concerning such CERs issued from projects that have been established before 2013 in respect of emission reductions from 2013 onwards.
- (23) In the event that the conclusion of an international agreement is delayed, the possibility should be foreseen for using credits from high quality projects in the Community trading system through agreements with third countries. Such agreements, which may be bilateral or multilateral, could enable projects to continue to be recognised in the Community scheme that generated ERUs until 2012 but are not longer able to do so under the Kyoto framework.
- (24) Least Developed Countries are especially vulnerable to the effects of climate change, and are responsible only for a very low level of greenhouse gas emissions. Therefore, particular priority should be given to addressing the needs of Least Developed Countries when revenues generated from auctioning are used to facilitate developing countries' adaptation to the impacts of climate change. Given that very few CDM projects have been established in those countries, it is appropriate to give certainty on the acceptance of credits from projects started there after 2012, even in the absence of an international agreement. This entitlement should apply to Least Developed Countries until 2020 provided that they have by then either ratified a global agreement on climate change or a bilateral or multilateral agreement with the Community.
- (25) Once a future international agreement on climate change has been reached, CDM credits from third countries should only be accepted in the Community scheme once those countries have ratified the international agreement.
- (26) The Community and its Member States should only authorise project activities where all project participants have headquarters either in a country that has concluded the international agreement relating to such projects, so as to discourage 'free-riding' by companies in States which have not concluded an international agreement, except where those companies are based in third countries or sub-federal or regional entities which are linked to the EU emissions trading system.
- (27) In the light of experience, the provisions of the Community scheme relating to monitoring, reporting and verifying emissions should be improved.

- (28) In order to clarify the coverage of all kinds of boilers, burners, turbines, heaters, furnaces, incinerators, kilns, ovens, dryers, engines, flares, and thermal or catalytic afterburning by this Directive, a definition of combustion installation should be added.
- (29) In order to ensure that allowances can be transferred between persons within the Community without any restriction, and to ensure that the Community scheme can be linked to emissions trading systems in third countries and sub-federal and regional entities, from January 2013 onwards, all allowances should be held in the Community registry established under Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004<sup>22</sup>. This should be without prejudice to the maintenance of national registries for emissions not covered by the Community scheme.
- (30) From 2013 onwards, the capture, transport and geological storage of greenhouse gases should be covered by the Community scheme in a harmonised manner.
- (31) Arrangements should be provided to enable the mutual recognition of allowances between the Community scheme and other mandatory greenhouse gas emissions trading systems capping absolute emissions established in any third country or sub-federal or regional entity.
- (32) Taking into account experience under the Community scheme, it should be possible to issue allowances in respect of projects that reduce greenhouse gas emissions, provided that these projects take place in accordance with harmonised rules adopted at Community level and these projects would not result in the double-counting of emissions reductions or impede the extension of the scope of the Community scheme or the undertaking of other policy measures to reduce emissions not covered by the Community scheme.
- (33) [As regards the approach to allocation, aviation should be treated as other industries which receive transitional free allocation rather than as electricity generators. This means that 80% of allowances should be allocated for free in 2013, and thereafter the free allocation to aviation should decrease each year by equal amounts resulting in no free allocation in 2020. The Community and its Member States should continue to seek to reach an agreement on global measures to reduce greenhouse gas emissions from aviation and review the situation of this sector as part of the next review of the Community scheme.]
- (34) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>23</sup>. In particular power should be conferred on the Commission to adopt measures for the auctioning of allowances, for transitional Community-wide allocation of allowances, for the monitoring, reporting and verification of emissions, for the accreditation of verifiers and for implementing harmonised rules for projects. Since those measures are of general scope and are designed to amend non-essential elements of this Directive and to supplement this Directive by the addition or modification of new non-essential

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<sup>22</sup> OJ L 49, 19.2.2004, p. 1.

<sup>23</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

elements, they should be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

- (35) Directive 2003/87/EC should therefore be amended accordingly.
- (36) It is appropriate to provide for an early transposition of those provisions which prepare for the revised operation of the Community scheme from 2013 onwards.
- (37) In order to correctly complete the trading-period 2008 to 2012, the provisions of Directive 2003/87/EC, as amended by Directive 2004/101/EC, should continue to apply without affecting the possibility for the Commission to adopt the measures necessary for revised operation of the Community scheme from 2013 onwards.
- (38) The application of this Directive is without prejudice to Article 87 and 88 of the EC Treaty.
- (39) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (40) Since the objectives of this Directive cannot be sufficiently achieved by the Member States acting individually, and can therefore, by reason of its scale and effects be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*  
*Amendments to Directive 2003/87/EC*

Directive 2003/87/EC is amended as follows:

- (1) The following paragraph is added to Article 1:

"It also provides for the reductions of greenhouse gas emissions to be increased so as to contribute to the levels of reductions that are considered scientifically necessary to avoid dangerous climate change."

- (2) Article 3 is amended as follows:

- (a) point (c) is replaced by the following:

"(c) 'greenhouse gases' means the gases listed in Annex II and other gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation;"

- (b) point (h) is replaced by the following:

"(h) 'new entrant' means any installation carrying out one or more of the activities indicated in Annex I, which has obtained a greenhouse gas

emission permit subsequent to the submission to the Commission of the list referred to in Article 11(1);"

(c) The following points are added:

"[(t)] 'Combustion installation' means any stationary technical unit in which fuels are oxidised producing heat or mechanical energy or both, and other directly associated activities including waste gas scrubbing are carried out;

[(u)] 'Electricity generator' means an installation that, on or after 1 January 2005, has produced electricity for sale to third parties, and which is only covered by the category 'Supply of power or heat' in Annex I."

(3) Article 5(d) is replaced by the following:

"(d) the measures planned to monitor and report emissions in accordance with the Regulation referred to in Article 14."

(4) The following subparagraph is added to Article 6(1):

"The competent authority shall, at least every five years, review the greenhouse gas emissions permit and make any amendments as are appropriate."

(5) Article 9 is replaced by the following:

#### *"Article 9*

#### **Community-wide quantity of allowances**

The Community-wide quantity of allowances issued each year starting in 2013 shall decrease in a linear manner beginning from the mid-point of the period 2008 to 2012. The quantity shall decrease by a linear factor of 1.74% compared to the average annual total quantity of allowances issued by Member States in accordance with the Commission Decisions on their national allocation plans for the period 2008 to 2012.

The Commission shall, by 30 June 2010, publish the absolute quantity of allowances for 2013, based on the total quantities of allowances issued by the Member States in accordance with the Commission Decisions on their national allocation plans for the period 2008 to 2012.

The Commission shall review the linear factor no later than 2025."

(6) The following Article 9a is inserted:

#### *"Article 9a*

#### **Adjustment of the Community-wide quantity of allowances**

1. In respect of installations that were included in the Community scheme during the period 2008 to 2012 pursuant to Article 24(1), the quantity of allowances to be issued from 1 January 2013 shall be adjusted to reflect the average annual quantity of allowances issued in respect of those installations during the period of their inclusion, adjusted by the linear factor referred to in Article 9.

2. In respect of installations which are only included in the Community scheme from 2013 onwards, Member States shall ensure that the operators of such installations may submit to the relevant competent authority independently verified emissions data in order for them to be taken into account for the quantity of allowances to be issued.

Any such data shall be submitted, by 30 April 2010 at the latest, to the relevant competent authority in accordance with the provisions adopted pursuant to Article 14(1).

If the data submitted are duly substantiated, the competent authority shall notify the Commission thereof by 30 June 2010 and the quantity of allowances to be issued, adjusted by the linear factor referred to in Article 9, shall be adjusted accordingly.

3. The Commission shall publish the adjusted quantities referred to in paragraphs 1 and 2."

- (7) Article 10 is replaced by the following:

*"Article 10*  
**Auctioning of allowances**

1. From 2013 onwards, Member States shall auction all allowances which are not allocated free of charge in accordance with Article 10a.
2. The total quantity of allowances to be auctioned by each Member State shall be composed as follows:
  - (a) 90% of the total quantity of allowances to be auctioned being distributed amongst Member States in shares that are identical to the share of verified emissions under the Community scheme in 2005 of the Member State concerned;
  - (b) 10% of the total quantity of allowances to be auctioned being distributed amongst certain Member States for the purpose of solidarity and growth within the Community, thereby increasing the amount of allowances that those Member States auction under point (a) by the percentages specified in Annex IIa.

For the purposes of point (a), in respect of Member States which did not participate in the Community scheme in 2005, their share shall be calculated using their verified Community scheme emissions under the Community scheme in 2007.

If necessary, the percentages referred to in point (b) of the first subparagraph shall be adapted in a proportional manner to ensure that the redistribution is 10%.

3. At least 20% of the revenues generated from the auctioning of allowances referred to in paragraph 2, including all revenues from the auctioning referred to in point (b) thereof, should be used for the following:

- (a) to reduce greenhouse gas emissions, including by contributing to the Global Energy Efficiency and Renewable Energy Fund, to adapt to the impacts of climate change and to fund research and development for reducing emissions and adapting, including participation in initiatives within the framework of European Strategic Energy Technology Plan;
  - (b) to develop renewable energies to meet the commitment of the Community to using 20% renewable energies by 2020, and to meet the commitment of the Community to increase energy efficiency by 20% by 2020;
  - (c) for the capture and geological storage of greenhouse gases, in particular from coal power stations;
  - (d) for measures to avoid deforestation, in particular in Least Developed Countries;
  - (e) to facilitate developing countries' adaptation to the impacts of climate change;
  - (f) to address social aspects in lower and middle income households, for example by increasing their energy efficiency and insulation; and
  - (g) to cover administrative expenses of the management of the Community scheme.
4. Member States shall include information on the use of revenues for each of these purposes in their reports submitted under Decision No 280/2004/EC.
5. By 31 December 2010, the Commission shall adopt a Regulation on timing, administration and other aspects of auctioning to ensure that it is conducted in an open, transparent and non-discriminatory manner. Auctions shall be designed to ensure that operators, and in particular any small and medium size enterprises covered by the Community scheme, have full access and any other participants do not undermine the operation of the auction. That measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article [23(3)]."
- (8) The following Articles 10a and 10b are inserted:

*“Article 10a*

**Transitional Community-wide rules for harmonised free allocation**

1. The Commission shall, by 30 June 2011, adopt Community wide and fully-harmonised implementing measures for allocating the allowances referred to in paragraphs 2 to 6 and 8 in a harmonised manner.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article [23(3)].



The measures referred to in the first subparagraph shall, to the extent feasible, ensure that allocation takes place in a manner that gives incentives for greenhouse gas and energy efficient techniques and for reductions in emissions, by taking account of the most efficient techniques, substitutes, alternative production processes, use of biomass and greenhouse gas capture and storage, and shall not give incentives to increase emissions. No free allocation shall be made in respect of any electricity production.

The Commission shall, upon the conclusion by the Community of an international agreement on climate change leading to mandatory reductions of greenhouse gas emissions comparable to those of the Community, review those measures to provide that free allocation only takes place where this is fully justified in the light of that agreement.

2. Subject to paragraph 3, no free allocation shall be given to electricity generators, to installations for the capture, pipelines for the transport or to storage sites for greenhouse gas emissions.
3. Free allocation may be given to electricity generators in respect of the production of heat through high efficiency cogeneration as defined by Directive 2004/8/EC for economically justifiable demand to ensure equal treatment with regard to other producers of heat. In each year subsequent to 2013, the total allocation to such installations in respect of the production of that heat shall be adjusted by the linear factor referred to in Article 9.
4. The maximum amount of allowances that is the basis for calculating allocations to installations which carry out activities in 2013 and received a free allocation in the period 2008 to 2012 shall not exceed, as a proportion of the annual Community-wide total quantity, the percentage of the corresponding emissions in the period 2005 to 2007 that those installations emitted. A correction factor shall be applied where necessary.
5. The maximum amount of allowances that is the basis for calculating allocations to installations which are only included in the Community scheme from 2013 onwards shall not exceed, in 2013, the total verified emissions of those installations in 2005 to 2007. In each subsequent year, the total allocation to such installations shall be adjusted by the linear factor referred to in Article 9.
6. Five percent of the Community-wide quantity of allowances determined in accordance with Articles 9 and 9a over the period 2013 to 2020 shall be set aside for new entrants, as the maximum that may be allocated to new entrants in accordance with the rules adopted pursuant to paragraph 1 of this Article.

Allocations shall be adjusted by the linear factor referred to in Article 9.

No free allocation shall be made in respect of any electricity production by new entrants.

7. Subject to Article 10b, the amount of allowances allocated free of charge under paragraphs 3 to 6 of this Article [and paragraph 2 of Article 3c] in 2013 shall be 80% of the quantity determined in accordance with the measures referred to in paragraph

1 and thereafter the free allocation shall decrease each year by equal amounts resulting in no free allocation in 2020.

8. In 2013 and in each subsequent year up to 2020, installations in sectors which are exposed to a significant risk of carbon leakage shall be allocated allowances free of charge up to 100 percent of the quantity determined in accordance with paragraphs 2 to 6.
9. At the latest by 30 June 2010 and every 3 years thereafter the Commission shall determine the sectors referred to in paragraph 8.

That measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article [23(3)].

In the determination referred to in the first subparagraph the Commission shall take into account the extent to which it is possible for the sector or sub-sector concerned to pass on the cost of the required allowances in product prices without significant loss of market share to less carbon efficient installations outside the Community, taking into account the following:

- (a) the extent to which auctioning would lead to a substantial increase in production cost;
- (b) the extent to which it is possible for individual installations in the sector concerned to reduce emission levels for instance on the basis of the most efficient techniques;
- (c) market structure, relevant geographic and product market, the exposure of the sectors to international competition;
- (d) the effect of climate change and energy policies implemented, or expected to be implemented outside the EU in the sectors concerned.

For the purposes of evaluating whether the cost increase resulting from the Community scheme can be passed on, estimates of lost sales resulting from the increased carbon price or the impact on the profitability of the installations concerned may *inter alia* be used.

#### *Article 10b*

#### **Measures to support certain energy intensive industries in the event of carbon leakage**

Not later than June 2011, the Commission shall, in the light of the outcome of the international negotiations and the extent to which these lead to global greenhouse gas emission reductions, and after consulting with all relevant social partners, submit to the European Parliament and to the Council an analytical report assessing the situation with regard to energy-intensive sectors or sub-sectors that have been determined to be exposed to significant risks of carbon leakage. This shall be accompanied by any appropriate proposals, which may include:

- adjusting the proportion of allowances received free of charge by those sectors or sub-sectors under Article 10a;

- inclusion in the Community scheme of importers of products produced by the sectors or sub-sectors determined in accordance with Article 10a.

Any binding sectoral agreements which lead to global emissions reductions of the magnitude required to effectively address climate change, and which are monitorable, verifiable and subject to mandatory enforcement arrangements shall also be taken into account when considering what measures are appropriate."

- (9) Articles 11 and 11a are replaced by the following:

*"Article 11*  
**National implementation measures**

1. Each Member State shall publish and submit to the Commission, by 30 September 2011, the list of installations covered by this Directive in its territory and any free allocation to each installation in its territory calculated in accordance with the rules referred to in Article 10a(1).
2. By 28 February of each year, the competent authorities shall issue the quantity of allowances that are to be distributed for that year, calculated in accordance with Articles 10 and 10a.

An installation which ceases to operate shall receive no further free allowances.

*Article 11a*  
**Use of CERs and ERUs from project activities in the Community scheme before the entry into force of a future international agreement on climate change**

1. Until a future international agreement on climate change has entered into force, and in advance of the application of paragraphs 3 and 4 of Article 28, paragraphs 2 to 7 of this Article shall apply.
2. Operators may request the competent authority, to the extent that the levels of CER/ERU use allowed to them by Member States for the period 2008 to 2012 have not been used up, to issue allowances to them valid from 2013 onwards in exchange for CERs and ERUs issued in respect of emission reductions up until 2012 from project types which were accepted by all Member States in the Community scheme during the period 2008 to 2012. Until 31 December 2014, the competent authority shall make such an exchange on request.
3. To the extent that the levels of CER/ERU use allowed to operators by Member States for the period 2008 to 2012 have not been used up, competent authorities shall allow operators to exchange CERs from projects that were established before 2013 issued in respect of emission reductions from 2013 onwards for allowances valid from 2013 onwards.

The first subparagraph shall apply for all project types which were accepted by all Member States in the Community scheme during the period 2008 to 2012.

4. To the extent that the levels of CER/ERU use allowed to operators by Member States for the period 2008 to 2012 have not been used up, competent authorities shall allow operators to exchange CERs issued in respect of emission reductions from 2013 onwards for allowances from new projects started from 2013 onwards in Least Developed Countries.

The first subparagraph shall apply to CERs for all project types which were accepted by all Member States in the Community scheme during the period 2008 to 2012, until those countries have ratified an agreement with the Community or until 2020, whichever is the earlier.

5. To the extent that the levels of CER/ERU use allowed to operators by Member States for the period 2008 to 2012 have not been used up and in the event that the conclusion of an international agreement on climate change is delayed, credits from projects or other emission reducing activities may be used in the Community scheme in accordance with agreements concluded with third countries, specifying levels of use. In accordance with such agreements, operators shall be able to use credits from project activities in those third countries to comply with their obligations under the Community scheme.
6. Any agreements referred to in paragraph 5 shall provide for the use of credits in the Community scheme from renewable energy or energy efficiency technologies which promote technological transfer, sustainable development. Any such agreement may also provide for the use of credits from projects where the baseline used is below the level of free allocation under the measures referred to in Article 10a or below the levels required by Community legislation.
7. Once an international agreement on climate change has been reached, only CERs from third countries which have ratified that agreement shall be accepted in the Community scheme."

- (10) In Article 11b(1) the following subparagraph is added:

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

- (11) Article 13 is amended as follows:

- (a) paragraph 1 is replaced by the following:

"1. Allowances issued from 1 January 2013 onwards shall be valid for emissions during periods of eight years beginning on 1 January 2013."

- (b) paragraph 2 is deleted;

- (c) In paragraph 3, the first subparagraph is replaced by the following:

"Four months after the beginning of each period referred to in paragraph 1, allowances which are no longer valid and have not been surrendered and

cancelled in accordance with Article 12(3) shall be cancelled by the competent authority."

- (12) Article 14 is replaced by the following:

*"Article 14*

**Monitoring and reporting of emissions**

1. The Commission shall adopt a Regulation for the monitoring and reporting of emissions and, where relevant, activity data, from the activities listed in Annex I which shall be based on the principles for monitoring and reporting set out in Annex IV and shall specify the global warming potential of each greenhouse gas in the requirements for monitoring and reporting emissions for that gas.

That measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article [23(3)].

2. The Regulation may take into account the most accurate and up-to-date scientific evidence available, in particular from the IPCC, and may also specify requirements for operators to report on emissions associated with the production of goods produced by energy intensive industries which may be subject to international competition, and for this information to be verified independently.

Those requirements may include reporting on levels of emissions from electricity generation covered by the Community scheme associated with the production of such goods.

3. Member States shall ensure that each operator of an installation reports the emissions from that installation during each calendar year to the competent authority after the end of that year in accordance with the regulation."

- (13) Article 15 is amended as follows:

- (a) the title is replaced by the following:

"Verification and Accreditation"

- (b) the following paragraphs are added:

"The Commission shall adopt a Regulation for the verification of emission reports and the accreditation of verifiers specifying conditions for the accreditation, mutual recognition and withdrawal of accreditation for verifiers, and for supervision and peer evaluation as appropriate.

That measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article [23(3)]."

- (14) In Article 16, paragraph 4 is replaced by the following:

"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."

(15) Article 19 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Allowances issued from 1 January 2013 onwards shall be held in the Community registry."

(b) The following paragraph 4 is added:

"4. The Regulation on a standardised and secured system of registries shall contain appropriate modalities for the Community registry to undertake transactions and other operations to implement arrangements referred to in Article 25(1b)."

(16) Article 21 is amended as follows:

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

"That report shall pay particular attention to the arrangements for the allocation of allowances, the operation of registries, the application of the implementing measures on monitoring and reporting, verification and accreditation and issues relating to compliance with this Directive and on the fiscal treatment of allowances, if any."

(b) paragraph 3 is replaced by the following:

"3. The Commission shall organise an exchange of information between the competent authorities of the Member States concerning developments relating to issues of allocation, the use of ERUs and CERs in the Community scheme, the operation of registries, monitoring, reporting, verification, accreditation, information technology, and compliance with this Directive."

(17) Article 22 is replaced by the following:

#### *"Article 22*

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

The Commission may amend the Annexes to this Directive, with the exception of Annex I, in the light of the reports provided for in Article 21 and of the experience of the application of this Directive. Annexes IV and V may be amended in order to improve the monitoring, reporting and verification of emissions.

Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article [23(3)]."

(18) In Article 24, paragraphs 2 and 3 are replaced by the following:

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

3. The Commission may, on its own initiative or on request by a Member State, adopt a Regulation on the monitoring of, and reporting on, emissions concerning activities, installations and greenhouse gases which are not listed as a combination in Annex I, if that monitoring and reporting can be carried out with sufficient accuracy.

That measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article [23(3)]."

(19) The following Article 24a is inserted:

*"Article 24a*

**Harmonised rules for projects that reduce emissions**

1. In addition to the inclusions provided for in Article 24, the Commission may adopt implementing measures for issuing allowances in respect of projects administered by Member States that reduce greenhouse gas emissions outside of the Community scheme.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article [23(3)].

Any such measures shall not result in the double-counting of emissions reductions and impede the undertaking of other policy measures to reduce emissions not covered by the Community scheme. Provisions shall only be adopted where inclusion is not possible in accordance with Article 24, and the next review of the Community scheme shall consider harmonising the coverage of those emissions across the Community.

2. The Commission may adopt implementing measures that set out the details for crediting Community-level projects referred to in paragraph 1.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article [23(3)]."

(20) In Article 25, the following paragraphs 1a and 1b are inserted:

"1a. Agreements may be made to provide for the recognition of allowances between the Community scheme and mandatory greenhouse gas emissions trading systems with absolute emissions caps established in any other country or in sub-federal or regional entities.

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

- (21) Articles 27 and 28 are replaced by the following:

*"Article 27*

**Exclusion of small combustion installations subject to equivalent measures**

1. Member States may exclude, from the Community scheme, combustion installations which have a rated thermal input below 25MW, reported emissions to the competent authority of less than 10 000 tonnes of carbon dioxide equivalent, excluding emissions from biomass, in each of the preceding 3 years, and which are subject to measures that will achieve an equivalent contribution to emission reductions, if the Member State concerned complies with the following conditions:
  - (a) it notifies the Commission of each such installation, specifying the equivalent measures that are in place,
  - (b) it confirms that monitoring arrangements are in place to assess whether any installation emits 10 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year;
  - (c) it confirms that if any installation emits 10 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year or the equivalent measures are no longer in place, the installation will be re-introduced into the system;
  - (d) it publishes the information referred to in points (a), (b) and (c) for public comment.
2. If, following a period of three months from the date of notification for the public to comment, the Commission does not object within a further period of six months, the notification shall be considered to be granted.

Following the surrender of allowances in respect of the period during which the installation is in the emissions trading system, the installation shall be excluded and the Member State shall issue no further free allowances to the installation pursuant to Article 10a.

*Article 28*

**Adjustments applicable upon the conclusion of a future international agreement on climate change**

1. Upon the conclusion by the Community of an international agreement on climate change leading, by 2020, to mandatory reductions of greenhouse gas emissions exceeding the minimum reduction levels agreed upon by the European Council, paragraphs 2, 3 and 4 shall apply.
2. From the year following the conclusion of the international agreement referred to in paragraph 1, the linear factor shall increase so that the Community quantity of allowances in 2020 is lower than that established pursuant to Article 9, by a quantity of allowances equivalent to the overall reduction of greenhouse gas emissions by the



Community below 20% to which the international agreement commits the Community, multiplied by the share of overall greenhouse gas emission reductions in 2020 which the Community scheme is contributing pursuant to Articles 9 and 9a.

3. Operators may use CERs, ERUs or other credits approved in accordance with paragraph 4 from third countries which have concluded the international agreement, up to half of the reduction taking place in accordance with paragraph 2.
4. The Commission may adopt measures to provide for the use of additional project types by operators in the Community scheme to those referred to in paragraphs 2 to 5 of Article 11a or the use by such operators of other mechanisms created under the international agreement, as appropriate.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article [23(3)].”

- (22) Annex I is amended in accordance with Annex I to this Directive.
- (23) Annex IIa is added, as set out in Annex II to this Directive .
- (24) Annex III is deleted.

## *Article 2*

### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2012 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

However, they shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 9a(2) of Directive 2003/87/EC as inserted by Article 1(6) of this Directive and with Article 11 of Directive 2003/87/EC as amended by Article 1(9) of this Directive by [31 December 2009] at the latest.

Member States shall apply the provisions referred to in the first subparagraph from 1 January 2013. When Member States adopt the provisions referred to in the first and second subparagraphs, those provisions shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

*Article 3*  
*Transitional provision*

The provisions of Directive 2003/87/EC, as amended by Directive 2004/101/EC, shall continue to apply until 31 December 2012.

*Article 4*  
*Entry into force*

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

*Article 5*  
*Addressees*

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## ANNEX I

Annex I to Directive 2003/87/EC is amended as follows:

(1) Point 1 is replaced by the following:

“1. Installations or parts of installations used for research, development and testing of new products and processes and combustion installations exclusively using biomass are not covered by this Directive.”

(2) In point 2 the following sentence is added:

“When calculating the total capacity of combustion installations, units with a rated thermal input under 3 MW shall not be taken into account for the purposes of this calculation.”

(3) The table is amended as follows:

(a) The first row of categories of activity is replaced by the following:

“

<i>Supply of power or heat</i>	
Combustion installations with a rated thermal input exceeding 20 MW (except hazardous or municipal waste installations)	Carbon dioxide
<i>Other Energy activities</i>	
Mineral oil refineries	Carbon dioxide
Coke ovens	Carbon dioxide

”

(b) The second row of categories of activity is amended as follows:

(i) in the heading the word "*ferrous*" is deleted;

(ii) the following paragraphs are added :

“

Production and processing of ferrous metals (including ferro-alloys) where combustion installations with a rated thermal input exceeding 20 MW are operated, including rolling mills, re-heaters, annealing furnaces, smitheries, foundries, coating and pickling.	Carbon dioxide
Production of aluminium (primary, and secondary where combustion installations with a rated thermal input exceeding 20 MW are operated)	Carbon dioxide and perfluorocarbons
Production and processing of non-ferrous metals, including production of alloys, refining, foundry casting, etc., where combustion installations with a rated thermal input exceeding 20 MW are operated.	Carbon dioxide

(c) the third row of categories of activity is amended as follows:

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

“Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or lime including the calcination of dolomite and magnesite in rotary kilns with a production capacity exceeding 50 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day”;

(ii) in the third paragraph the following terms are deleted:

“, and/or with a kiln capacity exceeding 4 m<sup>3</sup> and with a setting density per kiln exceeding 300 kg/m<sup>3</sup>.”

(iii) the following paragraphs are added:

“

Installations for the manufacture of rock wool or stone wool with a capacity exceeding 20 tonnes per day	Carbon dioxide
Installations for the drying or calcination of gypsum or for the production of plaster boards and other gypsum products, where combustion installations with a rated thermal input exceeding 20 MW are operated.	Carbon dioxide

”

(4) The following rows of categories of activity are added:

“

<i>Chemical industry</i>	
Production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues, where combustion installations with a rated thermal input exceeding 20 MW are operated	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 basic organic chemicals by cracking, reforming, partial	

or full oxidation or by similar processes, with a production capacity exceeding 100 tonnes per day	Carbon dioxide
Production of hydrogen (H <sub>2</sub> ) and synthesis gas by reforming or partial oxidation with a production capacity exceeding 25 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
<i>Capture, transport and geological storage of greenhouse gas emissions</i>	
Installations to capture greenhouse gases for the purpose of transport and geological storage in a storage site permitted under Directive xxxx/xx/EC <sup>24</sup>	All greenhouse gases listed in Annex II
Pipelines for the transport of greenhouse gases for geological storage in a storage site permitted under Directive xxxx/xx/EC	All greenhouse gases listed in Annex II
Storage sites for the geological storage of greenhouse gases permitted under Directive xxxx/xx/EC	All greenhouse gases listed in Annex II

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## ANNEX II

The following is added as Annex IIa to Directive 2003/87/EC:

### “ANNEX IIa

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

	Member State share
Belgium	10%
Bulgaria	53%
Czech Republic	31%
Estonia	42%
Greece	17%
Spain	13%
Italy	2%
Cyprus	20%
Latvia	56%
Lithuania	46%
Luxembourg	10%
Hungary	28%
Malta	23%
Poland	39%

Portugal	16%
Romania	53%
Slovenia	20%
Slovakia	41%
Sweden	10%
”	

## LEGISLATIVE FINANCIAL STATEMENT

### 1. NAME OF THE PROPOSAL:

Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the EU greenhouse gas emission allowance trading system of the Community

### 2. ABM/ABB FRAMEWORK

Policy Area(s) concerned and associated Activity/Activities:

Policy area: 07 Environment

Activity ABB Code 0703: Implementation of Community environmental policy and legislation

### 3. BUDGET LINES

#### 3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- BA lines)) including headings:

Article 07 03 07 - LIFE+ (Financial Instrument for the Environment — 2007 to 2013)

#### 3.2. Duration of the action and of the financial impact:

For 2009-2013 the appropriations required will be covered by the resources already foreseen for the LIFE+ programme. As the revised legislation only takes effect as from 2013, and there is no end date for the action, the proposal will continue to have an impact on the EU budget also thereafter, at least for regular monitoring of the functioning of the system. The main element of uncertainty is the timing of an international climate change agreement, which may make adjustments to the system necessary.

#### 3.3. Budgetary characteristics (add rows if necessary):

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
07 03 07	Non-comp	Diff	NO	NO	NO	NO 2



## 4. SUMMARY OF RESOURCES

### 4.1. Financial resources

#### 4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		2009	2010	2011	2012	2013	2014 and later	Total
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#### Operational expenditure<sup>25</sup>

Commitment appropriations (CA)	8.1.	a	0.900	1.850	0.150	0.150	0.000	0.000	3.050
Payment appropriations (PA)		b	0.270	1.185	0.815	0.675	0.105	0.000	3.050

#### Administrative expenditure within reference amount<sup>26</sup>

Technical & administrative assistance (NDA)	8.2.4.	c	0.000	0.000	0.000	0.000	0.000	0.000	0.000
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#### TOTAL REFERENCE AMOUNT

Commitment appropriations		a+c	0.900	1.850	0.150	0.150	0.000	0.000	3.050
Payment appropriations		b+c	0.270	1.185	0.815	0.675	0.105	0.000	3.050

#### Administrative expenditure not included in reference amount<sup>27</sup>

Human resources and associated expenditure (NDA)	8.2.5.	d	1.170	1.813	1.287	0.819	0.819	0.819	6.727
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6.	e	0.250	0.287	0.341	0.395	0.277	0.331	1.881

#### Total indicative financial cost of intervention

TOTAL CA including cost of human resources		a+c +d +e	2.320	3.950	1.778	1.364	1.096	1.150	11.658
TOTAL PA including cost of human resources		b+c +d +e	1.690	3.285	2.443	1.889	1.201	1.150	11.658

<sup>25</sup> Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

<sup>26</sup> Expenditure within Article xx 01 04 of Title xx.

<sup>27</sup> Expenditure within Chapter xx 01 other than Articles xx 01 04 or xx 01 05.

## Co-financing details

If the proposal involves co-financing by Member States or other bodies (please specify which), an estimate of the level of this co-financing should be indicated in the table below (additional lines may be added if different bodies are foreseen for the provision of the co-financing):

EUR million (to 3 decimal places)

Co-financing body		Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and later	Total
.....	f	0.000	0.000	0.000	0.000	0.000	0.000	0.000
TOTAL CA including co-financing	a+c +d +e +f							

### 4.1.2. Compatibility with financial programming

- Proposal is compatible with existing financial programming.
- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement<sup>28</sup> (i.e. flexibility instrument or revision of the financial perspective).

### 4.1.3. Financial impact on revenue

- Proposal has no financial implications on revenue
- Proposal has financial impact – the effect on revenue is as follows:

NB: All details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.

<sup>28</sup> See points 19 and 24 of the Interinstitutional Agreement.

EUR million (to one decimal place)

		Prior to action [Year n-1]	Situation following action					
Budget line	Revenue		[Year n]	[n+1]	[n+2]	[n+3 ]	[n+4]	[n+5] <sup>29</sup>
	<i>a) Revenue in absolute terms</i>							
	<i>b) Change in revenue</i>	Δ						

(Please specify each revenue budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line.)

**4.2. Human resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.**

Annual requirements	2009	2010	2011	2012	2013	2014 and later
Total number of human resources	10 A*/AD	15.5 A*/A D	11 A*/A D	7 A*/A D	7 A*/A D	7 A*/A D

**5. CHARACTERISTICS AND OBJECTIVES**

**5.1. Need to be met in the short or long term**

The EU Emission Trading System is one of the most important instruments for the EU's contribution towards achieving the significant emission reductions which are necessary to prevent dangerous climate change.

In the light of the experience with the first trading period and extensive stakeholder consultations, it is clear that the scheme needs to be strengthened and extended to further large industrial emitters, so that it can become a solid building block for a global carbon market and for a future international agreement on climate change. To this end, financial resources are necessary for the development of tasks attributed to the Commission by the Directive, including:

- the development of Regulations setting out detailed implementing rules on monitoring and reporting, verification of emission reports and accreditation of verifiers, and auctioning,
- the development of Community-wide allocation rules,

<sup>29</sup> Additional columns should be added if necessary, i.e. if the duration of the action exceeds 6 years.

- the development of rules in relation to projects that reduce greenhouse gas emissions within or outside the Community,
- the potential development of methodologies and provisions to be valid until an international agreement on climate change has been concluded,
- any necessary adjustment of the provisions of the Directive once an international agreement on climate change has been concluded,
- the setting up of arrangements and agreements for the recognition of allowances between the Community system and compatible, mandatory GHG emission trading systems in other parts of the world,
- the procurement of studies or other technical assistance related to the implementation,
- information and capacity-building activities.

The primary beneficiaries of the improved certainty and predictability and the increased harmonisation of the scheme are the operators of installations that are currently covered or are proposed to be covered in the future. Indirectly, also trading intermediaries benefit from the increased transparency and predictability.

## **5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy**

Action to reduce greenhouse gas emissions can best be achieved through legislation and coordination at Community level. It appeared from the first phase of the EU ETS from 2005 to 2007 that increased harmonisation, e.g. of the application of the scope of the Directive and of the cap-setting and the allocation rules is needed in order to avoid distortions of competition on the internal market.

Operational expenditure is envisaged within the part of the LIFE+ budget subject to central direct management.

## **5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework**

The European Council held on 8-9 March 2007 endorsed an EU objective of a 20%, and under certain circumstances 30%, reduction in greenhouse gas emissions by 2020 compared to 1990 as its contribution to a global and comprehensive agreement for the period beyond 2012, provided that other developed countries commit themselves to comparable emission reductions and economically more advanced developing countries to contributing adequately according to their responsibilities and respective capabilities.

Furthermore, that European Council confirmed that the European Union Emissions Trading System (EU ETS) is and will remain one of the most important instruments for the EU's contribution towards achieving the significant emission reductions which are necessary to meet the strategic objective of limiting the global average temperature increase to not more than 2°C above pre-industrial levels.

In this context, it is vital that the EU ETS is improved and extended in the light of experience during the first "learning-by-doing" phase from 2005 to 2007, and that it is prepared for linking to compatible cap-and-trade systems in other parts of the world. The objectives of the proposal are set out in the Explanatory Memorandum.

<b>Objective</b>	<b>Indicator</b>
To streamline and extend the scope of the EU ETS	Fewer complaints from industry or MS relating to differences in application of the scope between MS, and about disproportionate administrative costs for the smallest installations.
To increase the harmonisation and the predictability of the system	No distortion of competition in the internal market due to differences in Member State implementation.  Companies having sufficient regulatory certainty to be able to decide on medium- to long-term investments in low-carbon technologies.
To have robust compliance and enforcement	High confidence in the EU ETS, also internationally.
To link with appropriate emissions trading systems in third countries and to have appropriate means to involve developing countries and countries in economic transition	Having given input to the development of emissions trading schemes in third countries or administrative entities with a view to enabling linking to the EU ETS without jeopardizing its environmental integrity.

#### 5.4. Method of implementation (indicative)

X ***Centralised management***

X directly by the Commission

indirectly by delegation to:

executive Agencies

bodies set up by the Communities as referred to in Article 185 of the Financial Regulation

national public-sector bodies/bodies with a public-service mission

***Shared or decentralised management***

with Member States

with third countries

- Joint management with international organisations (please specify)*

Relevant comments:

## **6. MONITORING AND EVALUATION**

### **6.1. Monitoring system**

Member States will have to report on all actions and measures they take to implement the Directive (Article 1(7) and Article 2 of the proposal).

Contracts signed by the Commission for the purpose of the implementation of the Directive must provide for supervision and financial control by the Commission (or any representative authorised by it) and for audits by the Court of Auditors, if necessary on the spot.

### **6.2. Evaluation**

#### *6.2.1. Ex-ante evaluation*

See the impact assessment accompanying this proposal. The economic, social, health and environmental impacts of the measures proposed have been assessed. It was partly carried out internally and partly through external consultants during 2007.

#### *6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experience in the past)*

The measures proposed and the accompanying impact assessment take into account lessons learned from the operation of the Community system in the period 2005 to 2007.

#### *6.2.3. Terms and frequency of future evaluation*

The progress of the work on implementing this proposal and the appropriateness of the resources allocated will be evaluated annually in connection with the management plan.

## **7. ANTI-FRAUD MEASURES**

Internal control standards No 14, 15, 16, 18, 19, 20, and 21, and the principles laid down in Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities will be fully applied.

## 8. DETAILS OF RESOURCES

### 8.1. Objectives of the proposal in terms of their financial cost

Commitment appropriations in EUR million (to 3 decimal places)

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	2009		2010		2011		2012		2013		2014 or later		TOTAL	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost
OPERATIONAL OBJECTIVE No.2 <sup>1</sup> Increase harmonisation and predictability																
<b>Action 1</b> Adopt Community-wide allocation rules																
- Output 1	Allocation rules		0	0.400	1	1.100									1	1.500
<b>Action 2</b> Establish and maintain Community-wide registry																
- Output 1	Software				1	0.750									1	0.750
<b>Action 3</b> Provide for projects in EU outside the EU ETS																

- Output 1	Provisions for issuing allowances								1	0.150					1	0.150
<i>Until conclusion of int'l agreement</i>																
<b>Action 7</b> Address carbon leakage																
- Output 1	Report on potential carbon leakage		1	0.350											1	0.350
Sub-total Objective 2			1	0.750	2	1.850			1	0.150					5	2.750
OPERATIONAL OBJECTIVE No.3 <sup>1</sup> Robust compliance and enforcement																
<b>Action 1</b> Improve and upgrade guidelines																
- Output 1	Regulation on monitoring and reporting		1	0.100											1	0.100
- Output 2	Regulation on verification and accreditation		1	0.050											1	0.050
Sub-total Objective 3			2	0.150											2	0.150
OPERATIONAL OBJECTIVE No.4 <sup>1</sup> Linking and involvement of 3 <sup>rd</sup> countries																



<i>Upon concl of int'l agreement</i>																
<b>Action 1</b> Provide for use of new credits/mechanisms																
- Output 1	Provisions						1	0.150							1	0.150
Sub-total Objective 4							1	0.150							1	0.150
<b>TOTAL COST</b>			4	0.900	2	1.850	1	0.150	2	0.150					<b>9</b>	<b>3.050</b>

## 8.2. Administrative expenditure

### 8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources ( <b>number of posts/FTEs</b> )					
		2009	2010	2011	2012	2013	2014+
Officials or temporary staff <sup>30</sup> (XX 01 01)	A*/AD	9	14.5	10	6	6	6
	B*, C*/AST	1	1	1	1	1	1
Staff financed <sup>31</sup> by Article XX 01 02							
Other staff <sup>32</sup> financed by Article XX 01 04/05							
<b>TOTAL</b>		10	15.5	11	7	7	7

### 8.2.2. Description of tasks deriving from the action

- Prepare regulations on auctioning; monitoring and reporting; verification and accreditation
- Develop Community-wide allocation rules and a Community wide electronic registry
- Analyse the need for a mechanism to apply to certain energy intensive installations until there is an international agreement on climate change
- Adjust the scheme, as and if appropriate, in the light of an international agreement on climate change
- Monitor the implementation in the Member States
- Capacity-building and information activities

### 8.2.3. Sources of human resources (statutory)

- Posts currently allocated to the management of the programme to be replaced or extended
- Posts pre-allocated within the APS/PDB exercise for year n
- Posts to be requested in the next APS/PDB procedure

<sup>30</sup> Cost of which is NOT covered by the reference amount.

<sup>31</sup> Cost of which is NOT covered by the reference amount.

<sup>32</sup> Cost of which is included in the reference amount.

- Posts to be redeployed using existing resources within the managing service (internal redeployment)
- Posts required for year n although not foreseen in the APS/PDB exercise for the year in question

8.2.4. *Other administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)*

EUR million (to 3 decimal places)

Budget line (number and heading)	2009	2010	2011	2012	2013	2014 and later	TOTAL
<b>1 Technical and administrative assistance (including related staff costs)</b>							
Executive agencies <sup>33</sup>							
Other technical and administrative assistance							
- <i>intra muros</i>							
- <i>extra muros</i>							
<b>Total technical and administrative assistance</b>							

8.2.5. *Financial cost of human resources and associated costs not included in the reference amount*

EUR million (to 3 decimal places)

Type of human resources	2009	2010	2011	2012	2013	2014 and later
Officials and temporary staff (XX 01 01)	1.170	1.813	1.287	0.819	0.819	0.819
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.)  (specify budget line)						
<b>Total cost of human resources and associated costs (NOT in reference amount)</b>	1.170	1.813	1.287	0.819	0.819	0.819

<sup>33</sup> Refer to the specific legislative financial statement for the Executive Agency(ies) concerned.

Calculation– *Officials and temporary agents*

The standard salary for 1A\*/AD official as referred to in Point 8.2.1 is € 0.117 M

Calculation– *Staff financed under Article XX 01 02*

N/A

8.2.6. *Other administrative expenditure not included in reference amount*

EUR million (to 3 decimal places)

	2009	2010	2011	2012	2013	2014 and later	TOTAL
XX 01 02 11 01 – Missions		0.010	0.010	0.010			0.030
XX 01 02 11 02 – Meetings & conferences							
XX 01 02 11 03 – Committees <sup>34</sup>		0.027	0.081	0.135	0.027	0.081	0.351
XX 01 02 11 04 – Studies & consultations							
XX 01 02 11 05 - Information systems							
<b>2 Total other management expenditure (XX 01 02 11)</b>	0.000	0.037	0.091	0.145	0.027	0.081	0.381
<b>3 Other expenditure of an administrative nature (XX.010301 (Equipment of the Data Centre, Services and operating expenditure of the Data Centre))</b>	0.250	0.250	0.250	0.250	0.250	0.250	1.500
<b>Total administrative expenditure, other than human resources and associated costs (NOT included in reference amount)</b>	0.250	0.287	0.341	0.395	0.277	0.331	1.881

Calculation - *Other administrative expenditure not included in reference amount*

Ten missions of Commission staff at a unit cost of € 1 000 are foreseen every year from 2010 to 2012, in order to explain the new legislation and facilitate its implementation in the Member States.

<sup>34</sup> Specify the type of committee and the group to which it belongs.

Meetings of the Climate Change Committee (unit cost: € 27 000) are foreseen for the adoption of three new Commission Regulations and amendment of one existing Commission Regulation and of Community-wide rules on allocation. Once an international agreement on climate change has been concluded, certain elements of the EU ETS are likely to have to be adjusted through comitology. There may also be arrangements or agreements for linking the EU ETS to schemes in third countries for adoption in comitology. The meetings of the Climate Change Committee for adoption of the Commission Regulations and of Community-wide allocation rules will be needed in the period 2010 to 2012. The timing of other meetings will depend on developments internationally.

The € 250 000 per year. The costs included here relate to the hosting of the CITL/Community Registry by the Commission, as well as to the purchase and maintenance of IT and communication tools necessary to make the system fully operational. The CITL, an independent transaction log recording the issue, transfer and cancellation of allowances is a critical IT application for the functioning of the EU Emissions Trading Scheme, which the Commission is obliged to operate in accordance with Article 20 of Directive 87/2003/EC. According to Article 68 of Regulation (EC) No 2216/2004 regulating the registries system, the Commission must ensure that both the CITL and the CR (a separate registry that the Kyoto Protocol requires the EC to operate) is operational 24 hours a day, 7 days a week, and that interruptions to the operations of these systems are kept to a minimum.

The costs relating to development and maintenance of the system are covered by budget line 07 03 07 (LIFE +) - cf section 8.1.

The needs for human and administrative resources shall be within the allocation that can be granted to the managing DG in the framework of the annual allocation procedure in the light of budgetary constraints.