

Amendment 180

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Report

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Proposal for a directive – amending act

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AMENDMENTS BY PARLIAMENT*

to the Commission 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 ,

Having regard to the opinion of the European Economic and Social Committee¹,

* Political amendments: new or replacement text is marked in bold italics and deletions are indicated
by the symbol . Technical corrections and adaptations by the services: new or replacement text is
marked in italics and deletions are indicated by the symbol .

¹ OJ C ...

Having regard to the opinion of the Committee of the Regions¹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²,

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/EC³ 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)⁴, 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 exceed 2°C above pre-industrial levels. The latest Intergovernmental Panel on Climate Change Assessment (IPCC) report⁵ 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 Council⁶ 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, *including international maritime shipping and aviation. Aviation is contributing to these reductions through its inclusion in the Community scheme. In the event that no international agreement including international maritime emissions in its reduction targets through the IMO has been approved by the Member States and/or no such agreement through the UNFCCC has been approved by the Community by 31 December 2011, the Commission should make a proposal to include international maritime emissions according to harmonised modalities in the Community reduction commitment with the aim of its entry into force by 2013. Such*

¹ OJ C ...

² OJ C ...

³ OJ L 275, 25.10.2003, p. 32. □

⁴ OJ L 33, 7.2.1994, p. 11.

⁵ Intergovernmental Panel on Climate Change 4th Assessment report, adopted on 17 November 2007 in Valencia, Spain, and available at www.ipcc.ch

⁶ Conclusions of the meeting of the European Council of 8-9 March 2007 in Brussels.

proposal should minimise any negative impact on EU competitiveness, taking into account the potential environmental benefits.

- (3a) *In its resolution of 31 January 2008 on the outcome of the Bali Conference on Climate Change (COP 13 and COP/MOP 3), the European Parliament recalled its position that industrialised countries should commit to reducing their greenhouse gas emissions by at least 30% by 2020 and by 60-80% by 2050, compared to 1990 figures. Given that it anticipates a positive outcome to the COP 15 negotiations to be held in Copenhagen in 2009, the European Union should begin to prepare tougher emission reduction targets for 2020 and beyond and should seek to ensure that, after 2013, the Community scheme allows, if necessary, for more stringent emission caps, as part of the Union's contribution to a new international agreement.*
- (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.
- (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 **25 000** tonnes of CO₂ 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. **Hospitals may also be excluded if they undertake equivalent measures.** This threshold □ offers the maximum gain, in *relative* 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. **It is for Member States to propose measures applying to small installations which will achieve an equivalent contribution to emission reductions as the emissions trading scheme. Such measures could include taxation, agreements with industry and regulation. Taking into account the need to reduce unnecessary administrative burdens for smaller emitters, Member States may set up simplified procedures and measures to comply with this Directive.**

(10a) Information on the application of this Directive should be easily accessible, in particular for small- and medium-sized enterprises (SMEs).

- (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, **or excluded from**, 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.

- (13a) In order to maintain the environmental and administrative efficiency of the Community scheme, avoid distortions of competition and early depletion of the new entrants reserve, the rules should be harmonised so as to ensure that all Member States take the same approach, in particular in relation to the meaning of significant extensions of installations. Provisions for the adoption of harmonised rules for the implementation of this Directive should therefore be included. In these rules, significant extension should wherever appropriate be defined as an extension by at least 10% of the installation's existing installed capacity or a substantial increase of the emissions of the installation linked to the increase of the installed capacity. Allocation from the new entrants reserve should only take place in respect of the significant extension of the installation.***
- (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 ***safe and sustainable*** 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. ***88%*** of the total quantity of allowances to be auctioned should be distributed amongst Member States according to their relative share of □ emissions in the Community scheme ***for 2005 or the average of the period 2005-2007, whichever one is the highest.*** 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. ***The*** 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. ***A further 2% of the total quantity of allowances to be auctioned should be distributed amongst Member States whose greenhouse gas emissions in 2005 were at least 20% below their emissions in their levels applicable to them under the Kyoto Protocol.*** 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 ***50%*** 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 ***environmentally safe*** capture and geological storage of greenhouse gases, to contribute to the Global Energy Efficiency

and Renewable Energy Fund¹ *and to the Adaptation Fund as operationalised by UNFCCC COP 14 in Poznan*², 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 CO₂, 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 which are stored. Electricity generators may receive free allowances for *district heating and cooling and for heat and cooling* 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.

(16a) The main long-term incentive for carbon capture and storage and new renewable technologies is that allowances will not need to be surrendered for CO₂ emissions which are permanently stored, or avoided. In addition, to accelerate demonstration of the first commercial facilities and demonstration of innovative renewable technologies, allowances should be set aside from the new entrants reserve to provide a guaranteed reward for CO₂ tonnes stored or avoided at sufficient scale for the first such facilities in the EU provided there is an agreement on knowledge-sharing. The additional financing should apply to projects of sufficient scale, which are innovative in nature and which have significant co-financing by the operator covering, in principle, more than half of the relevant investment cost, and taking into account the viability of the project.

(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 30% free allocation in 2020, *with a view to reaching no free allocation in 2027.*

(17a) In order to ensure an orderly functioning of the carbon and electricity markets, the auctioning of allowances for the period from 2013 onwards should start by 2011 at the latest and be based on clear and objective principles defined well in advance.

¹ COM(2006) 583, 6.10.2006.

² UNFCCC Decision xxx/COP.14.

(18) Transitional free allocation to installations should be provided for through harmonised Community-wide rules ("*ex ante* 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. ***These harmonised rules may also take into account emissions related to the use of combustible waste gases when the production of these waste gases cannot be avoided in the industrial process; in this respect the rules may provide for allowances to be allocated for free to operators of installations combusting the waste gases concerned or to operators of the installations where these gases originate.*** They should also avoid undue distortions of competition on the markets for electricity and *heating and cooling* supplied to industrial installations. ***They should further avoid undue distortions of competition between industrial activities carried out in installations operated by a single operator and production in outsourced 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.

(18a) Member States may deem it necessary to compensate temporarily certain installations which have been determined to be exposed to a significant risk of carbon leakage related to greenhouse gas emissions passed on in electricity prices for these costs. Such support should only be granted where it is necessary and proportionate and should ensure that the Community scheme incentives to save energy and to stimulate a shift in demand from grey to green electricity are maintained.

(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 Bali¹ 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 ***100% of*** allowances free of charge □ 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

¹ 13th Conference of the Parties to the UNFCCC, and 3rd Meeting of the Parties to the Kyoto Protocol, held in Bali, Indonesia from 3-14 December 2007.

electricity consumption in the production process, without changing the total quantity of allowances. ***The carbon leakage risk in these sectors or sub-sectors should be assessed, as a starting point, at a 3-digit level (NACE-3 Code) or, where appropriate and where the relevant data are available, at a 4-digit level (NACE-4 Code).***

- (20) The Commission should therefore review the situation by **30 June 2010** 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 **31 December 2009**. 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.

(20a) The discussion in the European Council concerning the determination of the sectors or sub-sectors exposed to a significant risk of carbon leakage has an exceptional character and in no way affects the procedures for the exercise of the implementing powers conferred on the Commission under Article 202 of the EC Treaty.

- (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 ***eligible for use*** 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. ***It is important that credits from projects used by operators represent real, verifiable, additional and permanent emission reductions and have clear sustainable development benefits and no significant negative environmental or social impacts. A procedure should be established which allows for the exclusion of certain project types.***
- (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, ***when these projects are clearly additional and contribute to sustainable development.*** 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, ***additional credits up to half of the additional reduction taking place in the Community scheme may be used, and high quality CDM credits from third countries should only be accepted in the Community scheme once those countries have ratified the international agreement from 2013.***
- (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 ***in*** sub-federal or regional entities which are linked to the EU emissions trading system.
- (26a) The fact that certain provisions of this Directive refer to the approval of a future international agreement on climate change by the Community is without prejudice to the conclusion of that agreement by the Member States as well.***
- (27) In the light of experience, the provisions of the Community scheme relating to monitoring, reporting and verifying emissions should be improved.
- (27a) The EU should work to establish an internationally recognised system for reducing deforestation and increasing afforestation and reforestation, supporting the objective, within the UNFCCC, of developing financing mechanisms, taking into account existing arrangements, as part of an effective, efficient, equitable and coherent financial architecture within the post-2012 climate agreement to be reached in Copenhagen.***
- (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 □ 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 2004¹. This should be without prejudice to the maintenance of national registries for emissions not covered by the Community scheme. ***The Community registry will provide the same quality of services as the national registries.***
- (30) From 2013 onwards, the ***environmentally safe*** 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

¹ OJ L 49, 19.2.2004, p. 1.

systems capping absolute emissions established in any third country or sub-federal or regional entity.

(31a) Third countries neighbouring the Union should be encouraged to join the Community scheme if they comply with this Directive. The Commission should make every effort in negotiations with, and in the provision of financial and technical assistance to, candidate countries and potential candidate countries and countries covered by the European neighbourhood policy to promote this aim. This would facilitate technology and knowledge transfer to these countries, which is an important means of providing economic, environmental and social benefits to all.

(31b) This Directive should provide for agreements to be made for the recognition of allowances between the Community scheme and other mandatory greenhouse gas emissions trading systems with absolute emissions caps, which are compatible with that of the European Union taking into account the level of environmental ambition and the presence of a robust and comparable emissions monitoring, reporting and verification mechanism and compliance system.

(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.

□

(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 Commission¹. In particular power should be conferred on the Commission to adopt measures for the **harmonisation of rules on the definition of new entrant, for the auctioning of allowances, for transitional Community-wide allocation of allowances, for the establishment of the criteria and modalities applicable to the selection of certain demonstration projects, for the establishment of a list of sectors or sub-sectors which are exposed to a significant risk of carbon leakage, for the use of credits**, for the monitoring, reporting and verification of emissions, **for the accreditation of verifiers, for implementing harmonised rules for projects as well as for amending certain annexes**. 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 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.

¹ OJ L 184, 17.7.1999, p. 23. □

- (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 **2008/101/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.
- (41) ***In accordance with paragraph 34 of the inter-institutional agreement on better lawmaking¹, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between the Directive and the transposition measures, and to make them public,***

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 2003/87/EC

Directive 2003/87/EC is amended as follows:

- (1) The following ***paragraphs are*** 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.

It also lays down provisions for assessing and implementing a stricter EU reduction commitment exceeding 20%, to be applied upon the approval by the Community of an international agreement leading to emissions reductions exceeding those required in Article 9, as reflected in the 30% commitment as endorsed by the Spring 2007

* ***Directive 2008/101/EC amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community.***

¹ ***OJ C 321, 31.12.2003, p. 1.***

European Council.

(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 ***emissions*** permit ***for the first time, later than three months before the date*** referred to in Article 11 (1), ***or***
- ***any installation carrying out an activity which is included pursuant to Article 24(1) or (2) for the first time, or***
- ***any installation carrying out one or more of the activities indicated in Annex I or an activity which is included pursuant to Article 24(1) or (2), which has had a significant extension later than three months before the date referred to in Article 11(1), as far as this extension is concerned.***

The Commission shall, by 31 December 2010, adopt harmonised rules for the application of the definition of new entrant, in particular in relation to the definition of significant extensions.

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).;

(c) The following points are added:

"[(t)] 'Combustion □' means any ***oxidation of*** fuels ***regardless of the way in which the*** heat, ***electrical*** or mechanical energy ***produced by this process are used and any other directly associated activities including waste gas scrubbing;***

"[(u)] 'Electricity generator' means an installation that, on or after 1 January 2005, has produced electricity for sale to third parties, and ***in*** which ***no activity*** of □ Annex I ***is carried out other than "combustion of fuels".;***

(2a) Article 4 is replaced by the following:

"Article 4

Greenhouse gas emissions permits

Member States shall ensure that, from 1 January 2005, no installation undertake any activity listed in Annex I resulting in emissions specified in relation to that activity unless its operator holds a permit issued by a competent authority in accordance with Articles 5 and 6, or the installation is excluded from the Community scheme pursuant to Article 27. This shall also apply to installations opted in under Article 24."

- (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."

- (4a) Article 6(2)(c) is replaced by the following:***

"c) a monitoring plan that fulfils the requirements under the regulation referred to in Article 14. Member States may allow operators to update monitoring plans without changing the permit. Operators shall submit any updated monitoring plans to the competent authority for approval"

- (4b) Article 7 shall be replaced by the following:***

***"Article 7
Changes relating to installations***

The operator shall inform the competent authority of any changes planned in the nature or functioning, or an extension or a significant reduction of capacity, of the installation which may require updating of the greenhouse gas emissions permit. Where appropriate, the competent authority shall update the permit. Where there is a change in the identity of the installation's operator, the competent authority shall update the permit to include the name and address of the new operator."

- (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 ***Community-wide*** quantity of allowances for 2013, based on the total quantities of allowances issued ***or to be***

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 *and submit a proposal, where appropriate, to the Council and the European Parliament as from 2020, with a view to having a decision by 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 *carrying out activities listed in Annex I*, which are only included in the Community scheme from 2013 onwards, Member States shall ensure that the operators of such installations submit to the relevant competent authority *duly substantiated and* independently verified emissions data in order for them to be taken into account for the *adjustment of the Community-wide* 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. *In case of installations emitting greenhouse gases other than carbon dioxide, the competent authority may notify a lower amount of emissions according to their emission reduction potential.*

3. The Commission shall publish the adjusted quantities referred to in paragraphs 1 and 2 *by 30 September 2010.*
- 3a. *In respect of installations which are excluded from the Community scheme in accordance with Article 27, the Community-wide quantity of allowances to be issued from 1 January 2013 shall be adjusted downwards to reflect the average annual verified emissions of those installations in 2008 to 2010, adjusted by the linear factor referred to in Article 9."*

(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 *and 10c. By 31 December 2010, the Commission shall determine and publish an estimated amount of allowances to be auctioned.*
2. The total quantity of allowances to be auctioned by each Member State shall be composed as follows:
 - (a) **88%** 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 *for 2005 or the average of the period 2005-2007, whichever one is the highest,* of the Member State concerned;
 - (b) *(i)* 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; *and*

(ii) **2%** of the total quantity of allowances to be auctioned being distributed amongst Member States whose greenhouse gas emissions in 2005 were at least 20% below their emissions in their levels in the base year applicable to them under the Kyoto Protocol. Distribution of this percentage amongst the Member States concerned is set out in Annex IIb.

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% *and* 2%.

3. *It shall be for Member States to determine the use of revenues generated from the auctioning of allowances.* At least **50%** 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, *or the equivalent in value of these revenues*, should be used for *one or more of* the following:
 - to reduce greenhouse gas emissions, including by contributing to the Global Energy Efficiency and Renewable Energy Fund *and to the Adaptation Fund as operationalised by UNFCCC COP 14 in Poznan*, to adapt to the impacts of climate change and to fund research and development *as well as demonstration projects* for reducing emissions and *adaptation*, including participation in initiatives within the framework of the European Strategic Energy Technology Plan *and the European Technology Platforms*;

- to develop renewable energies to meet the commitment of the Community to using 20% renewable energies by 2020, *as well as to develop other technologies contributing to the transition to a safe and sustainable low-carbon economy and to help* meet the commitment of the Community to increase energy efficiency by 20% by 2020;
-
- for measures to avoid deforestation *and increase afforestation and reforestation in developing countries that have ratified the future international agreement ; to transfer technologies and to facilitate adaptation to the adverse effects of climate change in these countries;*
- *for forestry sequestration in the EU;*
- for the *environmentally safe* capture and geological storage of *carbon dioxide*, in particular from *solid fossil fuel* power stations *and a range of industrial sectors and sub-sectors, including in third countries;*
- *to encourage a shift to low emission and public forms of transport;*
- *to finance research and development in energy efficiency and clean technologies in the sectors covered by the scope of the directive;*
- *for measures such as those intended to increase energy efficiency and insulation or to provide financial support in order* to address social aspects in lower and middle income households □;
- to cover administrative expenses of the management of the Community scheme.

Member States shall have fulfilled the provisions of this paragraph if they have in place and implement fiscal or financial support policies, including in particular in developing countries, or domestic regulatory policies which leverage financial support, established for the purposes set out above that have a value equivalent to at least 50% 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.

□ Member States shall *inform the Commission* on the use of revenues *and on the actions taken pursuant to this paragraph* in their reports submitted under Decision No 280/2004/EC.

5. By **30 June** 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, *harmonised* and non-discriminatory manner. *To this end, the process should be predictable, in particular as regards to the timing and sequencing of auctions and the estimated volumes of allowances to be made available.*

Auctions shall be designed to ensure that:

- (a) operators, and in particular any small and medium size enterprises covered by the Community scheme, have full, *fair and equitable* access,
- (b) *all participants have access to the same information at the same time and that* participants do not undermine the operation of the auction,
- (c) *the organisation and participation in auctions is cost-efficient and undue administrative costs are avoided, and*
- (d) *access to allowances is granted for small emitters.*

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).

Member States shall report on each auction as regards the proper implementation of the auctioning rules, in particular with respect to fair and open access, transparency, price formation and technical and operational aspects. These reports shall be submitted within one month of the auction and shall be published on the Commission's website.

- 6. *The Commission shall monitor the functioning of the European carbon market. Each year, it shall submit a report to the Council and the European Parliament on the functioning of the carbon market including the implementation of the auctions, liquidity and the volumes traded. If necessary, Member States shall ensure that any relevant information is submitted to the Commission at least two months before adoption of the report by the Commission."*

- (8) The following Articles 10a, 10b and 10c are inserted:

“Article 10a

Transitional Community-wide rules for harmonised free allocation

- 1. The Commission shall, by **31 December 2010**, adopt Community wide and fully-harmonised implementing measures for allocating the allowances referred to in paragraphs 3 to 6 and 8 *including any necessary provisions for a harmonised application of paragraph 9e of this Article.*

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, *determine Community-wide ex ante benchmarks so as to* ensure that allocation takes place in a manner that gives incentives for *reductions in* greenhouse gas *emissions* and energy efficient techniques □, by taking account of the most efficient techniques, substitutes, alternative production processes, *high efficiency cogeneration, efficient energy recovery of waste gases*, use of biomass and □

capture and storage *of carbon dioxide, where such facilities are available*, and shall not give incentives to increase emissions. No free allocation shall be made in respect of any electricity production, *except for cases falling within Article 10c and electricity produced from waste gases*.

For each sector and sub-sector, in principle, the benchmark shall be calculated for products rather than for inputs, so as to maximise greenhouse gas emissions reductions and energy efficiency savings throughout each production process of the sector or the sub-sector concerned.

In defining the principles for setting benchmarks in individual sectors, the Commission shall consult the relevant stakeholders, including the sectors concerned.

The Commission shall, upon the *approval* 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.

- 1a. In defining the principles for setting ex-ante benchmarks in individual sectors or sub-sectors, the starting point shall be the average performance of the 10% most efficient installations in a sector or sub-sector in the Community in the years 2007-2008. The Commission shall consult the relevant stakeholders, including the sectors concerned.*

The Regulations pursuant to Articles 14 and 15 shall provide for harmonised rules on monitoring, reporting and verification of production related greenhouse gas emissions with a view to determining the benchmarks.

2. Subject to *paragraphs 3 and 6a, and notwithstanding Article 10c*, no free allocation shall be given to electricity generators, to installations for the capture, pipelines for the transport or to storage sites for *carbon dioxide*.
3. Free allocation *shall* be given to *district heating as well as* high efficiency cogeneration as defined by Directive 2004/8/EC for economically justifiable demand, *in respect of the production of heating or cooling*. In each year subsequent to 2013, the total allocation to such installations in respect of the production of that heat shall be adjusted by the linear factor referred to in Article 9.
4. The maximum amount of allowances that is the basis for calculating allocations to installations *not covered by paragraph 2 and not being new entrants* shall not exceed *the sum of:*
 - (a) the annual Community-wide total quantity *as determined pursuant to Article 9 multiplied by the share of emissions from installations not covered by paragraph 2 in the total average verified emissions in the period 2005 to 2007 from installations covered by the Community scheme in the period 2008 to 2012,*

- (b) *the total average verified emissions of installations in 2005 to 2007 which are only included in the Community scheme from 2013 onwards and are not covered by paragraph 2 adjusted by the linear factor as referred to in Article 9.*

A *uniform cross-sectoral* correction factor shall be applied *if necessary*.

- 4a. *Member States may also adopt financial measures in favour of sectors or sub-sectors determined to be exposed to a significant risk of carbon leakage due to costs relating to greenhouse gas emissions passed on in electricity prices, in order to compensate for those costs and where this is in accordance with state aid rules applicable and to be adopted in this area.*

These measures shall be based on benchmarks of the indirect emissions of CO₂ per unit of production. These benchmarks shall be calculated for a given sector as the product of the electricity consumption per unit of production corresponding to the most efficient available technologies and of the CO₂ emissions of the relevant European electricity production mix.

□

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. *Allowances in this Community-wide reserve that are not allocated to new entrants over the period 2013 to 2020 shall be auctioned by the Member States, taking into account the level to which installations in Member States have benefited from this reserve, in accordance with Article 10(2) and, for modalities and timing, Article 10(5), and the relevant implementing provisions.*

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.

- 6a. *Up to 300 million allowances in the new entrants reserve shall be available until 31 December 2015 to help stimulate the construction and operation of up to 12 commercial demonstration projects that are aiming at the environmentally safe capture and geological storage of carbon dioxide as well as the demonstration projects of innovative renewable energy technologies, in the territory of the EU.*

The allowances shall be made available for support of demonstration projects that provide for the development in geographically balanced locations, of a wide range of CCS and innovative renewable energy technologies that are not commercially viable yet. Their award shall be dependent upon the verified avoidance of CO₂ emissions.

Projects shall be selected on the basis of objective and transparent criteria that

include requirements for knowledge-sharing. These criteria and the modalities shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(3), and will be made available to the public.

Allowances shall be set aside for the projects that meet the criteria referred to in the previous subparagraph. Support for these projects shall be given via Member States and shall be complementary to substantial co-financing by the operator of the installation. They could also be co-financed by the Member State concerned, as well as other instruments. No project shall receive support via this mechanism that exceeds 15% of the total number of allowances available for this purpose. These allowances shall be taken into account under Article 10a(6).

- 6b. Lithuania, which, pursuant to Article 1 of Protocol No 4 on the Ignalina nuclear power plant in Lithuania, annexed to the 2003 Act of Accession, has committed to the closure of unit 2 of the Ignalina Nuclear Power Plant by 31 December 2009 at the latest, may, if the total verified emissions of Lithuania from 2013 to 2015 within the Community scheme exceed the sum of the free allowances issued to installations in Lithuania for electricity production emissions in that period and three-eighths of the allowances to be auctioned by Lithuania for the period from 2013 to 2020, claim allowances from the new entrants reserve for auctioning in accordance with the Regulation referred to in Article 10(5). The maximum amount of allowances shall be equivalent to the excess emissions in that period to the extent that this excess is due to increased emissions from electricity generation, minus any quantity by which allocations in that Member State in the period 2008 to 2012 exceeded verified emissions within the Community scheme in Lithuania during that period. Any such allowances shall be taken into account under Article 10a(6).*
- 6c. Any Member State the electricity network of which is interconnected with Lithuania and which in 2007 imported more than 15% in terms of its domestic electricity consumption from Lithuania for its own consumption, and where emissions have increased due to investment in new electricity generation, may apply the provisions of paragraph 6b under the conditions set out in that paragraph.*
7. Subject to Article 10b, the amount of allowances allocated free of charge under paragraphs 3 to 6 of this Article \square 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 30% free allocation in 2020, *with a view to reaching no free allocation in 2027.*
8. In 2013 and in each subsequent year up to 2020, installations in sectors *or sub-sectors* which are exposed to a significant risk of carbon leakage shall be allocated, *pursuant to Article 10a (1)*, allowances free of charge *at 100%* of the quantity determined in accordance with *the measures referred to in paragraph 1.*

The allocation of allowances referred to in subparagraph 1 shall apply, subject to the measures provided for in Article 10b.

9. At the latest by **31 December 2009** and every **5 years** thereafter the Commission shall determine, *after discussion in the European Council*, the sectors or sub-sectors referred to in paragraph 8 *on the basis of the criteria referred to in paragraphs 9a, 9b, 9c and 9d*.

Every year the Commission may, at its own initiative or on request of a Member State, add to the list referred to in paragraph 8 a sector or subsector if it can be demonstrated, in an analytical report, that this sector or subsector qualifies for the criteria below, following a change that has a substantial impact on the sector's activities.

For the purpose of implementing this article, the Commission shall consult the Member States, the sectors or sub-sectors concerned and other relevant stakeholders.

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).

- 9a. *In order to determine the sectors or sub-sectors referred to in paragraph 8, the Commission shall assess, at a Community level, the extent to which it is possible for the sector or sub-sector concerned, at the relevant level of disaggregation, to pass on the direct cost of the required allowances and indirect costs from higher electricity prices resulting from the implementation of the present directive into product prices without significant loss of market share to less carbon efficient installations outside the Community. These assessments will be based on an average carbon price according to the Commission's impact assessment and trade, production and value added data from the three most recent years for each sector or sub-sector, if available.*

- 9b. *A sector or sub-sector is deemed to be exposed to a significant risk of carbon leakage if:*

- (a) *the extent to which the sum of direct and indirect additional costs induced by the implementation of this directive would lead to a substantial increase of production cost, calculated as a proportion of the Gross Value Added, of at least 5%; and*
- (b) *the Non-EU Trade intensity defined as the ratio between total of value of exports to non EU + value of imports from non-EU and the total market size for the Community (annual turnover plus total imports) is above 10%.*

Notwithstanding paragraph 9b, subparagraph 1, a sector or sub-sector is also deemed to be exposed to a significant risk of carbon leakage:

- *if the sum of direct and indirect additional costs induced by the implementation of this directive would lead to a particularly high increase of production cost, calculated as a proportion of the Gross Value Added, of at least 30%; or*

- *if the Non-EU Trade intensity defined as the ratio between total of value of exports to non EU + value of imports from non-EU and the total market size for the Community (annual turnover plus total imports) is above 30%.*
- 9c. *The list of sectors or subsectors which are exposed to a significant risk of carbon leakage may be supplemented after completion of a qualitative assessment, taking into account, when the relevant data are available, the following criteria:*
- *the extent to which it is possible for individual installations in the sector and/or subsector concerned to reduce emission levels or electricity consumption, including, as appropriate, the increase in cost of production that the related investment may entail, for instance on the basis of the most efficient techniques;*
 - *market characteristics (current and projected), including when trade exposure or direct and indirect cost increase rates are close to one of the thresholds mentioned in paragraph 9b, second subparagraph;*
 -
 - *profit margins as potential indicator of long-run investment and/or relocation decisions;*
- 9d. *The list of sectors or sub-sectors exposed to a significant risk of carbon leakage shall be determined after taking into account, where the relevant data are available, the extent to which third countries, representing a decisive share of world production of products in sectors deemed to be at risk of carbon leakage, firmly commit to reducing greenhouse gas emissions in the relevant sectors and within the same time frame to an extent comparable to that of the EU and the extent to which carbon efficiency of installations located in these countries is comparable to that of the EU.*
- 9e. *No free allocation shall be given to an installation that has ceased its operations, unless the operator demonstrates to the competent authority for that installation that it will resume production within a specified and reasonable time. Installations for which the greenhouse gas emissions permit has expired or been withdrawn and installations for which the operation and resumption of operation is technically impossible shall be considered to have ceased operations.*
- 9f. *The Commission shall, within the measures adopted under Article 10a(1), include measures for defining installations that partially cease to operate or significantly reduce their capacity and for adapting, as appropriate, the level of free allocations given to them accordingly.*

Article 10b

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

1. Not later than **30 June 2010**, 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;
- ***assessing the impact of carbon leakage on Member States' energy security, in particular where the electricity connections with the rest of the European Union are insufficient and where there are electricity connections with third countries, and appropriate measures in this regard.***

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.

2. ***The Commission shall assess at the latest by 31 March 2011 whether the decisions made on the proportion of allowances received free of charge by sectors or sub-sectors according to paragraph 1, including the effect of the setting of ex-ante benchmarks according to Article 10a(1a), are likely to significantly affect the quantity of allowances to be auctioned by Member States according to Article 10(2)(b), compared to a scenario with full auctioning for all sectors in 2020. It shall, if appropriate, submit adequate proposals to the European Parliament and the Council, taking into account their possible distributional effects.***

Article 10c

Option for transitional free allocation for modernisation of electricity generation

1. ***As an exception to Article 10a, paragraphs (1) to (4), Member States may give a transitional free allocation to installations operating by 31 December 2008 or to installations for which the investment process was physically initiated by the same date for electricity production if one of the following conditions is met:***
 - ***the national electricity network was not, in 2007, directly or indirectly connected to the network interconnected system operated by the Union for the Coordination of the transmission of electricity (UCTE);***
 - ***or where the national electricity network was, in 2007, only directly or indirectly connected to the network operated by Union for the***

Coordination of the transmission of electricity (UCTE) through a single line with a capacity of less than 400 MW;

- *or where, in 2006, more than 30 % of electricity was produced from a single fossil fuel, and, where in 2006 the gross domestic product per capita at market prices did not exceed 50% of the average gross domestic product per capita of the EU.*

The Member State concerned shall submit to the Commission a national plan that provides for investments in retrofitting and upgrading of the infrastructure and clean technologies and for the diversification of their energy mix and sources of supply for an amount equivalent, to the extent possible, to the market value of the free allocation with respect to the intended investments, while taking into account the need to limit as far as possible directly linked prices rises. It shall submit to the Commission, every year, a report on investments made in upgrading infrastructure and clean technologies. Investment undertaken from the entry into force of this Directive may be counted for this purpose.

2. *Transitional free allocations shall be deducted from the quantity of allowances that the respective Member State would otherwise auction pursuant to Article 10(2). In 2013, the total transitional free allocation shall not exceed 70% of the annual average verified emissions in 2005-2007 from such generators for the amount corresponding to the gross final national consumption of the Member State concerned and shall gradually decrease resulting in no free allocation in 2020. For those Member States which did not participate in the Community scheme in 2005, the relevant emissions shall be calculated using their verified Community scheme emissions under the Community scheme in 2007.*

The Member State concerned may determine that the allowances allocated pursuant to this article may only be used by the operator of the installation concerned for surrendering allowances pursuant to Article 12(3) with respect to emissions of the same installation during the year for which the allowances are allocated.

3. *Allocations to operators shall be based on the allocation under the verified emissions in 2005-2007 or an ex ante efficiency benchmark based on the weighted average of emission levels of most greenhouse gas efficient electricity production covered by the Community system for installations using different fuels. The weights may reflect the shares of the different fuels in electricity production in the Member State concerned. The Commission shall, in accordance with the procedure in Article 23(2), provide guidance to ensure that the allocation methodology avoids undue distortions of competition and minimises negative impacts on the incentives to reduce emissions.*
4. *Any Member State using this Article shall require benefiting electricity generators and network operators to report every 12 months on the implementation of their investments referred to in the national plan, and shall report on this to the Commission and make those reports public.*

5. *Any Member State that intends to allocate allowances on the basis of the present article shall, by 30 September 2011, submit to the Commission an application containing the proposed allocation methodology and individual allocations. An application shall contain:*
- (a) *evidence that the Member State falls under at least one of the categories in paragraph 1;*
 - (b) *list the installations covered by the application and the amount of allowances to be allocated to each installation in accordance with paragraph 3 and the Commission guidance;*
 - (c) *the national plan referred to in paragraph 1, second indent;*
 - (d) *monitoring and enforcement provisions with respect to the intended investments pursuant to the national plan.*
 - (e) *information showing that the allocations do not create undue distortions of competition.*
6. *The Commission shall assess the application taking into account the elements set out in paragraph 5 and may reject the application within 6 months of receiving the relevant information.*
7. *Two years before the end of the period during which a Member State may give transitional free allocation to installations operating by 31 December 2008 for electricity production, the Commission shall assess the progress made in the implementation of the national action plan. If the Commission estimates, on request of the concerned Member State, that there is a need for a possible extension of that period, it may submit to the European Parliament and the Council appropriate proposals, including the conditions that would have to be met in the case of an extension of that period.";*

(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 *Articles 10a(1) and 10c.*
- 1a. Member States may not issue allowances free of charge under paragraph 2 to installations whose inscription in the list referred to in paragraph 1 has been rejected by the Commission.*
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, 10a *and 10c.*

□

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. **Without prejudice to** the application of paragraphs 3 and 4 of Article 28, paragraphs 2 to 7 of this Article shall apply.
2. **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 or an entitlement to use credits is granted under paragraph 7a**, operators may request the competent authority □, to issue **these** allowances to them valid from 2013 onwards in exchange for CERs and ERUs issued in respect of emission reductions up until 2012 from project types which were **eligible for use** in the Community scheme during the period 2008 to 2012.

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

3. To the extent that the levels of CER/ERU use allowed to operators by Member States for the period 2008 to 2012 have not been used up **or an entitlement to use credits is granted under paragraph 7a**, competent authorities shall allow operators to exchange CERs **and ERUs** from projects that were **registered** before 2013 issued in respect of emission reductions from 2013 onwards for allowances valid from 2013 onwards.

The first subparagraph shall apply **to CERs and ERUs** for all project types which were **eligible for use** in the 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 **or an entitlement to use credits is granted under paragraph 7a**, 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 **eligible for use** 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 **or an entitlement to use credits is granted under paragraph 7a** and in the event that **the negotiations on an international agreement on climate change are not concluded by 31 December 2009**, credits from projects or other emission reducing activities may be used in the 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 ***project types which were eligible for use in the Community scheme during the period 2008 to 2012, including*** 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 ***credits from projects*** from third countries which have ratified that agreement shall be accepted in the Community scheme ***from 1 January 2013***.
- 7a. ***All existing operators shall be allowed to use credits during the period from 2008 to 2020 up to either the amount allowed to them during the period 2008 to 2012, or an amount corresponding to a certain percentage, which shall not be set below 11%, of their allocation during the period from 2008 to 2012, whichever is the highest.***

Operators shall be able to use credits beyond the 11% provided for in the preceding sub-paragraph, up to an amount so that their combined free allocation in the period from 2008 to 2012 and overall project credits entitlement is equal to a certain percentage of their verified emissions in the period from 2005 to 2007.

New entrants, including new entrants in the period 2008 to 2012 which received neither free allocation nor an entitlement to use JI/CDM credits in 2008-2012, and new sectors shall be able to use credits up to an amount corresponding to a certain percentage, which shall not be set below 4,5%, of their verified emissions during the period from 2013 to 2020. Aviation operators shall be able to use credits up to an amount corresponding to a certain percentage, which shall not be set below 1,5%, of their verified emissions during the period from 2013 to 2020.

Measures shall be adopted to specify the exact percentages which shall apply under the preceding sub-paragraphs. At least one-third of the additional amount which is to be distributed to existing operators beyond the first percentage referred to in the first subparagraph shall be distributed to the operators which had the lowest level of combined average free allocation and project credit use in the period 2008 to 2012.

These measures shall ensure that the overall use of credits allowed does not exceed 50% of the EU-wide reductions of the existing sectors under the Community scheme over the period 2008 to 2020 and 50 % of the EU-wide reductions below the 2005 levels of new sectors and aviation over the period 2013 to 2020.

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(2).

8. *From 1 January 2013, measures may be applied to restrict the use of specific credits from project types.*

These measures shall also set the date from which the use of credits under paragraphs 1 to 4 shall be in accordance with these measures. That date shall be, at the earliest, six months following the adoption of the measures or, at the latest, three years from their adoption.

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(2). The Commission shall consider submitting to the Committee a draft of such measures to be taken where a Member State requests it.";

- (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."

- (10a) *Article 12 is amended as follows:*

- (a) *the following paragraph 1a shall be inserted:*

"1a. The Commission shall, by 31 December 2010, examine whether the market for emissions allowances is sufficiently protected from insider dealing and market manipulation and if appropriate bring forward proposals to ensure it. The relevant provisions of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation may be used with any appropriate adjustments for application in trade in commodities.";

- (b) *the following paragraph 3a shall be inserted:*

"3a. An obligation to surrender allowances shall not arise in respect of emissions verified as captured and transported for permanent storage to a facility for which a permit is in force in accordance with Directive 2008/xxx/EC on the geological storage of carbon dioxide."

- (c) *the following paragraph 5 shall be added:*

"5. Paragraphs 1 and 2 apply without prejudice to Article 10c".

- (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* shall be cancelled by the competent authority."

(12) Article 14 is replaced by the following:

"Article 14

Monitoring and reporting of emissions

1. ***By 31 December 2011, 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, ***for the monitoring and reporting of tonne-kilometre data for the purpose of an application under Articles 3e or 3f,*** 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 ***shall*** take into account the most accurate and up-to-date scientific evidence available, in particular from the IPCC, and may also specify requirements for operators to report on emissions associated with the production of goods produced by energy intensive industries which may be subject to international competition, 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 ***or an aircraft operator monitors and*** reports the emissions from that installation during each calendar year, ***or, from 1 January 2010, the aircraft which it operates,*** to the competent authority after the end of that year in accordance with the regulation.

4. ***The Regulation may include requirements on the use of automated systems and data exchange formats to harmonise communication on the monitoring plan, the annual emission report and the verification activities between the operator, verifier and competent authorities.***"

(13) Article 15 is amended as follows:

(a) the title is replaced by the following:

"Verification and Accreditation"

(b) the following paragraphs are added:

"By 31 December 2011, the Commission shall adopt a Regulation for the verification of emission reports based on the principles set out in Annex V and for the accreditation and supervision of verifiers specifying conditions for the accreditation □ and withdrawal of accreditation, for mutual recognition and peer evaluation of accreditation bodies, 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)."

(13a) The following Article 15a is inserted:

"Article 15a

Disclosure of information and professional secrecy

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

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

(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 2012 onwards shall be held in the Community registry **for the execution of processes pertaining to the maintenance of the holding accounts opened in the Member State and the allocation, surrender and cancellation of allowances under the Regulation on a standardised and secured system of registries.**

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

(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). *That Regulation shall also include processes for the change and incident management for the Community Registry with regard to issues in paragraph 1 of this Article. It shall contain appropriate modalities for the Community registry to ensure that initiatives of the Member States pertaining to efficiency improvement, administrative cost management and quality control measures are possible.*";

(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 □ Annexes to this Directive, with the exception of *Annexes I, IIa and IIb*, may be **amended** 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)."

(17a) A new paragraph is added to Article 23:

"4. Where reference is made to this paragraph, Article 4 and 7 of Decision 1999/468/CE shall apply, having regard to the provisions of Article 8 thereof.";

(18) Article 24 is replaced *as follows*:

"Article 24

Procedures for unilateral inclusion of additional activities and gases

1. ***From 2008, Member States may apply emission allowance trading in accordance with this Directive to activities and to greenhouse gases which are not listed in Annex I, provided that inclusion of such activities and greenhouse gases is approved by the Commission in accordance with the procedure referred to in Article 23(2), taking into account all relevant criteria, in particular effects on the internal market, potential distortions of competition, the environmental integrity of the scheme and reliability of the planned monitoring and reporting system.***
2. When the inclusion of additional activities and gases is approved, the Commission may at the same time authorise ***the issuance of additional allowances and authorise*** other Member States to include such additional activities and gases.
3. ***On the initiative of the Commission*** or on request by a Member State, a Regulation ***may be adopted*** on the monitoring of, and reporting on, emissions concerning activities, installations and greenhouse gases which are not listed as a combination in Annex I, if that monitoring and reporting can be carried out with sufficient accuracy.

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, implementing measures ***may be adopted*** for issuing allowances ***or credits*** 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 ***nor*** 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. **Implementing** measures *may be adopted* 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).

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

Such projects will be executed on the basis of the agreement of the Member State where this project takes place.

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

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

"Article 27

Exclusion of small installations subject to equivalent measures

1. Member States may exclude, from the Community scheme, **following consultation with the operator**, installations which have reported emissions to the competent authority of less than **25 000** tonnes of carbon dioxide equivalent **and, where they carry out combustion activities, have** a rated thermal input below **35 MW**, excluding emissions from biomass, in each of the 3 years **preceding the notification under point (a)**, and which are subject to measures that will achieve an equivalent contribution to emission reductions, if the Member State concerned complies with the following conditions:
 - (a) it notifies the Commission of each such installation, specifying the equivalent measures **applying to that installation that will achieve an equivalent contribution to emission reductions** that are in place, **before the list of installations pursuant to Article 11(1) has to be submitted and at the latest when this list is submitted to the Commission;**

- (b) it confirms that monitoring arrangements are in place to assess whether any installation emits **25 000** tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year. **Member States may allow simplified monitoring, verification and reporting measures for installations whose average annual verified emissions between 2008 and 2010 are below 5000 tons a year, in accordance with Article 14;**
- (c) it confirms that if any installation emits **25 000** tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year or the measures **applying to that installation that will achieve an equivalent contribution to emission reductions** are no longer in place, the installation will be re-introduced into the system;
- (d) it publishes the information referred to in points (a), (b) and (c) for public comment.

Hospitals may also be excluded if they undertake equivalent measures.

2. If, following a period of three months from the date of notification for 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 **Community scheme**, the installation shall be excluded and the Member State shall issue no further free allowances to the installation pursuant to Article 10a.

3. **When an installation is re-introduced into the Community scheme pursuant to paragraph 1(c), any allowances issued pursuant to Article 10a shall be granted starting with the year of the re-entrance. Allowances issued to these installations shall be deducted from the quantity to be auctioned pursuant to Article 10(2) by the Member State in which the installation is situated.**

Any such installation shall stay in the Community scheme for the rest of the trading period.

4. **For installations which have not been included in the Community scheme during the period 2008-2012, simplified requirements for monitoring, reporting and verification may be applied for determining emissions in the three years preceding the notification under paragraph 1 point (a).**

Article 28

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

1. **At the latest 3 months after the signature by the Community of an international agreement on climate change leading, by 2020, to mandatory reductions of greenhouse gas emissions exceeding 20% compared to 1990 levels, as reflected in the 30% commitment as endorsed by the Spring 2007 European Council, the**

Commission shall submit a report assessing, in particular, the following elements:

- the nature of the measures agreed upon in the framework of the international negotiations as well as the commitments made by other developed countries to comparable emission reductions to the EU's and the commitments made by economically more advanced developing countries to contributing adequately according to their responsibilities and respective capabilities.*
 - the implications of the international agreement, and consequently, options required at the EU level, in order to move to the more ambitious 30% reduction target in a balanced, transparent and equitable way, taking into account work under the Kyoto Protocol first commitment period.*
 - the EU manufacturing industries competitiveness in the context of carbon leakage risks.*
 - the impact of the international agreement on other EU economic sectors.*
 - the impact on the EU agriculture sector, including carbon leakage risks.*
 - appropriate modalities for including emissions and removals related to land use, land use change and forestry in the Community;*
 - afforestation, reforestation, avoided deforestation and forest degradation in third countries in the event of the establishment of any internationally recognised system in this context;*
 - the need for additional community policies and measures in view of the Community's and the Member States' greenhouse gas reduction commitments.*
2. *On the basis of this report, the Commission shall, as appropriate, submit a legislative proposal to the European Parliament and to the Council amending the present directive pursuant to paragraph 1, with a view to its entry into force upon the approval by the Community of the international agreement and in view of the emissions reduction commitment to be implemented under that agreement.*
- This proposal shall be based upon the principles of transparency, economic efficiency and cost-effectiveness, and fairness and solidarity in the distribution of effort between Member States.*
3. *This proposal shall allow, as appropriate, operators to use CERs, ERUs or other credits approved from third countries which have **ratified** the international agreement **in addition to the credits provided for in this Directive.***
4. *It shall also include, as appropriate, any other measures needed to help reach the mandatory reductions in accordance with paragraph 1 in a transparent,*

balanced and equitable way and, in particular, implementing measures to provide for the use of additional *types of* project *credits* 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.

□

5. *It shall include the appropriate transitional and suspensive measures pending the entry into force of the international agreement.”;*

(21a) Article 29 shall be replaced by the following:

"Article 29

Report to ensure the better functioning of the carbon market

If, on the basis of the regular reports on the carbon market in Article 10(6), the Commission has evidence that the carbon market is not functioning properly, it shall submit a report to the Council and the European Parliament. The report may be accompanied, if appropriate, by proposals aiming at increasing transparency of the carbon market and addressing measures to improve its functioning.”;

(21b) The following new Article is inserted:

"Article 29a

Measures in the event of excessive price fluctuations

1. *If, for more than six consecutive months, the allowance price is more than thrice the average price of allowances during the two preceding years on the European market, the Commission shall immediately convene a meeting of the Committee instituted by Article 9 of Decision 280/2004/EC.*
2. *If the price evolution referred to in paragraph 1 does not correspond to changing market fundamentals, one of the following measures may be adopted, taking into account the degree of price evolution :*
 - a) *A measure which allows Member States to bring forward the auctioning of a part of the quantity to be auctioned.*
 - b) *A measure which allows Member States to auction up to 25% of the remaining allowances in the new entrants reserve.*

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

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

4. *The modalities for the application of these provisions shall be laid down in the Regulation referred to in Article 10(2) and 10(5)."*

- (22) Annex I is amended in accordance with Annex I to this Directive.
- (23) ***Annexes IIa and IIb are*** 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. □

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 ***and Directive 2008/101/EC***, shall continue to apply until 31 December 2012.

Article 3a
Subsequent amendments to Directive 2008/101/EC*

Directive 2008/101/EC shall be amended as follows:

- a) In Article 3c(2), "Article 11(2)" shall be replaced by "Article 13(1)",***
b) In Article 3g, "guidelines" shall be replaced by "Regulation"..

* ***Directive 2008/101/EC amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community.***

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 ...

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 installations exclusively using biomass are not covered by this Directive.”

(2) *The first subparagraph of point 2 is replaced by the following:*

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

(2a) *The following points are added:*

“3. *When the total rated thermal input of an installation is calculated in order to decide upon its inclusion in the Community system, the rated thermal inputs of all technical units which are part of it, in which fuels are combusted within the installation, are added together. These units could include all types of boilers, burners, turbines, heaters, furnaces, incinerators, calciners, kilns, ovens, dryers, engines, fuel cells, chemical looping combustion units, flares, and thermal or catalytic post-combustion units. Units with a rated thermal input under 3 MW and units which use exclusively biomass shall not be taken into account for the purposes of this calculation. "Units using exclusively biomass" includes units which use fossil fuels only during start-up or shut-down of the unit.*

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

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

(3) The table is amended as follows:

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

”

<input type="checkbox"/> Combustion <i>of fuels in</i> installations with a <i>total</i> rated thermal input exceeding 20 MW (<i>except in installations for the incineration of hazardous or municipal waste <input type="checkbox"/></i>)	Carbon dioxide
--	----------------

<p>□</p> <p>Refining of mineral oil</p> <p>Production of coke</p>	<p>Carbon dioxide</p> <p>Carbon dioxide</p>
---	---

"

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

(i) **the heading "Production and processing of ferrous metals" is deleted;**

(ia) **the first line is replaced by "Metal ore (including sulphide ore) roasting or sintering, including pelletisation";**

(ib) **in the second paragraph, the words "installations for the" are deleted;**

(ii) the following paragraphs are added :

"

<p>Production and processing of ferrous metals (including ferro-alloys) where combustion units with a total rated thermal input exceeding 20 MW are operated. Processing includes, inter alia, rolling mills, reheaters, annealing furnaces, smitheries, foundries, coating and pickling.</p>	<p>Carbon dioxide</p>
<p>Production of primary aluminium.</p>	<p>Carbon dioxide and perfluorocarbons</p>
<p>Production of secondary aluminium where combustion units with a total rated thermal input exceeding 20 MW are operated.</p>	<p>Carbon dioxide</p>
<p>Production and processing of non-ferrous metals, including production of alloys, refining, foundry casting, etc., where combustion units with a total rated thermal input (including fuels used as reducing agents) exceeding 20 MW are operated.</p>	<p>Carbon dioxide</p>

"

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

□"

<p>□</p> <p>Production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or □ in other furnaces with a production capacity exceeding 50 tonnes per day □</p>	Carbon dioxide
<p>Production of lime or calcination of dolomite or magnesite in rotary kilns or in other furnaces with a production capacity exceeding 50 tonnes per day</p>	Carbon dioxide
<p>Manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day</p>	Carbon dioxide
<p>Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day</p>	Carbon dioxide
<p>Manufacture of mineral wool insulation material using glass, rock or slag with a melting capacity exceeding 20 tonnes per day</p>	Carbon dioxide
<p>Drying or calcination of gypsum or production of plaster boards and other gypsum products, where combustion units with a rated thermal input exceeding 20 MW are operated.</p>	Carbon dioxide

"

(d) the fourth row of categories of activity is amended as follows:

(i) The heading "Other activities" is deleted;

(ii) the words "Industrial plants for the" are deleted;

(iii) the words "paper and board" are replaced by "paper or card board";

(e) The following rows of categories of activity are added after the fourth row:

"

<p><input type="checkbox"/></p> <p>Production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues, where combustion <i>units</i> with a <i>total</i> rated thermal input exceeding 20 MW are operated</p> <p>Production of nitric acid</p> <p>Production of adipic acid</p> <p>Production of glyoxal and glyoxylic acid</p> <p>Production of ammonia</p> <p>Production of <i>bulk</i> organic chemicals by cracking, reforming, partial or full oxidation or by similar processes, with a production capacity exceeding 100 tonnes per day</p> <p>Production of hydrogen (H₂) and synthesis gas by reforming or partial oxidation with a production capacity exceeding 25 tonnes per day</p> <p>Production of soda ash (Na₂CO₃) and sodium bicarbonate (NaHCO₃)</p>	<p>Carbon dioxide</p> <p>Carbon dioxide and nitrous oxide</p> <p>Carbon dioxide and nitrous oxide</p> <p>Carbon dioxide and nitrous oxide</p> <p>Carbon dioxide</p> <p>Carbon dioxide</p> <p>Carbon dioxide</p> <p>Carbon dioxide</p>
<p><input type="checkbox"/></p> <p><input type="checkbox"/> Capture of <i>greenhouse gases from installations covered by this Directive</i> for the purpose of transport and geological storage in a storage site permitted under Directive xxxx/xx/EC</p> <p><input type="checkbox"/> Transport of <i>greenhouse gases by pipelines</i> for geological storage in a storage site permitted under Directive xxxx/xx/EC</p> <p><i>Geological storage of greenhouse gases in a storage site</i> permitted under Directive xxxx/xx/EC.</p>	<p><i>Carbon dioxide</i></p> <p><i>Carbon dioxide</i></p> <p><i>Carbon dioxide</i></p>

ANNEX II

The following ***Annexes are*** added as Annex IIa ***and Annex IIb*** 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%

"

"ANNEX IIb

Distribution of allowances to be auctioned by Member States pursuant to Article 10(2)(b)(ii) reflecting early efforts of some Member States to achieve 20% reduction of greenhouse gas emissions

<i>Member State</i>	<i>Distribution of the 2% against the Kyoto base in percentages</i>
<i>Bulgaria</i>	<i>15 %</i>
<i>Czech Republic</i>	<i>4 %</i>
<i>Estonia</i>	<i>6 %</i>
<i>Hungary</i>	<i>5 %</i>
<i>Latvia</i>	<i>4 %</i>
<i>Lithuania</i>	<i>7 %</i>
<i>Poland</i>	<i>27 %</i>
<i>Romania</i>	<i>29 %</i>
<i>Slovakia</i>	<i>3 %</i>

"

Or. en