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Common position

with a view to the adoption of Directive of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC

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THE EUROPEAN UNION**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject : Common position adopted by the Council on 18 March 2003 with a view to the adoption of Directive of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC

**DIRECTIVE 2003/.../EC OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**
of

establishing a scheme for greenhouse gas emission allowance
trading within the Community and amending Council Directive 96/61/EC
(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 ¹,

Having regard to the Opinion of the European Economic and Social Committee ²,

Having regard to the Opinion of the Committee of the Regions ³,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁴,

¹ OJ C 75 E, 26.3.2002, p. 33.

² OJ C 221, 17.9.2002, p. 27.

³ OJ C 192, 12.8.2002, p. 59.

⁴ Opinion of the European Parliament of 10 October 2002 (not yet published in the Official Journal), Council Common Position of (not yet published in the Official Journal) and Decision of the European Parliament of (not yet published in the Official Journal).

Whereas:

- (1) The Green Paper on greenhouse gas emissions trading within the European Union launched a debate across Europe on the suitability and possible functioning of greenhouse gas emissions trading within the European Union. The European Climate Change Programme has considered Community policies and measures through a multi-stakeholder process, including a scheme for greenhouse gas emission allowance trading within the Community (the Community scheme) based on the Green Paper. In its Conclusions of 8 March 2001, the Council recognised the particular importance of the European Climate Change Programme and of work based on the Green Paper, and underlined the urgent need for concrete action at Community level.

- (2) The Sixth Community Environment Action Programme established by Decision No 1600/2002/EC of the European Parliament and of the Council¹ identifies climate change as a priority for action and provides for the establishment of a Community-wide emissions trading scheme by 2005. That Programme recognises that the Community is committed to achieving an 8% reduction in emissions of greenhouse gases by 2008 to 2012 compared to 1990 levels, and that, in the longer-term, global emissions of greenhouse gases will need to be reduced by approximately 70% compared to 1990 levels.

¹ OJ L 242, 10.9.2002, p. 1.

- (3) The ultimate objective of the United Nations Framework Convention on Climate Change, which was approved by Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change ¹, is to achieve stabilisation of greenhouse gas concentrations in the atmosphere at a level which prevents dangerous anthropogenic interference with the climate system.
- (4) Once it enters into force, the Kyoto Protocol, which was approved by Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder, ² will commit the Community and its Member States to reducing their aggregate anthropogenic emissions of greenhouse gases listed in Annex A to the Protocol by 8% compared to 1990 levels in the period 2008 to 2012.
- (5) The Community and its Member States have agreed to fulfil their commitments to reduce anthropogenic greenhouse gas emissions under the Kyoto Protocol jointly, in accordance with Decision 2002/358/EC. This Directive aims to contribute to fulfilling the commitments of the European Community and its Member States more effectively, through an efficient European market in greenhouse gas emission allowances, with the least possible diminution of economic development and employment.

¹ OJ L 33, 7.2.1994, p. 11.

² OJ L 130, 15.5.2002, p. 1.

- (6) Council Decision 93/389/EEC of 24 June 1993 for a monitoring mechanism of Community CO₂ and other greenhouse gas emissions ¹, established a mechanism for monitoring greenhouse gas emissions and evaluating progress towards meeting commitments in respect of these emissions. This mechanism will assist Member States in determining the total quantity of allowances to allocate.
- (7) Community provisions relating to allocation of allowances by the Member States are necessary to contribute to preserving the integrity of the internal market and to avoid distortions of competition.
- (8) Member States may provide that they only issue allowances valid for a five-year period beginning in 2008 to persons in respect of allowances cancelled, corresponding to emission reductions made by those persons on their national territory during a three-year period beginning in 2005.
- (9) Starting with the said five-year period, transfers of allowances to another Member State will involve corresponding adjustments of assigned amount units under the Kyoto Protocol.
- (10) Member States should ensure that the operators of certain specified activities hold a greenhouse gas emissions permit and that they monitor and report their emissions of greenhouse gases specified in relation to those activities.

¹ OJ L 167, 9.7.1993, p. 31. Decision as amended by Decision 1999/296/EC (OJ L 117, 5.5.1999, p. 35).

- (11) Member States should lay down rules on penalties applicable to infringements of this Directive and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.
- (12) In order to ensure transparency, the public should have access to information relating to the allocation of allowances and to the results of monitoring of emissions, subject only to restrictions provided for in Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information ¹.
- (13) Member States should submit a report on the implementation of this Directive drawn up on the basis of Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment ².
- (14) The inclusion of additional installations in the Community scheme should be in accordance with the provisions laid down in this Directive.
- (15) This Directive should not prevent any Member State from maintaining or establishing national trading schemes regulating emissions of greenhouse gases from activities other than those listed in Annex I or included in the Community scheme, or from installations temporarily excluded from the Community scheme.
- (16) Member States may participate in international emissions trading as Parties to the Kyoto Protocol with any other Party included in Annex B thereto.

¹ OJ L 41, 14.2.2003, p. 26.

² OJ L 377, 31.12.1991, p. 48.

- (17) Linking the Community scheme to greenhouse gas emission trading schemes in third countries will increase the cost-effectiveness of achieving the Community emission reductions target as laid down in Decision 2002/358/EC on the joint fulfilment of commitments.
- (18) The recognition of credits from project-based mechanisms for fulfilling obligations under this Directive as from 2005 will increase the cost-effectiveness of achieving reductions of global greenhouse gas emissions and will be provided for by a Directive for linking Project-based mechanisms including Joint Implementation (JI) and the Clean Development Mechanism (CDM) with the Community scheme.
- (19) Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control ¹ establishes a general framework for pollution prevention and control, through which greenhouse gas emissions permits may be issued. Directive 96/61/EC should be amended to ensure that emission limit values are not set for direct emissions of greenhouse gases from an installation subject to this Directive and that Member States may choose not to impose requirements relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide on the site, without prejudice to any other requirements pursuant to Directive 96/61/EC.

¹ OJ L 257, 10.10.1996, p. 26.

- (20) This Directive is compatible with the United Nations Framework Convention on Climate Change and the Kyoto Protocol. It should be reviewed in the light of developments in that context and to take into account experience in its implementation and progress achieved in monitoring of emissions of greenhouse gases.
- (21) Emission allowance trading should form part of a comprehensive and coherent package of policies and measures implemented at Member State and Community level. Without prejudice to the application of Articles 87 and 88 of the Treaty, where activities are covered by the Community scheme, Member States may consider the implications of regulatory, fiscal or other policies that pursue the same objectives. The review of the Directive should consider the extent to which these objectives have been attained.
- (22) The instrument of taxation can be a national policy to limit emissions from installations temporarily excluded.

- (23) Policies and measures should be implemented at Member State and Community level across all sectors of the European Union economy, and not only within the industry and energy sectors, in order to generate substantial emissions reductions.
- (24) Notwithstanding the multifaceted potential of market-based mechanisms, the European Union strategy for climate change mitigation should be built on a balance between the Community scheme and other types of Community, domestic and international action.
- (25) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (26) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ¹.
- (27) Since the objective of the proposed action, the establishment of a Community scheme, cannot be sufficiently achieved by the Member States acting individually, and can therefore by reason of the scale and effects of the proposed action 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,

¹ OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes a scheme for greenhouse gas emission allowance trading within the Community (hereinafter referred to as the "Community scheme") in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner.

Article 2

Scope

1. This Directive shall apply to emissions from the activities listed in Annex I and greenhouse gases listed in Annex II.
2. This Directive shall apply without prejudice to any requirements pursuant to Directive 96/61/EC.

Article 3
Definitions

For the purposes of this Directive the following definitions shall apply:

- (a) "allowance" means an allowance to emit one tonne of carbon dioxide equivalent during a specified period, which shall be valid only for the purposes of meeting the requirements of this Directive and shall be transferable in accordance with the provisions of this Directive;
- (b) "emissions" means the release of greenhouse gases into the atmosphere from sources in an installation;
- (c) "greenhouse gases" means the gases listed in Annex II;
- (d) "greenhouse gas emissions permit" means the permit issued in accordance with Articles 5 and 6;
- (e) "installation" means a stationary technical unit where one or more activities listed in Annex I are carried out and any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution;

- (f) "operator" means any person who operates or controls an installation or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of the installation has been delegated;
- (g) "person" means any natural or legal person;
- (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 or an update of its greenhouse gas emissions permit because of a change in the nature or functioning or an extension of the installation, subsequent to the notification to the Commission of the national allocation plan;
- (i) "the public" means one or more persons and, in accordance with national legislation or practice, associations, organisations or groups of persons;
- (j) "tonne of carbon dioxide equivalent" means one metric tonne of carbon dioxide (CO₂) or an amount of any other greenhouse gas listed in Annex II with an equivalent global-warming potential.

Article 4

Greenhouse gas emissions permits

Member States shall ensure that, from 1 January 2005, no installation undertakes 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 temporarily excluded from the Community scheme pursuant to Article 27.

Article 5

Applications for greenhouse gas emissions permits

An application to the competent authority for a greenhouse gas emissions permit shall include a description of:

- (a) the installation and its activities including the technology used;
- (b) the raw and auxiliary materials, the use of which is likely to lead to emissions of gases listed in Annex I;
- (c) the sources of emissions of gases listed in Annex I from the installation; and
- (d) the measures planned to monitor and report emissions in accordance with the guidelines adopted pursuant to Article 14.

The application shall also include a non-technical summary of the details referred to in the first subparagraph.

Article 6

Conditions for and contents of the greenhouse gas emissions permit

1. The competent authority shall issue a greenhouse gas emissions permit granting authorisation to emit greenhouse gases from all or part of an installation if it is satisfied that the operator is capable of monitoring and reporting emissions.

A greenhouse gas emissions permit may cover one or more installations on the same site operated by the same operator.

2. Greenhouse gas emissions permits shall contain the following:

- (a) the name and address of the operator;
- (b) a description of the activities and emissions from the installation;
- (c) monitoring requirements, specifying monitoring methodology and frequency;
- (d) reporting requirements; and

- (e) an obligation to surrender allowances equal to the total emissions of the installation in each calendar year, as verified in accordance with Article 15, within four months following the end of that year.

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, 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.

Article 8

Coordination with Directive 96/61/EC

Member States shall take the necessary measures to ensure that, where installations carry out activities that are included in Annex I to Directive 96/61/EC, the conditions of, and procedure for, the issue of a greenhouse gas emissions permit are coordinated with those for the permit provided for in that Directive. The requirements of Articles 5, 6 and 7 of this Directive may be integrated into the procedures provided for in Directive 96/61/EC.

Article 9

National allocation plan

1. For each period referred to in Article 11(1) and (2), each Member State shall develop a national plan stating the total quantity of allowances that it intends to allocate for that period and how it proposes to allocate them. The plan shall be based on objective and transparent criteria, including those listed in Annex III, taking due account of comments from the public. The Commission shall, without prejudice to the Treaty, by 31 December 2003 at the latest develop guidance on the implementation of the criteria listed in Annex III.

For the period referred to in Article 11(1), the plan shall be published and notified to the Commission and to the other Member States by 31 March 2004 at the latest. For subsequent periods, the plan shall be published and notified to the Commission and to the other Member States at least eighteen months before the beginning of the relevant period.

2. National allocation plans shall be considered within the committee referred to in Article 23(1).

3. Within three months of notification of a national allocation plan by a Member State under paragraph 1, the Commission may reject that plan, or any aspect thereof, on the basis that it is incompatible with the criteria listed in Annex III or with Article 10. The Member State shall only take a decision under Article 11(1) or (2) if proposed amendments are accepted by the Commission. Reasons shall be given for any rejection decision by the Commission.

Article 10

Method of allocation

For the three-year period beginning 1 January 2005 Member States shall allocate allowances free of charge. For the five-year period beginning 1 January 2008, Member States shall allocate at least 90% of the allowances free of charge.

Article 11

Allocation and issue of allowances

1. For the three-year period beginning 1 January 2005, each Member State shall decide upon the total quantity of allowances it will allocate for that period and the allocation of those allowances to the operator of each installation. This decision shall be taken at least three months before the beginning of the period and be based on its national allocation plan developed pursuant to Article 9 and in accordance with Article 10, taking due account of comments from the public.
2. For the five-year period beginning 1 January 2008, and for each subsequent five-year period, each Member State shall decide upon the total quantity of allowances it will allocate for that period and initiate the process for the allocation of those allowances to the operator of each installation. This decision shall be taken at least twelve months before the beginning of the relevant period and be based on the Member State's national allocation plan developed pursuant to Article 9 and in accordance with Article 10, taking due account of comments from the public.

3. Decisions taken pursuant to paragraph 1 or 2 shall be in accordance with the requirements of the Treaty, in particular Articles 87 and 88 thereof. When deciding upon allocation, Member States shall take into account the need to provide access to allowances for new entrants.

4. The competent authority shall issue a proportion of the total quantity of allowances each year of the period referred to in paragraph 1 or 2, by 28 February of that year.

Article 12

Transfer, surrender and cancellation of allowances

1. Member States shall ensure that allowances can be transferred between:

- (a) persons within the Community;
- (b) persons within the Community and persons in third countries, where such allowances are recognised in accordance with the procedure referred to in Article 25 without restrictions other than those contained in, or adopted pursuant to, this Directive.

2. Member States shall ensure that allowances issued by a competent authority of another Member State are recognised for the purpose of meeting an operator's obligations under paragraph 3.

3. Member States shall ensure that, by 30 April each year at the latest, the operator of each installation surrenders a number of allowances equal to the total emissions from that installation during the preceding calendar year as verified in accordance with Article 15, and that these are subsequently cancelled.

4. Member States shall take the necessary steps to ensure that allowances will be cancelled at any time at the request of the person holding them.

Article 13

Validity of allowances

1. Allowances shall be valid for emissions during the period referred to in Article 11(1) or (2) for which they are issued.

2. Four months after the beginning of the first five-year period referred to in Article 11(2), allowances which are no longer valid and have not been surrendered and cancelled in accordance with Article 12(3) shall be cancelled by the competent authority.

Member States may issue allowances to persons for the current period to replace any allowances held by them which are cancelled in accordance with the first subparagraph.

3. Four months after the beginning of each subsequent five-year period referred to in Article 11(2), allowances which are no longer valid and have not been surrendered and cancelled in accordance with Article 12(3) shall be cancelled by the competent authority.

Member States shall issue allowances to persons for the current period to replace any allowances held by them which are cancelled in accordance with the first subparagraph.

Article 14

Guidelines for monitoring and reporting of emissions

1. The Commission shall adopt guidelines for monitoring and reporting of emissions resulting from the activities listed in Annex I of greenhouse gases specified in relation to those activities, in accordance with the procedure referred to in Article 23(2), by 30 September 2003. The guidelines shall be based on the principles for monitoring and reporting set out in Annex IV.

2. Member States shall ensure that emissions are monitored in accordance with the guidelines.

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

Article 15

Verification

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

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

Article 16

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that such rules are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission by 31 December 2003 at the latest, and shall notify it without delay of any subsequent amendment affecting them.
2. Member States shall ensure publication of the names of operators who are in breach of requirements to surrender sufficient allowances under Article 12(3).

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

4. During the three-year period beginning 1 January 2005, Member States shall apply a lower excess emissions penalty of EUR 40 for each tonne of carbon dioxide equivalent emitted by that installation for which the operator has not surrendered allowances. Payment of the excess emissions penalty shall not release the operator from the obligation to surrender an amount of allowances equal to those excess emissions when surrendering allowances in relation to the following calendar year.

Article 17

Access to information

Decisions relating to the allocation of allowances and the reports of emissions required under the greenhouse gas emissions permit and held by the competent authority shall be made available to the public by that authority subject to the restrictions laid down in Article 3(3) and Article 4 of Directive 2003/4/EC ¹.

¹ OJ L

Article 18

Competent authority

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

Article 19

Registries

1. Member States shall provide for the establishment and maintenance of a registry in order to ensure the accurate accounting of the issue, holding, transfer and cancellation of allowances. Member States may maintain their registries in a consolidated system, together with one or more other Member States.
2. Any person may hold allowances. The registry shall be accessible to the public and shall contain separate accounts to record the allowances held by each person to whom and from whom allowances are issued or transferred.

3. In order to implement this Directive, the Commission shall adopt a Regulation in accordance with the procedure referred to in Article 23(2) for a standardised and secured system of registries in the form of standardised electronic databases containing common data elements to track the issue, holding, transfer and cancellation of allowances, to provide for public access and confidentiality as appropriate and to ensure that there are no transfers incompatible with obligations resulting from the Kyoto Protocol.

Article 20

Central Administrator

1. The Commission shall designate a Central Administrator to maintain an independent transaction log recording the issue, transfer and cancellation of allowances.
2. The Central Administrator shall conduct an automated check on each transaction in registries through the independent transaction log to ensure there are no irregularities in the issue, transfer and cancellation of allowances.
3. If irregularities are identified through the automated check, the Central Administrator shall inform the Member State or Member States concerned who shall not register the transactions in question or any further transactions relating to the allowances concerned until the irregularities have been resolved.

Article 21

Reporting by Member States

1. Each year the Member States shall submit to the Commission a report on the application of this Directive. This report shall pay particular attention to the arrangements for the allocation of allowances, the operation of registries, the application of the monitoring and reporting guidelines, verification and issues relating to compliance with the Directive and on the fiscal treatment of allowances, if any. The first report shall be sent to the Commission by 30 June 2005. The report shall be drawn up on the basis of a questionnaire or outline drafted by the Commission in accordance with the procedure laid down in Article 6 of Directive 91/692/EEC. The questionnaire or outline shall be sent to Member States at least six months before the deadline for the submission of the first report.
2. On the basis of the reports referred to in paragraph 1, the Commission shall publish a report on the application of this Directive within three months of receiving the reports from the Member States.
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 operation of registries, monitoring, reporting, verification and compliance.

Article 22

Amendments to Annex III

The Commission may amend Annex III for the period from 2008 to 2012 in the light of the reports provided for in Article 21 and of the experience of the application of this Directive, in accordance with the procedure referred to in Article 23(2).

Article 23

Committee

1. The Commission shall be assisted by the committee instituted by Article 8 of Decision 93/389/EEC.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

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, installations and greenhouse gases which are not listed in Annex I, provided that inclusion of such activities, installations 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.

From 2005 Member States may under the same conditions apply emissions allowance trading to installations carrying out activities listed in Annex I below the capacity limits referred to in that Annex.

2. Allocations made to installations carrying out such activities shall be specified in the national allocation plan referred to in Article 9.

3. The Commission may, on its own initiative, or shall, on request by a Member State, adopt monitoring and reporting guidelines for emissions from activities, installations and greenhouse gases which are not listed in Annex I in accordance with the procedure referred to in Article 23(2), if monitoring and reporting of these emissions can be carried out with sufficient accuracy.

4. In the event that such measures are introduced, reviews carried out pursuant to Article 30 shall also consider whether Annex I should be amended to include emissions from these activities in a harmonised way throughout the Community.

Article 25

Links with other greenhouse gas emissions trading schemes

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

2. Where an agreement referred to in paragraph 1 has been concluded, the Commission shall draw up any necessary provisions relating to the mutual recognition of allowances under that agreement in accordance with the procedure referred to in Article 23(2).

Article 26

Amendment of Directive 96/61/EC

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

"Where emissions of a greenhouse gas from an installation are specified in Annex I to Directive 2003/ /EC of the European Parliament and of the Council of establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC * in relation to an activity carried out in that installation, the permit shall not include an emission limit value for direct emissions of that gas unless it is necessary to ensure that no significant local pollution is caused.

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

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

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

* OJ L

Article 27

Temporary exclusion of certain installations

1. Member States may apply to the Commission for certain installations and activities to be temporarily excluded until 31 December 2007 at the latest from the Community scheme. Any such application shall list each such installation and shall be published.

2. If, having considered any comments made by the public on that application, the Commission decides, in accordance with the procedure referred to in Article 23(2), that the installations and activities will:

- (a) as a result of national policies, limit their emissions as much as would be the case if they were subject to the provisions of this Directive;
- (b) be subject to monitoring, reporting and verification requirements which are equivalent to those provided for pursuant to Articles 14 and 15, and
- (c) be subject to penalties at least equivalent to those referred to in Article 16(1) and (4) in the case of non-fulfilment of national requirements;

it shall provide for the temporary exclusion of those installations from the Community scheme.

It must be ensured that there will be no distortion of the internal market.

Article 28

Pooling

1. Member States may allow operators of installations carrying out one of the activities listed in Annex I to form a pool of installations from the same activity for the period referred to in Article 11(1) and/or the first five-year period referred to in Article 11(2) in accordance with paragraphs 2 to 6 of this Article.
2. Operators carrying out an activity listed in Annex I who wish to form a pool shall apply to the competent authority, specifying the installations and the period for which they want the pool and supplying evidence that a trustee will be able to fulfil the obligations referred to in paragraphs 3 and 4.
3. Operators wishing to form a pool shall nominate a trustee:
 - (a) to be issued with the total quantity of allowances calculated by installation of the operators, by way of derogation from Article 11;
 - (b) to be responsible for surrendering allowances equal to the total emissions from installations in the pool, by way of derogation from Articles 6(2)(e) and 12(3); and

(c) to be restricted from making further transfers in the event that an operator's report has not been verified as satisfactory in accordance with the second paragraph of Article 15.

4. The trustee shall be subject to the penalties applicable for breaches of requirements to surrender sufficient allowances to cover the total emissions from installations in the pool, by way of derogation from Article 16(2), (3) and (4).

5. A Member State that wishes to allow one or more pools to be formed shall submit the application referred to in paragraph 2 to the Commission. Without prejudice to the Treaty, the Commission may within three months of receipt reject an application that does not fulfil the requirements of this Directive. Reasons shall be given for any such decision. In the case of rejection the Member State may only allow the pool to be formed if proposed amendments are accepted by the Commission.

6. In the event that the trustee fails to comply with penalties referred to in paragraph 4, each operator of an installation in the pool shall be responsible under Articles 12(3) and 16 in respect of emissions from its own installation.

Article 29

Force majeure

During the period referred to in Article 11(1), Member States may apply to the Commission for certain installations to be issued with additional allowances in cases of force majeure.

The Commission shall determine whether force majeure is demonstrated, in which case it shall authorise the issue of additional and non-transferable allowances by that Member State to the operators of those installations.

Article 30

Review and further development

1. On the basis of progress achieved in the monitoring of emissions of greenhouse gases, the Commission may make a proposal to the European Parliament and the Council by 31 December 2004 to amend Annex I to include other activities and emissions of other greenhouse gases listed in Annex II.
2. On the basis of experience of the application of this Directive and of progress achieved in the monitoring of emissions of greenhouse gases and in the light of developments in the international context, the Commission shall draw up a report on the application of this Directive, considering:

- (a) whether Annex I should be amended to include other activities and emissions of other greenhouse gases listed in Annex II, with a view to further improving the economic efficiency of the scheme;
- (b) the relationship of Community emission allowance trading with the international emissions trading that will start in 2008;
- (c) further harmonisation of the method of allocation and of the criteria for national allocation plans referred to in Annex III;
- (d) the use of credits from project mechanisms;
- (e) the relationship of emissions trading with other policies and measures implemented at Member State and Community level, including taxation, that pursue the same objectives;
- (f) whether it is appropriate for there to be a single Community registry;
- (g) the level of excess emissions penalties, taking into account, inter alia, inflation;
- (h) the functioning of the allowance market, covering in particular any possible market disturbances;
- (i) how to adapt the Community scheme to an enlarged European Union;
- (j) pooling.

The Commission shall submit this report to the European Parliament and the Council by 30 June 2006, accompanied by proposals as appropriate.

3. Linking the project-based mechanisms, including Joint Implementation (JI) and the Clean Development Mechanism (CDM), with the Community scheme is desirable and important to achieve the goals of both reducing global greenhouse gas emissions and increasing the cost-effective functioning of the Community scheme. Therefore, the emission credits from the project-based mechanisms will be recognised for their use in this scheme subject to provisions adopted by the European Parliament and the Council on a proposal from the Commission, which should apply in parallel with the Community scheme in 2005.

Article 31

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2003 at the latest. They shall forthwith inform the Commission thereof. The Commission shall notify the other Member States of these laws, regulations and administrative provisions.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

Article 32

Entry into force

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

Article 33

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

CATEGORIES OF ACTIVITIES REFERRED TO IN
ARTICLES 2(1), 3, 4, 14(1), 28 AND 30

1. Installations or parts of installations used for research, development and testing of new products and processes are not covered by this Directive.
2. The threshold values given below generally refer to production capacities or outputs. Where one operator carries out several activities falling under the same subheading in the same installation or on the same site, the capacities of such activities are added together.

Activities	Greenhouse gases
<u>Energy activities</u> Combustion installations with a rated thermal input exceeding 20 MW (except hazardous or municipal waste installations) Mineral oil refineries Coke ovens	Carbon dioxide Carbon dioxide Carbon dioxide
<u>Production and processing of ferrous metals</u> Metal ore (including sulphide ore) roasting or sintering installations Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2,5 tonnes per hour	Carbon dioxide Carbon dioxide
<u>Mineral industry</u> Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or lime in rotary kilns with a production capacity exceeding 50 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day Installations for the manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day Installations for the 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, and/or with a kiln capacity exceeding 4 m ³ and with a setting density per kiln exceeding 300 kg/m ³	Carbon dioxide Carbon dioxide Carbon dioxide
<u>Other activities</u> Industrial plants for the production of (a) pulp from timber or other fibrous materials (b) paper and board with a production capacity exceeding 20 tonnes per day	Carbon dioxide Carbon dioxide

GREENHOUSE GASES REFERRED TO IN ARTICLES 3 AND 30

Carbon dioxide (CO₂)

Methane (CH₄)

Nitrous Oxide (N₂O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur Hexafluoride (SF₆)



CRITERIA FOR NATIONAL ALLOCATION PLANS
REFERRED TO IN ARTICLES 9, 22 AND 30

- (1) The total quantity of allowances to be allocated for the relevant period shall be consistent with the Member State's obligation to limit its emissions pursuant to Decision 2002/358/EC and the Kyoto Protocol, taking into account, on the one hand, the proportion of overall emissions that these allowances represent in comparison with emissions from sources not covered by this Directive and, on the other hand, national energy policies, and should be consistent with the national climate change programme.
- (2) The total quantity of allowances to be allocated shall be consistent with assessments of actual and projected progress towards fulfilling the Member States' contributions to the Community's commitments made pursuant to Decision 93/389/EEC.
- (3) Quantities of allowances to be allocated shall be consistent with the potential, including the technological potential, of activities covered by this scheme to reduce emissions. Member States may base their distribution of allowances on average emissions of greenhouse gases by product in each activity and achievable progress in each activity.
- (4) The plan shall be consistent with other Community legislative and policy instruments. Account should be taken of unavoidable increases in emissions resulting from new legislative requirements.

- (5) The plan shall not discriminate between companies or sectors in such a way as to unduly favour certain undertakings or activities in accordance with the requirements of the Treaty, in particular Articles 87 and 88 thereof.
- (6) The plan shall contain information on the manner in which new entrants will be able to begin participating in the Community scheme in the Member State concerned.
- (7) The plan may accommodate early action and shall contain information on the manner in which early action is taken into account.
- (8) The plan shall contain information on the manner in which clean technology, including energy efficient technologies, are taken into account.
- (9) The plan shall include provisions for comments to be expressed by the public, and contain information on the arrangements by which due account will be taken of these comments before a decision on the allocation of allowances is taken.
- (10) The plan shall contain a list of the installations covered by this Directive with the quantities of allowances intended to be allocated to each.
- (11) The plan may contain information on the manner in which the existence of competition from countries or entities outside the Union will be taken into account.

PRINCIPLES FOR MONITORING AND REPORTING REFERRED TO
IN ARTICLE 14(1)

Monitoring of carbon dioxide emissions

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

Calculation

Calculations of emissions shall be performed using the formula:

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

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

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

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

Default oxidation factors developed pursuant to Directive 96/61/EC shall be used, unless the operator can demonstrate that activity-specific factors are more accurate.

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

Measurement

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

Monitoring of emissions of other greenhouse gases

Standardised or accepted methods shall be used, developed by the Commission in collaboration with all relevant stakeholders and adopted in accordance with the procedure referred to in Article 23(2).

Reporting of emissions

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

- A. Data identifying the installation, including:
- Name of the installation;
 - Its address, including postcode and country;
 - Type and number of Annex I activities carried out in the installation;
 - Address, telephone, fax and email details for a contact person; and
 - Name of the owner of the installation, and of any parent company.
- B. For each Annex I activity carried out on the site for which emissions are calculated:
- Activity data;
 - Emission factors;
 - Oxidation factors;
 - Total emissions; and
 - Uncertainty.

C. For each Annex I activity carried out on the site for which emissions are measured:

- Total emissions;
- Information on the reliability of measurement methods; and
- Uncertainty.

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

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

CRITERIA FOR VERIFICATION REFERRED TO IN ARTICLE 15

General Principles

- (1) Emissions from each activity listed in Annex I shall be subject to verification.
- (2) The verification process shall include consideration of the report pursuant to Article 14(3) and of monitoring during the preceding year. It shall address the reliability, credibility and accuracy of monitoring systems and the reported data and information relating to emissions, in particular:
 - (a) the reported activity data and related measurements and calculations;
 - (b) the choice and the employment of emission factors;
 - (c) the calculations leading to the determination of the overall emissions; and
 - (d) if measurement is used, the appropriateness of the choice and the employment of measuring methods.

- (3) Reported emissions may only be validated if reliable and credible data and information allow the emissions to be determined with a high degree of certainty. A high degree of certainty requires the operator to show that:
- (a) the reported data is free of inconsistencies;
 - (b) the collection of the data has been carried out in accordance with the applicable scientific standards; and
 - (c) the relevant records of the installation are complete and consistent.
- (4) The verifier shall be given access to all sites and information in relation to the subject of the verification.
- (5) The verifier shall take into account whether the installation is registered under the Community eco-management and audit scheme (EMAS).

Methodology

Strategic analysis

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

Process analysis

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

Risk analysis

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

- (9) On the basis of this analysis the verifier shall explicitly identify those sources with a high risk of error and other aspects of the monitoring and reporting procedure which are likely to contribute to errors in the determination of the overall emissions. This especially involves the choice of the emission factors and the calculations necessary to determine the level of the emissions from individual sources. Particular attention shall be given to those sources with a high risk of error and the abovementioned aspects of the monitoring procedure.
- (10) The verifier shall take into consideration any effective risk control methods applied by the operator with a view to minimising the degree of uncertainty.

Report

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

Minimum competency requirements for the verifier

- (12) The verifier shall be independent of the operator, carry out his activities in a sound and objective professional manner, and understand:
- (a) the provisions of this Directive, as well as relevant standards and guidance adopted by the Commission pursuant to Article 14(1);
 - (b) the legislative, regulatory, and administrative requirements relevant to the activities being verified; and
 - (c) the generation of all information related to each source of emissions in the installation, in particular, relating to the collection, measurement, calculation and reporting of data.



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 18 March 2003

**Interinstitutional File:
2001/0245 (COD)**

**15792/1/02
REV 1 ADD 1**

**ENV 776
MI 308
IND 103
ENER 329
CODEC 1671**

STATEMENT OF THE COUNCIL'S REASONS

Subject : Common position adopted by the Council on 18 March 2003 with a view to the adoption of Directive of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC

Statement of the Council's Reasons

I. INTRODUCTION

1. On 23 October 2001, the Commission submitted to the Council its proposal on Directive of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.
2. The Committee of the Regions delivered its Opinion on 14 March 2002.
3. The Economic and Social Committee delivered its Opinion on 29 May 2002.
4. The European Parliament adopted its Opinion at first reading on 10 October 2002.
5. On 18 March 2003, the Council adopted its common position in accordance with Article 251(2) of the Treaty.

II. OBJECTIVE

The general objective of the proposed Directive is to create a scheme for greenhouse gas emission allowance trading within the Community by establishing an EU framework and ensuring an EU-wide market for emission allowances. Such an instrument is a cornerstone in the Commission's strategy for reaching the Kyoto target in the most cost-effective way. Emissions trading will reduce the cost of emission reductions by ensuring that these reductions are made where they are least costly. At the same time, emissions trading is environmentally effective by achieving a pre-determined emission reduction from the activities covered. The proposal ensures the proper functioning of the internal market and avoids unacceptable distortions of competition.

The Directive is particularly important to ensure that legal commitments to reduce greenhouse gas emissions pursuant to the Kyoto Protocol, which was ratified by the European Community¹ and its Member States on 31 May 2002, are fulfilled more cost-effectively.

III. ANALYSIS OF THE COMMON POSITION

1. General

Of the 73 amendments proposed by the European Parliament in first reading, the common position incorporates 23 (totally, in part or in principle, by means of identical or similar wording, or in spirit). The Council considers that the common position does not alter the approach and aims of the original proposal from the Commission and notes that the Commission also supports the common position as it stands.

2. European Parliament Amendments

In its Plenary vote on 10 October 2002, the EP adopted 73 amendments to the proposal. 23 of these have been incorporated into the Council's common position (18 to the Articles, 3 to the Recitals and 2 to the Annexes), either verbatim, in part or in spirit.

- (a) The accepted amendments are listed below in order of their inclusion in the common position.

¹ Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder, OJ L 130, 15.05.2002, p.1.

Amendment 10: First sentence accepted and incorporated in recital 24.

Amendment 13: Accepted and incorporated in recital 25.

Amendment 15: Reflected in recital 5.

Amendment 102: Reflected in principle and in part in Article 10. Relevant also is Article 30(c), and note the statement to the minutes made by the Council and the Commission, of the understanding that "any revenues arising from any allocation for the five year period beginning 1 January 2008 shall accrue to the benefit of the allocating Member State."

Amendment 35: Reflected in Article 19(3).

Amendment 39: Reflected in principle in Article 14(3).

Amendment 40: Accepted in Article 16(2).

Amendment 41: Accepted.

Amendment 42: Accepted.

Amendment 46: Reflected in Article 17.

Amendment 43: Reflected in Article 21.

Amendment 49: Accepted in principle and in part in Article 22 by the clear limitation in time set out for the use of comitology.

Amendments 51 and 103: Accepted in principle and in part in Article 24(1) (Note also recital 17).

Amendment 16: Reflected and incorporated in part in Article 24. Note also Recital 14.

Amendment 17: Reflected and incorporated in part in Article 24.

Amendment 50: Reflected and incorporated in part in Article 27.

Amendment 55: Reflected in Article 30(2).

Amendment 56: Incorporated in Article 30(2)(b).

Amendment 57: Incorporated in Article 30(2)(c).

Amendment 58: Incorporated in Article 30(2)(i).

Amendment 73: Accepted in principle and in part and incorporated in Annex III, point 10.

Amendment 74: Accepted in part and incorporated in Annex IV.

- (b) The 50 amendments that have been rejected have been listed in the order they would apply to the Commission's proposal, together with the reasons for their rejection.

Recitals

Amendment 1: The amendment refers to an opinion of the European Parliament that was made in relation to another, separate proposal from the Commission and therefore the Council deems it inappropriate.

Amendment 2: The Member States' margin of discretion in these matters is limited by what follows from Community legislation and may thus not be able to act as freely as supposed by the amendment.

Amendment 3: The need for an integrated Community approach (reflected in Recitals 7 and 27) does not exclude the need for the individual Member States to take action to reduce greenhouse gases individually.

Amendment 91: The emission trading scheme should let operators decide on which technologies they will use and not impose any technical standards possibly curtailing such choices.

Amendment 6: It should be for the Member States to decide on the quantities to be allocated. Furthermore, the suggested wording is operative and thus inappropriate for a recital. It can be noted that Annex III, point 8, prescribes that the national allocation plan shall contain information on the manner in which clean technology, including energy efficient technologies, are taken into account.

Amendment 8: The amendment would basically make statements in the preamble of the Directive about what the European Community will do in the context of the international negotiations on climate change, which would be inappropriate.

Amendment 9: In the view of the Council, the proposed recital would not adequately reflect the nature of the scheme in the common position. Setting targets and developing instruments for sectors not covered by the Directive is excessive and inappropriate. The relation and interaction with taxation is reflected in the existing recital 22, as well as in Article 30 (e) on review.

Amendment 11 is an operative provision inappropriate for recitals, and the taxation issue is reflected in the existing recital 22, as well as in Article 30 (e) on review. On the contents, it is doubtful that a blanket-prohibition of the kind proposed would be a universally preferred option, regardless of the specific circumstances that may be at hand.

Amendment 12: The common position clearly envisages the future inclusion of fluorinated gases when these can be sufficiently monitored and reported; something which is reflected in Article 24 (3-4). To include them earlier would, in the Council's view, be premature.

Amendment 14: The Directive is addressed to the Member States and it is inappropriate to make statements in the preamble of this Directive about what the European Community should do in the context of the international negotiations on climate change.

Articles

Amendment 97: rejected for the same reasons as for amendment 6 above.

Amendment 19 would presuppose monitoring of volumes even before the permit would have set out the monitoring requirements.

Amendment 20: The scheme, as set out in the common position, allows operators to increase or decrease their actual emissions, subject only to the requirement that operators hold corresponding quantities of allowances for the period concerned.

Amendment 21: The issuance of permits should not be subject to other legal requirements than those either laid down in the Directive itself or applicable regardless of mentioning (for instance, general principles of Community law).

Amendment 22: The provision that the amendment would change aims for consistency with the permit provisions of the existing IPPC Directive, which should be maintained. Apart from the essential information regarding the name and address of a new operator, it should be up to the competent authority to decide on what elements of a permit that might need updating.

Amendment 23 would make the criteria listed in Annex III exhaustive and thus deprive Member States of necessary flexibility to reflect different national circumstances in the setting of targets for their entities.

Amendment 24: The proposed "cap" is unnecessary because of the limitations from the Member States' targets under the Kyoto Protocol, the criteria laid down in Annex III to the common position and the Treaty provisions on state aid. The amendment would add additional complications to these existing safeguards and is superfluous. The overall effect would also likely constrain some Member States more than others, thereby risking a distortion of competition.

Amendment 25: Member States should have the opportunity to reward early action (see Annex III, point 7) as they think appropriate.

Amendment 26 could create serious and adverse effects for the expedient handling of individual national allocation plans, where, for instance, one Member State's failure to submit its allocation plan would prevent the other Member States from commencing trade.

Amendment 27: Existing national trading schemes incompatible with the present proposal cannot be linked without special measures being taken. The fact that Member States are free to maintain existing national schemes whose scopes fall outside that of the proposed Directive is reflected in recital 15.

Amendment 29: This amendment is linked to amendment 24 and is rejected for the same reasons 24. Furthermore, the time limit proposed in the amendment is too short and would not give Member States the necessary time to comply adequately.

Amendment 76: It should be up to the Member States to choose how allowances will be allocated to new entrants, under the general proviso that access per se to allowances is safeguarded (see, in this respect, Article 11 (3)).

Amendment 31: This amendment is linked to amendment 24 and is rejected for the same reasons.

Amendment 32: The accession of new Member States will bring additional sources – and, consequently, more emissions – into the scheme. Therefore, there will be a need to increase the number of allowances. Concerning the issue of potential gross over-allocation, it should be noted that national allocation plans are subject to Commission scrutiny and potential rejection (see Article 9(3) and the criteria in Annex III).

Amendment 33: It should be noted that the common position does not lay down any restrictions on transfers between operators within a Member State or between Member States beyond those provided for by the Kyoto Protocol and decisions thereunder, and that initial allocations are done to operators rather than installations.

Amendment 34: The cancellation proposed in the amendment may be detrimental to the objective of reducing greenhouse gas emissions by taking away some of the incentives to close down and cut back capacity on affected installations. Furthermore, the procedures cumbersome and bureaucratic to implement.

Amendment 36 on banking is partly catered for by Article 13, although making banking optional for Member States during the periods 2005-2007 and 2008-2012. Mandatory banking between these periods would be more difficult for some Member States and given their different circumstances, the Council considers that this should remain a matter of choice left to the Member States.

Amendment 37: Banking, but not borrowing, is provided for in Article 13; not least because of the need to provide certainty about the quantities of allowances to be allocated from the outset of each period.

Amendment 38: The application of such a provision would be unduly complicated and the benefits doubtful.

Amendment 80: The competence over the subject-matter rests with the Member States, and it is up to them to decide on how to use revenues for such penalties.

Amendment 45: Fiscal harmonisation is governed by specific Treaty provisions, and cannot be brought about by the present Directive.

Amendments 47-48: Judicial review is already provided for by Member States (compare, for instance, Article 6 of the European Convention on Human Rights) and the proposed amendments are therefore superfluous.

Amendments 52-53: The Council will (in co-decision with the European Parliament) consider the modalities for linking the trading scheme with the Kyoto flexible mechanisms within the framework of the separate proposal on these, to be presented by the Commission in 2003. The Council does not want to prejudge these deliberations in this Directive (see also Article 30(3)).

Amendment 54 mainly duplicates the provisions of Article 30(2), foreseeing reviewing, reporting and submission of appropriate proposals by the Commission by 30 June 2006.

Amendment 59: The features of the Community scheme should be confirmed in the context of this co-decision procedure, to ensure the highest degree of certainty for the market and the operators.

Annexes

Amendment 61: see the comments on amendment 12 above.

Amendment 62-63: The future inclusion of other gases and sectors is foreseen by Article 26, but the Council considers that CO₂ should be the starting point. In that light, there is no sense in include aluminium installations at this stage. Furthermore, the threshold-values proposed by the amendments would cause great administrative burdens.

Amendment 64: Annex II is not an appropriate place for these factors, which furthermore are subject to periodic revisions by the UN Intergovernmental Panel on Climate Change.

Amendment 65-66: The Council rejects the idea of a "cap" (see comments on amendment 24) and allocations should be consistent with the Community's legally binding commitments under the Kyoto Protocol and the Member States' targets under the burden sharing agreement, to ensure that these targets are reached.

Amendment 78 links to the concept of a cap, and is not acceptable (see comments on amendments 24 and 65).

Amendment 79 links to amendment 78 and cannot be accepted for the same reasons.

Amendment 68: see comments on amendment 12.

Amendment 70: Member States are free to reward early action as they see fit, subject to compatibility with the Treaty's rules on state aid and the criteria laid down in Annex III (see also comments on amendment 76). It is not legally acceptable to try to set out what could amount to undue discrimination in this Directive, and to state what already applies in this respect according to the Treaty would be superfluous.

Amendment 104: It should be left to the Member States to decide on the method for ensuring new entrants adequate access to allowances (see also comments on amendment 76).

Amendment 96: It should be for the Member States – in light of their different national circumstances – to decide on the extent and manner they would like to reward early action (see also comments on 76 and 70).

IV. CONCLUSION

The changes introduced by the Council to the Commission's amended Proposal respond to concerns in certain Member States, with which the European Parliament agreed, that existing instruments should, in certain circumstances, be allowed to continue until the end of 2007 as an alternative to the relevant installations being brought within the emissions trading scheme. For the five-year period beginning in 2008, the provision for "pooling" would enable there to be an easier transition between existing instruments, such as long-term negotiated national agreements, and emissions trading.

The common position incorporates many of the amendments proposed by the European Parliament at its first reading. In particular, reviews will take place by 31 December 2004 and 30 June 2006 to examine if emissions of other greenhouse gases can be sufficiently accurately monitored and the scope of the scheme can be extended. As from 2008 Member States will be able to unilaterally opt-in emissions of other gases, following which a review will consider harmonising the scheme through co-decision. The scope of the emissions trading scheme includes energy, heat and steam production of installations above 20MW, while Member States can extend the coverage of the scheme as from 2005 to lower thresholds. It should also be noted that the originally proposed use of comitology to revise Annex III has been limited to the period 2008-2012 in the common position, which is necessary purely for reasons of timing.

The common position's requirement for Member States during the period 2008-2012 to allocate at least 90% of allowances free of charge gives businesses and Member States greater certainty of what to expect in the future, and the issue of further harmonisation of the method of allocation will be included in the review to take place by 30 June 2006.

Regarding the modalities for linking the EC emissions trading scheme with the Kyoto Protocol's so-called project-based mechanisms, it can be noted that the common position does not prejudge this issue: On the basis of the Commission's forthcoming proposal on the project-based mechanisms, the Council and the European Parliament will decide on these modalities through co-decision. Furthermore, the common position accepts the European Parliament's position that the EC emissions trading scheme should only be linked to schemes in third countries that have ratified the Kyoto Protocol.

The EU ratified the Kyoto Protocol on 31 May 2002, and is committed to putting in place policies to reduce its greenhouse gas emissions. Emissions trading will reduce emissions cost-effectively, and the Community will greatly benefit from experience of greenhouse gas emissions trading from 2005 so that it is prepared for the commencement of international emissions trading under the Kyoto Protocol that will begin in 2008.

The EU is taking the lead in addressing climate change and proving that greenhouse gas emissions can be reduced cost-effectively. The Commission is to adopt monitoring guidelines by 30 September 2003 and guidance on allocation criteria by 31 December 2003, while the Member States are to adopt implementing legislation by 31 December 2003 and prepare their national allocation plans by 31 March 2004. Accession Countries are to do this at the latest by the date of their accession. Prompt finalisation of the emissions trading Directive is necessary in order to ensure that this timetable is respected and European leadership is maintained in the global fight against climate change.

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**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 14 March 2003

**Interinstitutional File:
2001/0245 (COD)**

**7290/1/03
REV 1**

**ENV 151
MI 52
IND 38
ENER 66
CODEC 295**

"I/A" ITEM NOTE

from : General Secretariat
to : Coreper / Council

Subject : Adoption of a common position adopted by the Council with a view to the adoption of a Directive of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC

1. The Commission submitted the above proposal to the Council on 23 October 2001. This proposal is based on Article 175(1) of the Treaty.
2. The European Parliament, in accordance with the procedure in Article 251 of the Treaty, delivered its Opinion at first reading on 10 October 2002. The Economic and Social Committee adopted its Opinion on 29 May 2002. The Committee of the Regions adopted its Opinion on 14 March 2002.
3. The Council reached agreement on the Articles and the Annexes at its meeting on 9 December 2002 and requested the Permanent Representatives Committee to establish the preamble and forward the text to the legal/linguistic experts for finalisation.

4. This having been done, it is suggested that the Permanent Representatives Committee invite Council, as an "A" item on the agenda of a forthcoming meeting, to:

- adopt its common position as contained in 15792/02 ENV 776 MI 308 IND 103 ENER 329 CODEC 1671+ COR 1 (de),
- take note of the statement of the Council's reasons in 15792/02 ADD 1,
- enter in its minutes the statements as contained in ADD 1 REV 1 to this Note.

The common position will be forwarded to the European Parliament as soon as possible, together with the statement of the Council's reasons.



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 14 March 2003 (17.03)
(OR. en,nl)**

**Interinstitutional File:
2001/0245 (COD)**

**7290/03
ADD 1 REV 1**

**ENV 151
MI 52
IND 38
ENER 66
CODEC 295**

ADDENDUM to "I/A" ITEM NOTE

from : General Secretariat
to : Coreper / Council

Subject : Adoption of a common position adopted by the Council with a view to the adoption of a Directive of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC

Statements to be entered in the Council minutes

1. Statements by the Council and the Commission

"The Council and the Commission understand that any revenues arising from any allocation for the five year period beginning 1 January 2008 shall accrue to the benefit of the allocating Member State."

"The Commission confirms its intention to propose, by the first half of 2003, a Directive for linking Project-based mechanisms including Joint Implementation (JI) and the Clean Development Mechanism (CDM) with the Community greenhouse emission trading scheme."

The Council confirms its intention to work towards a swift adoption of the forthcoming Directive in order for it to apply in parallel with the Community greenhouse gas emissions trading scheme in 2005."

2. Statement by Denmark

"In conjunction with the implementation of this Directive, Denmark endorses the need to incorporate effective, proportionate and dissuasive penalties into national legislation in order to ensure compliance with the Directive. However, the Community is not competent to harmonise Member States' criminal law in this Directive, and therefore cannot require Member States to incorporate penalties of an administrative or penal nature into their national legislation when implementing the Directive."

3. Statements by Germany

"It is the Federal Republic of Germany's view that within Article 27 "activities" are not necessarily defined according to Annex I but can also include sectors."

"It is the Federal Republic of Germany's view that 1990 may be used as a possible base year for the allocation and for the accommodation of early action."

4. Statement by Finland

"Finland considers it important, in implementing the Directive and especially Article 27 thereof, to take account of the need of some Member States to be able to continue to employ national instruments which have proved successful, such as energy taxation and energy savings agreements, in order to limit greenhouse gas emissions."

5. Statement by the Netherlands

"The Netherlands generally supports the objectives of the Directive, especially the pursuit of the greatest possible degree of harmonisation. With respect to Article 16, the Netherlands would like to state the following:

The Netherlands endorses the need to incorporate sanctions in national legislation implementing this Directive that are effective, proportionate and have a deterrent effect, as a means of ensuring compliance with the obligations imposed under the Directive. In this context the Netherlands emphasises the importance of the penalties as described in Article 16(3) and (4). Based on these paragraphs, the designated administrative or judicial authorities in each Member State can apply these penalties to enforce compliance with the provisions. The Netherlands takes the view that it is up to the Member States to decide which form of enforcement – either under administrative or criminal law – they consider the most appropriate to ensure optimum compliance with the provisions. In its opinion, the administrative or judicial authorities responsible for the day-to-day enforcement of the Directive's provisions, and in particular for imposing penalties as described in Article 16(3) and (4), may to a certain extent take account of the circumstances of each individual case, for example in terms of the amount of the penalty to be imposed."



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.3.2003
SEC(2003) 364 final

2001/0245 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251(2) of the EC Treaty

concerning the

**Common Position of the Council on the adoption of a Directive of the European
Parliament and of the Council establishing a scheme for greenhouse gas emission
allowance trading within the Community and amending Council Directive 96/61/EC**

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251(2) of the EC Treaty

concerning the

Common Position of the Council on the adoption of a Directive of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC

1. PROCEDURE

The Proposal COM(2001)581 final¹ was transmitted to the European Parliament and the Council on 23 October 2001 in accordance with the co-decision procedure pursuant to Article 175(1) of the EC Treaty.

The Committee of Regions gave its opinion on 14 March 2002².

The Economic and Social Committee gave its opinion on 29 May 2002³.

The European Parliament gave its opinion at the first reading in session on 10 October 2002.

Following the opinion of the European Parliament and pursuant to Article 250(2) of the EC Treaty, the Commission amended its Proposal by COM(2002)680 final⁴ and transmitted this to the European Parliament and the Council on 27 November 2002.

The Council reached unanimous political agreement on a Common Position on 9 December 2002. The Council adopted the Common Position formally on 18 March 2003.

2. PURPOSE OF THE DIRECTIVE

The general objective of the proposed Directive is to create a scheme for greenhouse gas emission allowance trading within the Community by establishing an EU framework and ensuring an EU-wide market for emission allowances. Such an instrument is a cornerstone in the Commission's strategy for reaching the Kyoto target in the most cost-effective way. Emissions trading will reduce the cost of emission reductions by ensuring that these reductions are made where they are least costly. At the same time, emissions trading is environmentally effective by achieving a pre-determined emission reduction from the activities covered. The proposal

¹ OJ C 75 E, 26.03.2002, p. 33.

² OJ C 192, 12.08.2002, p.59.

³ OJ C 221, 17.09.2002, p.27.

⁴ Not yet published in the Official Journal

ensures the proper functioning of the internal market and avoids unacceptable distortions of competition.

The Directive is particularly important to ensure that legal commitments to reduce greenhouse gas emissions pursuant to the Kyoto Protocol, which was ratified by the European Community⁵ and its Member States on 31 May 2002, are fulfilled more cost-effectively.

⁵ Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder, OJ L 130, 15.05.2002, p.1.

3. COMMISSION COMMENTS

3.1. General comments

The Commission accepted totally, in part or in principle 18 of the 73 amendments proposed by the European Parliament in the first reading and consequently amended its Proposal⁶. All these amendments have been incorporated in the Common Position, which the Council agreed upon unanimously on 9 December 2002, using identical or similar wording. In addition, the Common Position includes five amendments not accepted by the Commission in its amended proposal, relating to the temporary exclusion of certain installations under certain conditions until the end of 2007 (amendment 50), the method of allocation (amendment 102), the limitation of comitology under Article 22 (amendment 49) and the inclusion of additional sectors and gases (amendments 16 and 17).

The Commission accepted many of the Parliament's amendments that increased transparency, and full reasoning in respect of each amendment is given in sections 3.1 and 3.2 of the amended Proposal⁷.

The Commission welcomes the adoption of the Common Position on 18 March 2003 as likely to accelerate adoption of the proposal whose principal aims are safeguarded in the Common Position, and thus supports the Common Position as it stands.

3.2. Detailed comments

3.2.1. *Parliamentary amendments accepted by the Commission and incorporated in full or in part in the common position*

The following amendments, which have been accepted the Commission, are listed in the order of their inclusion in the Common Position.

Concerning recitals: the first sentence of amendment **10** says that policies and measures must be implemented across all sectors of the economy and not only the industrial and energy sectors. It makes explicit a belief that other sectors should contribute to reducing greenhouse gas emissions. This sentence has been accepted by the Commission and is included in the Common Position.

Concerning recitals: amendment **13** states that the EU's climate change strategy "*should be built on a balance between the emission allowance trading scheme and other types of Community, domestic and international action*". This amendment has been accepted by the Commission and is included in the Common Position.

Amendment **15** (Article 1) states that the present Directive "*aims to contribute towards*" the EU and its Member States fulfilling their commitments under the Kyoto Protocol with the least possible adverse impact on economic development and employment. This amendment has been accepted by the Commission at the end of existing recital 5 that refers to the Kyoto Protocol's targets, with the replacement of "EU" by "European Community" and the replacement of "*least possible diminution*"

⁶ COM(2002)680.

⁷ COM(2002)680.

of” by “*minimum adverse effect on*”. In the Common Position, the wording “*least possible diminution of*” proposed by the European Parliament has been re-instated.

Concerning transparency: amendment **35** requires that the system “*for the transfer, surrender and cancellation of allowances must ensure transparency as regards the ownership of allowances at all times and as regards the transactions performed between companies inside and outside the Member States*”. This amendment has been accepted by the Commission through the addition of the wording “*be accessible to the public and shall...*” to the second sentence of Article 19(2). In the Common Position, this amendment has been included through the replacement of “*to provide confidentiality as appropriate*” by “*to provide for public access and confidentiality as appropriate*”, thereby enshrining the principle of public access. Detailed arrangements for public access will be laid down in accordance with the international decisions on registries that ensure transparency as regards the ownership of allowances.

Concerning reporting by operators: amendment **39** (Article 14, paragraph 3) changes the word “*at*” to “*three months after*” so as to clarify that reporting emissions during a calendar year cannot be made at the exact end of the year (00h00, 1 January). This amendment has been accepted in part by the Commission by replacing the word “*at*” by the word “*after*”, as it is not necessary to specify “*three months*”, as by 30 April the reports have to be verified and corresponding allowances surrendered (see Article 12(3)). This amendment as incorporated in the Commission’s amended proposal is included in the Common Position.

Concerning penalties: amendment **40** (Article 16, paragraph 2) would confine “*naming and shaming*” to companies who have not surrendered sufficient allowances pursuant to this Directive. This has been accepted by the Commission and is included in the Common Position.

Amendment **41** (Article 16, paragraph 3) deletes the provision that the penalty shall be twice the average market price if higher than €100. This has been accepted by the Commission and is included in the Common Position.

Amendment **42** (Article 16, paragraph 4) deletes the provision that in the period 2005-2007 the penalty shall be twice the average market price if higher than €50. This has been accepted by the Commission and is included in the Common Position.

Concerning reporting by Member States: amendment **43** provides that Member States shall report on the way in which penalties and the purchase of additional allowances are treated for tax purposes. This amendment has been accepted in principle and in part by the Commission, and inserted into Article 21 on reporting by Member States through the wording “*and on the fiscal treatment of allowances*”. It is all aspects of the fiscal treatment (including capital gains and losses on allowances bought and sold) that would be of possible interest. This amendment is accepted in the Common Position, with the addition of “*if any*” to accommodate the possibility of there being no fiscal treatment.

Concerning transparency: amendment **46** (Article 17) refers to the forthcoming Directive on access to environmental information. This amendment has been accepted by the Commission and is included in the Common Position by the addition of the words “*Article 3(3) and Article 4 of Directive 2003/4/EC*”.

Concerning the links with emissions trading schemes in third countries: amendments **51** and **103** (Article 25, paragraph 1) say that agreements on the basis of the Kyoto Protocol may only be made with Parties that have ratified the Kyoto Protocol. Agreements must be concluded with the applicant countries insofar as it is not provided by the accession negotiations. This amendment has been accepted by the Commission in principle and in part by replacing “*third parties*” by “*Parties listed in Annex B of the Kyoto Protocol that have ratified that Protocol*”. The part of the amendment referring to agreements with applicant countries has not been accepted, as emissions trading in the applicant countries is expected to take place through transposition of this scheme, and it would be inappropriate to decide now that a link to any other pre-accession national scheme that has yet to be established “must” be made. The Common Position accepts that links should only be established with Annex B Parties to the Kyoto Protocol and goes further in the direction of the second part of the European Parliament’s amendment by stating that “agreements “*should be concluded with third countries listed in Annex B to the Kyoto Protocol which have ratified the Protocol*”, rather than “*may be concluded*”. This establishes a presumption in favour of links being established. Furthermore, a new recital (17) has been introduced which emphasises that linking the Community scheme to emission trading schemes in third countries will increase the cost-effectiveness of achieving the Community emission reduction target.

Concerning review: Amendment **55** inserts that the review should be based on experience during the 3-year period starting in 2005. The Commission accepted that it will make a report, by including the word “*shall*” in Article 30, paragraph 2, which is acceptable because the Commission’s right of initiative to make appropriate proposals is preserved by the wording “*proposals as appropriate*”. This amendment, as incorporated in the Commission’s amended proposal, has been accepted in the Common Position.

Concerning elements for review: amendment **56** specifies that the review should examine the relationship between the EU emissions trading scheme and international emissions trading that will start in 2008. This amendment has been accepted by the Commission and is included in the Common Position as Article 30, paragraph 2, point (b).

Amendment **57** inserts “*further harmonisation of the*” method of allocation, as opposed to “*the harmonised method...*”. This amendment has been accepted by the Commission and included in the Common Position as Article 30, paragraph 2, point (c). It is particularly relevant in the light of the Common Position deciding now on the method of allocation for the period from 2008-2012 by granting a limited degree of national flexibility to issue allowances against payment, because further harmonisation is already explicitly foreseen.

Amendment **58** adds an additional element for review to include the possible amendments to adapt the scheme in the light of EU enlargement. This amendment has been accepted by the Commission and is included in the Common Position as Article 30, paragraph 2, point (i).

Concerning transparency: Amendment **73** requires that national allocation plans shall list installations included in the scope of the directive “*and of those installations’ emissions permits*” [understood as intended to mean that the initial allocation of allowances to each installation shall be published]. This amendment serves to

improve transparency, and has been accepted in principle and in part by the Commission through the replacement of “*and those installations’ emissions permits*” with the words “*with the quantities of allowances allocated to each*”. This amendment as incorporated in the Commission’s amended proposal is incorporated in the Common Position as Annex III, point 10 with the addition of “intended to be”, which clarifies that National Allocation Plan states how allowances are to be allocated in advance of the decision on allocation.

Amendment 74 (Annex IV, Monitoring of emissions of other greenhouse gases) would require that standardised methods for monitoring the emissions of other greenhouse gases than CO₂ “*shall be developed in collaboration with all stakeholders*” and agreed in accordance with the comitology procedure. This amendment has been accepted in part by the Commission, through including the proposed text “*shall be developed in collaboration with all stakeholders*”, while maintaining the word “*used*” in the original text, followed by the insertion of a comma. This amendment as incorporated in the Commission’s amended proposal is incorporated in the Common Position.

3.2.2. *Amendments accepted by the Commission, but not incorporated in the common position*

All of the amendments that were accepted by the Commission form part of the Common Position.

3.2.3. *Parliamentary amendments not accepted by the Commission and incorporated by the Council in the common position*

Concerning the method of allocation: Amendment 102 provides for 15% auctioning in both the 2005-2007 and 2008-2012 periods, and states that revenues shall be recycled. The Commission did not accept this amendment because it opposed any auctioning in the first period and wished to take experience into account before deciding on the method of allocation for the second. This amendment has now been incorporated in the Common Position in principle and in part, in that “*for the five-year period beginning 1 January 2008, Member States shall allocate at least 90% of the allowances free of charge*” (Article 10). In addition, Article 30, paragraph 2, point (c) of the Common Position provides for the review by 30 June 2006 to consider “*further harmonisation of the method of allocation*”. A statement was made for the minutes by the Council and the Commission of their understanding “*that any revenues arising from any allocation for the five year period beginning 1 January 2008 shall accrue to the benefit of the allocating Member State*”.

Concerning extension of the scheme: Amendment 16 provides for additional sectors to be included by Member States provided that such inclusion does not conflict with Articles 87 and 88 of the Treaty. The Commission did not accept this amendment because unilateral “opt-in” of additional activities could distort competition and undermine the environmental integrity of the emissions trading system, depending on the ability to monitor emissions from different sources. This amendment has now been incorporated in the Common Position with changes. These are, firstly, for additional sectors to be included where “*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*” have been taken into account and monitoring of emissions can be done with sufficient

accuracy. Secondly, as from 2005 unilateral inclusion will apply to installations below the capacity limits set in Annex I, and whose emissions will therefore be similar to installations which are covered by the scheme at its beginning, while emissions from other installations may be included as from 2008. Thirdly, when sectors have been unilaterally included, the next Commission review will consider whether the Directive “*should be amended to cover these emissions in a harmonised way throughout the Community*”. Furthermore, a new recital (14) has been introduced which emphasises that the inclusion of additional installations in the Community scheme should be in accordance with the provisions laid down in the Directive.

Concerning the accurate monitoring of greenhouse gases: Amendment 17 extends the scope of emissions trading to cover all greenhouse gases covered by the Kyoto Protocol provided that the data with regard to a particular reference year is “*satisfactory*” and that “*accepted methods on measurement, monitoring and calculation*” are developed by the Commission in collaboration with all stakeholders and agreed in comitology. The Commission did not accept this amendment because it is inappropriate to extend the scope of the Directive in principle and then to limit the practical application of this extension until an indeterminately long process has been completed and a decision made by comitology. This amendment has now been incorporated in the Common Position by allowing Member States from 2008 to apply emissions trading to emissions of greenhouse gases other than carbon dioxide (see amendment 16 above) and have those emissions included in the emissions trading scheme, where “*the monitoring and reporting of these emissions can be done with sufficient accuracy*”. Furthermore, where guidelines for monitoring and reporting these emissions have been developed “*in collaboration with all relevant stakeholders*” (Annex IV), the next review by the Commission will consider harmonising coverage of these emissions throughout the Community.

Concerning temporary exclusions from the scheme: Amendment 50 allows Member States to apply to exclude until 2007 certain installations if they are subject to equivalent national measures, monitor their emissions and be subject to comparable penalties. The Commission did not accept this amendment because the exclusion of installations will reduce the economic efficiency of the instrument and pose a greater risk of distortion of the internal market. This amendment has now been incorporated in the Common Position with changes. These are, firstly, for the Commission to decide on temporary exclusions through the committee procedure rather than by itself, in consequence of which the European Parliament will be informed in advance of any proposed decision in accordance with the relevant inter-institutional agreement⁸. Secondly, the Common Position allows “*certain installations and activities*” to be temporarily excluded and applies a more stringent test for such exclusion by requiring penalties to be “*at least equivalent*” rather than “*comparable*”. Thirdly, the Common Position requires it to be “*ensured that there will be no distortion of the internal market*”.

⁸ Agreement between the European Parliament and the Commission on procedures for implementing Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission. OJ L 256 of 10.10.2000, p. 19.

Concerning amendments to Annex III: The Common Position amends Article 22 of the Commission proposal in order to provide that amendment to the allocation criteria in Annex III in respect of periods after 2008-2012 shall be made through co-decision by the European Parliament and the Council. In this way, amendment 49 is accepted in part by limiting the use of comitology to the period 2008-2012 (in respect of which there is insufficient time for any necessary amendment to be made through co-decision, because national allocation plans for this period will be published by June 2006, eighteen months before the beginning of the period).

3.2.4. *Additional changes made by the Council to the amended Proposal*

Concerning banking of assigned amount between 2007 and 2008: Article 13(2) of the Commission proposal on the validity of allowances and their cancellation and re-issue (“banking”) is unchanged in the Common Position. Recital (8) of the Common Position clarifies that Member States may choose to only allow banking from the 2005-2007 period into the 2008-2012 period in respect of emissions reductions made on their national territory. This is because Member States have limited quantities of assigned amount under the Kyoto Protocol, and as from 2008 transfers of allowances will involve corresponding transfers of assigned amount which is not the case during the period 2005-2007.

Concerning adjustments of assigned amount units: Recital (9) of the Common Position clarifies that, from 2008, transfers of allowances between Member States will involve corresponding adjustments of assigned amount units under the Kyoto Protocol. This is already stated in section 3 of the Explanatory Memorandum to the Commission’s proposal COM(2001)581, and will be implemented through the rules on registries.

Concerning national trading schemes: Recital (15) of the Common Position clarifies that the Directive does not prevent Member States from maintaining or establishing national trading schemes in respect of emissions not included in the Community emissions trading scheme.

Concerning Member States participating in international emissions trading: Recital (16) of the Common Position clarifies that the Directive does not affect Member States’ own participation in international emissions trading as Parties to the Kyoto Protocol outside the scope of the Directive.

Concerning taxation: - Recital (22) has been amended in the Common Position to state that “*where activities are covered by the Community greenhouse gas emission allowances trading scheme, Member States may consider the implications of regulatory, fiscal or other policies that pursue the same objectives*”. A new recital (23) has been added that clarifies that taxation can be seen as an instrument of policy to reduce greenhouse gas emissions which may therefore justify temporary exclusion of activities from the scheme. These amendments are in the spirit of the last sentence of the European Parliament’s amendment 9, which states that “*greenhouse gas emission allowance trading and energy taxation should be seen as complementary instruments*”.

Concerning the definition of “installation”: Article 3(e) of the Common Position defines “installation” in exactly the same terms as the Integrated Pollution Prevention and Control (IPPC) Directive 96/61/EC, through the addition of “*and any other*”

directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution". This applies the emissions trading scheme to directly associated activities to those activities listed in Annex I to the Directive, and promotes consistency between the emissions trading scheme and the IPPC Directive.

Concerning the definition of "new entrant": Article 3(h) of the Common Position defines a "new entrant" as being an installation which obtains its greenhouse gas emissions permit, or an update thereof, subsequent to notification to the Commission of a national allocation plan. This means that an installation that changes its nature or functioning or is extended in such a way that its greenhouse gas emissions permit needs updating will be treated the same as an installation which begins operating subsequent to notification to the Commission of a national allocation plan.

Concerning National Allocation Plans: The Common Position amends Article 9(1) in order to require the Commission to "*develop guidance on the implementation of the criteria listed in Annex III*" by 31 December 2003. This guidance is not intended to be legally binding but will assist the Member States in developing their National Allocation Plans.

Concerning timing: The Common Position amends Article 12(3), 13(2) and (3) and 16(4) by substituting "*30 April*" for 30 March, in order to give operators an extra month to surrender allowances to the competent authority in respect of their emissions during the previous year.

Concerning penalties: The Common Position amends Article 16(4) in order to reduce the excess emissions penalty from €50 to €40 during the period 2005-2007. The requirement for the excess emissions to be made up for in the following year is maintained, which protects the environmental integrity of the emissions trading scheme.

Concerning amendment of the IPPC Directive: Article 26 of the Common Position includes a second paragraph stating that Member States may choose not to impose requirements relating to energy efficiency under the IPPC Directive in respect of units emitting carbon dioxide which are covered by the scheme. A similar amendment has been introduced to recital (19) on the IPPC Directive. A new third sub-paragraph to Article 26 makes clear, consequential to the introduction of a provision on temporary exclusion of installations as proposed by the European Parliament, that installations that are temporarily excluded from the Directive are subject to the full requirements of the IPPC Directive.

Concerning Pooling (Article 28): The Common Position includes a new Article that enables Member States to allow operators of installations carrying out a particular activity listed in Annex I to apply to pool their allowances. Operators wanting to form a pool shall nominate a trustee to be issued the allowances that would be issued to them, to be responsible for surrendering allowances on their behalf, and to be responsible for penalties for breach of requirements to surrender allowances. Applications to form a pool which do not fulfil the requirements of the Directive may be rejected by the Commission. In the event that a trustee fails to comply with penalties, operators in a pool shall be individually responsible for their installation's emissions.

Concerning *force majeure* (Article 29): The Common Position includes a new Article on *force majeure* circumstances. In the period 2005-2007 only, where a Member State can demonstrate circumstances of *force majeure* that justify the issue of additional allowances, it can make an application to the Commission for authorisation to issue further allowances in respect of certain installations. Any such allowances are non-transferable, and so can only be used by an operator towards meet his own commitments under the scheme.

Concerning the Kyoto Protocol's project based mechanisms (Recital (18) and Article 30(3)): The Common Position includes a recital emphasising that recognition of credits from project-based mechanisms will increase the cost-effectiveness of achieving global reductions of greenhouse gas emissions and will be provided for a Directive on linking project-based mechanisms to the Community emissions trading scheme. It also includes a new paragraph (3) in Article 30 stating that linking the Community emissions trading scheme with the project-based mechanisms is important and desirable, and will be provided for by a proposal by the Commission which should apply in parallel with the Community emissions trading scheme in 2005. The European Parliament and the Council acting in accordance with Article 175(1) will decide the content of this Directive. Statements were made for the minutes by the Commission, confirming "*its intention to propose, by the first half of 2003, a Directive for linking Project-based mechanisms including Joint Implementation (JI) and the Clean Development Mechanism (CDM) with the Community greenhouse emission trading scheme*", and by the Council, confirming "*its intention to work towards a swift adoption of the forthcoming Directive in order for it to apply in parallel with the Community greenhouse gas emissions trading scheme in 2005*".

Concerning Annex III: The Common Position amends Annex III to state, in criterion (1), that the total quantity of allowances shall be consistent with "*national energy policies ... and ... the national climate change programme*". Criterion (2) is clarified by stating that consistency must be ensured with "*Member States' contributions on the Community's commitments*" under the Kyoto Protocol. Criterion (3) is broadened to cover the potential, and not just the technical potential, of activities to reduce greenhouse gas emissions. Furthermore, it is added that "*Member States may base their distribution of allowances on average emissions of greenhouse gases by product in each activity and achievable progress in each activity*". Criterion (4) is shortened by requiring consistency with other EC legislative and policy instruments without citing examples. Criterion (5) refers directly to "*the requirements of the Treaty, in particular Articles 87 and 88 thereof*" rather than to allocation not being more than is likely to be needed. In criterion (7), it is clarified that the "*plan may accommodate early action*". A new criterion (8) is added, for the national allocation plan to include "*information on the manner in which clean technology, including energy efficient technologies, are taken into account*". Finally, a new criterion (11) clarifies that the plan may contain information on how competition from countries/entities outside the EU will be taken into account.

4. CONCLUSION

The Common Position incorporates many of the amendments proposed by the European Parliament at its first reading. In particular, reviews will take place by 31 December 2004 and 30 June 2006 to see if emissions of other greenhouse gases can be sufficiently accurately monitored and the scope of the scheme can be extended. As from 2008 Member States will be able to unilaterally opt-in emissions of other gases, following which a review will consider harmonising the scheme through co-decision. The scope of the emissions trading scheme includes energy, heat and steam production of installations above 20MW, while Member States can extend the coverage of the scheme as from 2005 to lower thresholds. For the five-year period beginning in 2008, the provision for “pooling” would enable there to be an easier transition between existing instruments, such as long-term negotiated agreements, and emissions trading.

The Commission observes that the Common Position’s requirement for Member States during the period 2008-2012 to allocate at least 90% of allowances free of charge gives businesses and Member States greater certainty of what to expect in the future. It notes also that, depending on the use of revenues by Member States, auctioning may bring about extra costs for enterprises and that Member States may use different allocation methods under the relevant provisions during the period 2008-2012. Further harmonisation of the method of allocation will be included in the review to take place by 30 June 2006. The Commission’s initial proposal was for the method of allocation to be specified based on experience gained during the allocation of allowances for the period 2005-2007, and it considers that the final Directive should not depart further from this than the Common Position.

On the basis of the Commission’s forthcoming proposal on the Kyoto Protocol’s project-based mechanisms, the European Parliament will decide through co-decision on the modalities for their inclusion in the emissions trading scheme. Furthermore, the Common Position accepts the European Parliament’s position that the EC emissions trading scheme should only be linked to schemes in third countries that have ratified the Kyoto Protocol.

The EU ratified the Kyoto Protocol on 31 May 2002, and is committed to putting in place policies to reduce its greenhouse gas emissions cost-effectively. Emissions trading will reduce emissions cost-effectively, and the Community will greatly benefit from experience of greenhouse gas emissions trading from 2005. The Commission is to adopt monitoring guidelines by 30 September 2003 and guidance on allocation criteria by 31 December 2003, while the Member States are to adopt implementing legislation by 31 December 2003 and prepare their national allocation plans by 31 March 2004. Acceding Countries are to do this at latest by the date of their accession. Prompt finalisation of the emissions trading Directive is necessary in order to ensure that this timetable is respected and European leadership is maintained in the fight against climate change.

The Commission therefore supports the Common Position adopted on the 18 March 2003.