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12 June 2003

***II
RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a European Parliament and Council directive establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC
(15792/1/2002 – C5-0135/2003 – 2001/0245(COD))

Committee on the Environment, Public Health and Consumer Policy

Rapporteur: Jorge Moreira da Silva

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

At the sitting of 10 October 2002 Parliament adopted its position at first reading on the proposal for a European Parliament and Council directive establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (COM(2001) 581 – 2001/0245 (COD)).

At the sitting of 27 March 2003 the President of Parliament announced that the common position had been received and referred to the Committee on the Environment, Public Health and Consumer Policy (15792/1/2002 – C5-0135/2003).

The committee had appointed Jorge Moreira da Silva rapporteur at its meeting of 5 November 2001.

It considered the common position and draft recommendation for second reading at its meetings of 29 April 2003 and 11 June 2003.

At the last meeting it adopted the draft legislative resolution by 47 votes to 3, with 2 abstentions.

The following were present for the vote: Caroline F. Jackson, chairman; Mauro Nobilia, Alexander de Roo and Guido Sacconi, vice-chairmen; Jorge Moreira da Silva, rapporteur; María del Pilar Ayuso González, Jean-Louis Bernié, Hans Blokland, John Bowis, Martin Callanan, Dorette Corbey, Chris Davies, Avril Doyle, Anne Ferreira, Marialiese Flemming, Karl-Heinz Florenz, Pernille Frahm, Cristina García-Orcoyen Tormo, Laura González Álvarez, Robert Goodwill, Françoise Grossetête, Cristina Gutiérrez Cortines, Jutta D. Haug (for David Robert Bowe), Marie Anne Isler Béguin, Christa Klaß, Bernd Lange, Peter Liese, Giorgio Lisi (for Raffaele Costa), Torben Lund, Jules Maaten, Minerva Melpomeni Malliori, Emilia Franziska Müller, Rosemarie Müller, Riitta Myller, Giuseppe Nisticò, Ria G.H.C. Oomen-Ruijten, Marit Paulsen, Frédérique Ries, Dagmar Roth-Behrendt, Yvonne Sandberg-Fries, Karin Scheele, Ursula Schleicher (for Horst Schnellhardt), Inger Schörling, Jonas Sjöstedt, María Sornosa Martínez, Bart Staes (for Hiltrud Breyer), Robert William Sturdy (for Eija-Riitta Anneli Korhola), Astrid Thors, Antonios Trakatellis, Elena Valenciano Martínez-Orozco, Kathleen Van Brempt and Peder Wachtmeister.

The recommendation for second reading was tabled on 12 June 2003.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council common position for adopting a European Parliament and Council directive establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (15792/1/2002 – C5-0135/2003 – 2001/0245(COD))

(Codecision procedure: second reading)

The European Parliament,

– having regard to the Council common position (15792/1/2002 – C5-0135/2003),

– having regard to its position at first reading[1] on the Commission proposal to Parliament and the Council (COM(2001) 581[2]),

– having regard to the Commission's amended proposal (COM(2002) 680[3]),

– having regard to Article 251(2) of the EC Treaty,

– having regard to Rule 80 of its Rules of Procedure,

– having regard to the recommendation for second reading of the Committee on the Environment, Public Health and Consumer Policy (A5-0207/2003),

1. Amends the common position as follows;

2. Instructs its President to forward its position to the Council and Commission.

[1] Texts adopted, 10.10.2002, *P5_TA(2002)0461*
[2] OJ C 75 (E), 26.3.2002, p. 33.
[3] Not yet published in OJ

Council common position	Amendments by Parliament

Amendment 1
Recital 15 a (new)

	(15a) This Directive should only apply to the use of fluorinated gases in the industrial activities referred to in Annex I. The use and containment of fluorinated gases in consumer products should be covered by the future proposal for framework legislation on fluorinated gases.

Justification

This amendment reinstates Amendment 12 adopted at first reading in October 2002. It clarifies that the inclusion of fluorinated gases in the scope of the directive, as suggested by the rapporteur in his draft report, will only reduce their use in industrial activities. The Commission is therefore invited to put forward a proposal limiting their use in consumer products.

Amendment 2
Recital 18

(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***.	(18) Project-based mechanisms***,*** including Joint Implementation (JI) and the Clean Development Mechanism (CDM)***, are important to achieve the goals of both reducing global greenhouse gas emissions and increasing the cost-effective functioning of the Community scheme. Priority should however be given to domestic action.***

Justification

In view of the omission in the proposal for a Directive, Parliament proposed (Amendment 53)

that during the first period covered by the Directive, before the launch of the international emission trading system (in 2008) the use of emission allowance credits earned from projects under the Clean Development Mechanism (CDM) and Joint Implementation (JI) should be completely banned, since one of the main aims of the Directive is to reduce emissions inside the European Union. However, the European Parliament admitted that from the second period onwards recognition of those credits would be acceptable, as long as the projects did not include carbon sinks or sources of energy which use nuclear power. In the common position the Council and the Commission, in Article 30.3, consider that linking the emission trading system and the credits from the CDM and JI projects is desirable, but the detailed arrangements must be laid down in another Directive to be submitted by the Commission in the first half of this year, under the co-decision procedure. However, whilst recognising that the CDM and JI projects have advantages in the global reduction of greenhouse gas emissions and that they introduce elements of economic efficiency into the European emission trading system, it is important to ensure, in the context of this new legislation, that the projects do not shift the priority which should be given to the emission reductions to be carried out in the EU.

Amendment 3
Article 2, paragraph 1 a (new)

1 a. Notwithstanding paragraph 1, the greenhouse gases other than CO2 referred to in Annex II shall be included in the Community greenhouse gas emission allowance trading scheme provided that:

(a) the quality of data for a particular reference year is satisfactory, and

(b) standardised methods on measurement, monitoring, and calculation under Annex IV are developed by the Commission in collaboration with all stakeholders and agreed in accordance with the procedure referred to in Article 23(2).

Justification

This amendment reintroduces in a modified way amendment 17 adopted at first reading, in which Parliament proposed that the system should include, as of 2005, the six greenhouse gases, and not just CO2, provided that the quality of existing data was satisfactory and that there were harmonised methods for measuring, monitoring and calculating emissions. The common position accepts the inclusion in the system of other greenhouse gases in addition to

CO2, but only in a non-harmonised way (under the scrutiny of the European Commission the Member States may request the unilateral inclusion of other gases) and after 2008 (not 2005). Linked to amendment 22.

Amendment 4

Article 4, paragraph 1 a (new)

Member States shall take account of the corresponding carbon value of savings achieved through CHP investments and the replacement of fuel by waste fuels when allocating allowances to operators using the European Guidance on the Carbon Equivalence to be prepared by the Commission prior to the entry into force of the scheme.

Justification

Reinstatement of Amendment 97 from first reading. In particular in the light of the proposal for a regulation now under discussion (support for CHP), allowance trading should be used to reduce the burden on CHP installations. The reduction in greenhouse gas emissions stemming from the burning of waste should also be acknowledged.

Amendment 5
Article 9, paragraph 1 a (new)

1a. The total quantity referred to in paragraph 1 shall be no more than x%([1]) of the Member State's emissions level determined in terms of tonnes of carbon dioxide equivalent pursuant to Decision 2002/358/EC 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.

Before this determination has taken place, the total quantity referred to in paragraph 1 shall be no more than x%([1]) of the quantity of emissions that would result in

	the relevant period determined by a straight trend-line between the Member State's base year emissions and its target established by that Decision.
	(1) x corresponds to the share of total emissions produced by the installations covered by this Directive in the Member State concerned in 1990.

Justification

Reintroduces amendment 24 in first reading. In order to set a quantified reduction commitment to be achieved under the Directive and to avoid the risk of overallocation, the EP proposed in its first reading the inclusion of a cap on the total quantity of allowances that is allocated in each Member State. This cap represents x% (x is the shares of industry and energy emissions in each Member State) of the emissions forecast in the relevant period for each Member State on a linear curve converging with the Kyoto commitments. This definition means that the cap could be updated if additional activities were included (voluntary opt-in).

Amendment 6

Article 10

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.	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 ***5%*** of the allowances ***against payment and the remaining part*** free of charge**.** ***When selling part of the allowances, Member States shall endeavour to avoid any increase in the overall financial burden for operators, notably where energy taxes are applied, in order to achieve neutrality.***

Justification

Partially reintroduces amendment 102 in first reading, seeking a compromise with the Council. The proposal for a Directive envisaged that emission allowances would initially be allocated by means of the 'grandfathering' method (i.e. allocation for free) leaving in abeyance the method to be used for the period starting in 2008. Parliament proposed that allowances should be allocated, in both the first and second periods, using a hybrid method based on allocation free of charge, but with a small proportion of auctioning (15%). This hybrid method would have considerable advantages compared with allocation free of charge,

for example: it would ensure the progressive application of the 'polluter pays' principle, cause less distortion of competition and acknowledge the merit of companies which make reductions in emissions earlier and issue a signal about the price per tonne of carbon dioxide equivalent on the market.

The common position accepts the concept of the hybrid method (free allocation plus auctioning) but in a non-harmonised way: in the first period the allocation would be completely free of charge and in the second period the Member States would allocate at least 90% of the emission allowances for free. Although this solution constitutes a move in Parliament's direction on the part of the Council and the Commission, it would upset the equilibrium of the internal market and would not provide a desirable signal about the price per tonne of carbon dioxide in the first period of the Directive. Parliament is therefore justified in insisting on an harmonised allocation method (free of charge in the first period, 5% auctioning in the second period).

Amendment 7

Article 11, paragraph 1 a (new)

1a. For the periods referred to in paragraphs 1 and 2, new entrants shall acquire their allowances in the same way as all other participants in the market. For the periods referred to in paragraphs 1 and 2, the total level of allowances shall be adjusted in accordance with the procedure laid down in Article 9(1a). The provisions of this paragraph shall apply to existing participants in the market which extend their installations in the same way as to new entrants. The adjustment shall take place one year after the new entrant joins the market, with due account also being taken of installations which have been closed down.

Justification

Corresponds to Amendment 76 from the first reading.

The last sentence has been added on the grounds that an adjustment after the event for the preceding year is not possible, because undertakings may have sold too many allowances, thereby preventing them from returning sufficient allowances for the year in question. In aproperly functioning system, adjustments of this kind will be minimal (e.g. 0.1 to 0.2%).

Amendment 8

Article 12, paragraph 4 a (new)

4a. Member States shall ensure that operators of installations may use, in the next period, emissions that have not been used or sold.

Justification

Amendment 36 adopted at first reading.

Amendment 9

Article 12, paragraph 4 a (new)

4a. Member States shall cancel the allowances of installations

- which are closed down;

- whose capacity is cut back;

- which continue to operate under the same or worse conditions in non-EU countries.

Justification

Corresponds to Amendment 34 from the first reading.

Closing down or simply transferring production may not be regarded as a possible source of income. Moreover, the pressure to transfer operations must be reduced as it makes absolutely no sense in environmental terms to continue producing under the same or even worse conditions in non-EU countries and possibly even transport and import finished products, such as cement, into the EU.

Amendment 10

Article 12 a (new)

Where an installation ceases to carry out an activity listed in Annex I during a period referred to in Article 11(1) or (2), the

competent authority may decide not to issue any further allowances to the operator of that installation during the remainder of the period in respect of that installation unless the operator can demonstrate that the closure is related to a corresponding new investment made within the Community.

Justification

Corresponds to Amendment 38 from the first reading.

Closing an installation that is old and therefore pollutes more and rebuilding a new, more efficient installation should be encouraged. To make those operators hand back the allowances that they may have been given for the old installation and to treat them as 'new entrants' for the new installation would not be appropriate. On the other hand, it cannot be the aim of the directive to encourage the closure of installations. That's why normally no more allowances should be issued if an installation is closed.

Amendment 11

Article 13, paragraph 3 a (new)

3a. Member States shall ensure that operators of installations may, within the periods laid down in Article 11(1) and (2), bring forward allowances or put aside allowances for a subsequent year.

Justification

The Kyoto objectives relate to a time-frame of more than one year and represent the annual average to be achieved over the five-year period. The possibility of transferring allowances from one year to another will make it easier to achieve the Kyoto objectives and will prevent short-term variations from undermining the stability of undertakings.

Amendment 12
Article 22

Article 22	***Deleted***
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).	

Justification

Reintroduces amendment 49 in first reading. Any amendment to Annex III (Criteria for national allocation plans) should be carried out in the context of the legislative co-decision procedure, rather than commitology.

Amendment 13
Article 24, title and paragraph 1

Procedure for unilateral inclusion of additional activities and ***gases***	Procedure for unilateral inclusion of additional ***sectors,*** activities and ***installations***
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.***	1. ***The Member States shall also be able to extend the scheme to additional sectors, activities and installations if it does not conflict with Articles 87 and 88 of the Treaty. For the period referred to in Article 11(1), a list of additional sectors, activities and installations shall be notified to the Commission by 31 March 2004 at the latest. For subsequent periods, the list of additional sectors, activities and installations shall be notified to the Commission at least 18 months before the beginning of the relevant period. Within 3 months of notification, the Commission may reject completely, or in part, the list of additional sectors, activities and installations on the basis that it conflicts***
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.	***with Article 87 or 88 of the Treaty.***

Justification

This amendment corresponds to amendment 16 adopted at first reading. In it Parliament proposed that the Member States might, voluntarily and under the scrutiny of the Commission, extend the scheme to installations and activities other than those stipulated in Annex I of the Directive. This would, for example, enable the Member States unilaterally to include other economic activities and sectors, such as transport and SMEs. The common position accepts the concept of voluntary opt-in. However, for the period 2005 – 2008 the Council and the Commission only accept its implementation for installations whose activities are covered in Annex I of the Directive, hence postponing the voluntary inclusion of other activities to the period 2008 – 2012.

Amendment 14
Article 24, paragraph 3

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.	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 ***and*** installations 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.

Justification

Puts paragraph 3 in line with amendments 2 and 22 on gases.

Amendment 15
Article 27

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.	1. Member States may apply to the Commission to temporarily exclude certain installations from the Community greenhouse gas emission allowance trading scheme until 31 December 2007. 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:	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 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;	(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	(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;	(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 shall provide for the temporary exclusion of those installations from the Community scheme.

Justification

This amendment corresponds to amendment 50 adopted at first reading. It will be remembered that at first reading, in view of the large number of amendments intended to make the scheme merely voluntary rather than compulsory, which therefore threatened the equilibrium of the market and the liquidity, economic efficiency and environmental performance of the scheme, it was necessary to reach a compromise, according to which the Member States may temporarily exclude installations which fulfil three highly restrictive conditions. The common position accepted Parliament's proposal but extended to activities the possibility of temporary exclusion granted to installations. The common position therefore opens the way to various sectoral opt-outs, which obviously entails potential damage to the equilibrium of the internal market and the environmental and economic efficiency of the scheme. It therefore makes sense to insist on the wording proposed by Parliament.

Amendment 16

Article 28, paragraphs 1 and 2

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.	1. Member States may allow operators of installations carrying out one ***or more*** 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.	2. Operators carrying out ***one or more of the activities*** 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.

Justification

A provision should be incorporated authorising the extension of pooling to cover differing activities, given that in many cases individual installations carry out a variety of activities.

Amendment 17

Article 29

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 for 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.	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 for 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. ***The Commission shall, without prejudice to the Treaty, develop guidance to describe the circumstances under which force majeure***

	is demonstrated, by 31 December 2003 at the latest.

Justification

This new clause added by the Council provides reasonable assurance against the consequences of sudden and unforeseen events during the first period (Art 11(1)). It is appropriate, however, that Member States should have clarity with regard to the circumstances under which force majeure may be invoked when preparing their first national allocation plan.

Amendment 18
Article 30, paragraph 1

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***.	1. On the basis of progress achieved in the monitoring of emissions of greenhouse gases, the Commission ***shall*** make a proposal to the European Parliament and the Council by ***30 June 2006*** to amend Annex I to include other ***sectors and*** activities.

Justification

Reintroduces in a modified form amendment 54 in first reading and puts the text in line with amendments 2 and 22 on gases. It proposes to have a later review of the Directive - in 2006 and not in 2004 - to include for the second period more sectors and activities (like the transport sector and the households, for instance).

Amendment 19
Article 30, paragraph 3

Linking ***the*** project-based mechanisms, including Joint Implementation (JI) and the Clean Development Mechanism (CDM), with the Community scheme ***is desirable***	***The Commission shall, as soon as possible, put forward a proposal for*** linking Project-based mechanisms, including Joint Implementation (JI) and the

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.	Clean Development Mechanism (CDM), with the Community scheme***. This proposal shall set rules for the recognition of a fixed amount of credits from project-based mechanisms for fulfilling obligations under this Directive***.

Justification

In view of the omission in the proposal for a Directive, Parliament proposed (Amendment 53) that during the first period covered by the Directive, before the launch of the international emission trading system (in 2008) the use of emission allowance credits earned from projects under the Clean Development Mechanism (CDM) and Joint Implementation (JI) should be completely banned, since one of the main aims of the Directive is to reduce emissions inside the European Union. However, Parliament admitted that from the second period onwards recognition of those credits would be acceptable, as long as the projects did not include carbon sinks or sources of energy which use nuclear power. In the common position the Council and the Commission, in Article 30.3, consider that linking the emission trading system and the credits from the CDM and JI projects is desirable, but the detailed arrangements must be laid down in another Directive to be submitted by the Commission in the first half of this year, under the co-decision procedure. However, whilst recognising that the CDM and JI projects have advantages in the global reduction of greenhouse gas emissions and that they introduce elements of economic efficiency into the European emission trading system, it is important to ensure, in the context of this new legislation, that the projects do not shift the priority which should be given to the emission reductions to be carried out in the EU.

Amendment 20
Annex I, table, item "production and processing of ferrous metals"
Common position

Production and processing of ferrous metals	
Metal ore (including sulphide ore) roasting or sintering installations.	***Carbon dioxide***
Installations for the production of pig iron or steel (primary or secondary fusion) including	***Carbon dioxide***

continuous casting, with a capacity exceeding 2.5 tonnes per hour.	

Parliament's amendment

Production and processing of ferrous metals	
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.	
Installations for the production and processing of aluminium	
Installations falling under this category of activities shall fall within the scope of this Directive only if the total amount of greenhouse gas exceeds 50 000 tonnes of carbon dioxide equivalents per year.	

Justification

Reintroduces amendment 62 in first reading. This amendment seeks to enlarge the scope of the scheme to a new activity - aluminium.

Amendment 21
Annex I, table, item 3 a (new)

	Chemical industry
	Installations falling within this category of activity shall fall within the scope of this Directive only if the total amount of greenhouse gas exceeds 50 000 tonnes of carbon dioxide equivalents per year.

Justification

Reintroduces amendment 63 in first reading. This amendment seeks to enlarge the scope of the scheme to a new activity - chemicals.

Amendment 22
Annex I, table, column 2 (Greenhouse gases)

Deletion of column 2 "Greenhouse gases"

Justification

Linked to amendment 2 on gases. Reintroduces amendment 61 in first reading.

Amendment 23

Annex III, point 1 a (new)

The total quantity of allowances allocated shall take account of the other Community legal and policy instruments. Accordingly, Member States shall avoid cumulating measures which target greenhouse gases, such as energy taxes or CO_2 levies, in the sectors concerned.

Justification

Cumulating measures which target greenhouse gases reduces the competitiveness of the sectors concerned and leads to market distortions. The subsidiarity principle allows for the use of a range of instruments, but must take account of the internal market in connection with the implementation of the directive under consideration here. The amendment recommends an integrative approach.

Amendment 24

Annex III, point 3

(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	(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.	emissions***, with due account being taken of emission reductions achieved by means of early action to implement technological improvements.*** ***Benchmarks derived from reference documents concerning the best available technologies shall be employed in order to take account of past and future performance and to prevent the allocation of excessively high or excessively low allowances; these benchmarks shall be laid down on the basis of agreements between the Member States and the Commission.*** ***The benchmarks shall take account of comparable efforts in all sectors and in all types of installation.*** 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.

Justification

Reinstatement of Amendment 78 from the first reading. The establishment of benchmarks valid throughout the EU will provide a fair basis for the allocation of emission allowances tailored to sectoral standards compared across the EU.

Amendment 25

Annex III, point 3 a (new)

	3a. In the case operators are operating one or more activities listed in annex I which are technically linked to each other, Member States shall base their distribution of allowances to these operators taking into consideration their potential to decrease reducible overall GHG emissions by acting on the processes themselves.

Justification

This amendment clarifies the common position with regard to the procedure for allocating emission allowances for technically linked emissions within one or more installations, for example in steel or cement production. The aim of the directive is to reduce greenhouse gas emissions at installation level. Accordingly, where emissions are technically linked the allocation procedure must take account of the installation which actually produces greenhouse gases, taking as its basis the technological potential available to the operator of an installation to influence and reduce process-related emissions of greenhouse gases.

Amendment 26

Annex III, point 5

(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.	(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, ***nor shall any installation be allocated more allowances than it is likely to need, unless this is done in recognition of emission reductions already achieved.***

Justification

The amendment reintroduces the wording from the Commission proposal as well as Amendment 70 from the 1st reading.

The wording from the Commission proposal lays down the general rule that no installation should be allocated more allowances than it will probably need, to avoid all kind of discrimination.

Nevertheless, an exception to this rule can be made to reward early actions. Paragraph 7 of Annex III requires early action to be taken into account. This may also mean, in cases where drastic reductions were achieved before the start of emission trading, that more emission allowances are issued than the installation is likely to need, precisely to reward that early action.

Amendment 27

Annex IV, Reporting of emissions, part B

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.	B. For each Annex I activity carried out on the site for which emissions are calculated: - Activity data; - Emission factors; - Oxidation factors; - Total emissions ***(reducible and irreducible)***; and - Uncertainty.

Justification

The amendment is consistent with amendment 25 to Annex III 3 A.

In the context of total emissions, a distinction must be drawn between reducible and irreducible emissions.

EXPLANATORY STATEMENT

1. SUMMARY OF THE PROPOSAL FOR A DIRECTIVE ON EMISSION TRADING

According to the proposal drawn up by the Commission, the European system for emission trading will be launched in 2005, covering two periods (2005-2008 and 2008-2012) and will include more than 10 000 European businesses (specific large-scale sources) in the energy sector (combustion, refineries, coke furnaces) and industry (ferrous metals, paper and minerals), which account for more than 46% of all European carbon dioxide emissions.

2. IMPORTANCE OF THE EUROPEAN EMISSION TRADING SYSTEM

The European emissions trading scheme may combine the following advantages: it would speed up the remedying, from 2005 onwards, of the failure to comply with the Kyoto commitments on the part of the majority of the Member States; it would assist practical training, in the companies in the Member States, with a view to the launch of the international emissions trading scheme in 2008 (defined in the Kyoto Protocol); it would greatly reduce the costs of implementing the commitments made by the European Union at Kyoto. (It is estimated that costs will be reduced by around 35 %, equivalent to a saving of more than the EUR 1 300 million per year in the EU until 2010). Finally, the instrument may be of fundamental importance in convincing the United States to accede to the Kyoto Protocol, in particular because the cost of compliance with Kyoto may be greatly reduced.

3. INCORPORATION IN THE COMMON POSITION OF THE CORE AMENDMENTS ADOPTED BY THE EUROPEAN PARLIAMENT AT FIRST READING

At first reading Parliament adopted 73 amendments to the Commission's proposal for a Directive, and compromise amendments were formulated on the fundamental issues. They were as follows:

3.1 . Legal framework

In view of the many amendments intended to make the scheme merely voluntary rather than compulsory, which therefore threatened the equilibrium of the market and the liquidity, economic efficiency and environmental performance of the scheme, a compromise formulation was devised in Parliament. This compromise amendment (50) recommended that participation of installations should be compulsory but in fact, between 2005 and 2007 installations which fulfil three highly restrictive conditions could be temporarily excluded. These conditions were: (a) they should be subject to national policies to reduce greenhouse gas emissions to the same level as that required by the Directive; (b) they should be subject to mechanisms to measure, monitor and verify equivalent to those laid down in the Directive; (c) they should be subject to a national system of penalties for non-compliance identical to that covered by the Directive. The common position takes up Parliament's proposal but extends to activities the possibility of temporary exclusion only envisaged for installations. It thus opens the way to various sectoral opt-outs, which is bound to upset the equilibrium of the internal market and the environmental and economic efficiency of the system (since liquidity will be reduced).

3.2. Opt-in

The EP proposed (amendment 16) that the Member States might, voluntarily and under

scrutiny of the European Commission, extend the system to installations and activities other than those listed in Annex I of the Directive. This would, for example, allow Member States unilaterally to include other activities and economic sectors such as transport and SMEs. The common position accepts the concept of voluntary opt-in but, in the first period, it only accepts its implementation for installations whose activities are covered in Annex I of the Directive, postponing the voluntary inclusion of other activities to the second period.

3.3. Inclusion of the six greenhouse gases

The EP proposed (amendment 17) that the system should, from the outset, include the 6 greenhouse gases, not just carbon dioxide. The amendment defined, as criteria for greenhouse gases, the quality of existing data and the definition of harmonised methods for measuring, monitoring and calculating emissions. The common position accepts that, as of 2008 and under the scrutiny of the European Commission, Member States may request the unilateral inclusion of other greenhouse gases, apart from carbon dioxide, in the system.

3.4 Cap (total quantity of emission allowances)

The EP proposed (amendment 24) the setting of a national ceiling for emission allowances, according to which the Member States would only be able to place on the national market a quantity of emission allowances on a linear curve converging with its Kyoto commitments. In this way, in contrast with the Commission proposal, a quantified objective of reducing emissions to be obtained by the system would be guaranteed - that is half of the global effort to meet the Kyoto commitments in the European Union - and it would avoid the risk of excessive allocation by some countries. Regrettably, the common position does not accept the existence of a national ceiling on emission allowances.

3.5. Links with the flexible Kyoto Protocol project-based mechanisms

In view of the omission in the proposal for a Directive, Parliament proposed (amendment 53) that, in the first period covered by the Directive (2005 - 2007), before the international emissions trading scheme starts in 2008, the use, under the present Directive of emission allowance credits earned from projects under the *Clean Development Mechanism (CDM)* and *Joint Implementation (JI)* should be completely banned, since one of the main aims of the Directive is to reduce emissions inside the European Union. However, the European Parliament admitted that from the second period onwards recognition of those credits would be acceptable, as long as the projects did not include carbon sinks or sources of energy which use nuclear power. In the common position the Council and the Commission, in Article 30.3, consider that linking the emission trading system and the credits from the CDM and JI projects is desirable, but the detailed arrangements must be laid down in another Directive to be submitted by the Commission in the first half of this year, under the co-decision procedure. However, whilst recognising that the CDM and JI projects have advantages in the global reduction of greenhouse gas emissions and that they introduce elements of economic efficiency into the European emission trading system, it is important to ensure, in the context of this new legislation, that the projects do not shift the priority which should be given to the emission reductions to be carried out in the EU.

3.6. Extension of Annex I

In its amendments 62 and 63 Parliament proposed that the chemical and aluminium industries should be included in Annex I of the Directive and requested (amendment 54) that the Directive should be revised in 2006 (and not 2004) in order to include not only other activities, but also other sectors (for example services and transport). The common position

does not take up these proposals.

3.7. The initial method of allocating emission allowances

The proposal for a Directive stated that the initial allocation of emission allowances would, during the first period covered by the Directive, be carried out using the *grandfathering* method (i.e. allocation free of charge) leaving in abeyance the methods to be adopted for the period starting in 2008. Parliament proposed (in its amendment 102) that this allocation should be carried out, in the first period covered by the Directive as well as in the second, by means of a hybrid method based on allocation free of charge but with a small percentage of auctioning (15 %). The hybrid method has considerable advantages compared with allocation for free, such as: it ensures the progressive application of the 'polluter pays' principle; it leads to less distortion of competition; it recognises the merit of companies which reduced emissions earlier; it gives a signal about the price per tonne of carbon dioxide equivalent on the market. The common position accepts the concept of the hybrid method (allocation for free plus auctioning), albeit in a non-harmonised way (in the first period, allocation will be completely free of charge and, in the second period, the Member States will allocate at least 90 % of the emission allowances free of charge). Although this solution represents a move in Parliament's direction on the part of the Council and the Commission, it entails problems for the equilibrium of the internal market and would not provide a desirable signal about the price per tonne of carbon dioxide equivalent in the first period covered by the Directive.

3.8. Procedure for amending Annex III

Parliament advocated (in amendment 49) that any amendment to Annex III (Criteria for national allocation plans) should be carried out under the legislative co-decision procedure, rather than commitology as envisaged in the proposal for a directive. The common position sets a time limit (2012) for the revision of Annex III by means of commitology, without making any reference to the post-2012 period.

4. OTHER AMENDMENTS PROPOSED BY THE EUROPEAN PARLIAMENT AND INCORPORATED IN THE COMMON POSITION

Out of the 73 amendments adopted by Parliament at first reading, the common position accepts 23 and rejects 50. Apart from some of the amendments referred to in the previous point the common position also incorporates the following proposals made by Parliament at first reading: the need to implement other policies and measures, likewise binding, for the sectors not covered by the Directive (amendment 10); the Directive should contribute towards ensuring compliance with the Kyoto Protocol, while causing as little damage as possible to employment and the economy (amendment 15); the registration system should be more transparent as regards the ownership, transfer and cancellation of emission allowances (amendment 35);information regarding emissions from each installation should be forwarded after (and not before) the end of the relevant year (amendment 39); the names of operators who have failed to comply with their obligations should be published (amendment 40); sanctions for non-compliance should be a fixed sum – EUR 40 in the first period and EUR 100 in the second (amendments 41 and 42); public access to environmental information should be processed in accordance with the new law 2003/4/EC (amendment 46); the European emission trading scheme can only be linked to schemes in third countries which have ratified the Kyoto Protocol (amendments 51 and 103); emission trading and energy taxation must be seen as complementary instruments (amendments 9 and 69); the Commission will have to produce a report on the implementation of the Directive, bearing in mind its relationship with the international emission trading due to start in 2008, the need to

harmonise the method for allocating emission allowances; the adaptation of the scheme to an enlarged Europe (amendments 55, 56, 57 and 59); the national allocation plan should contain a complete list of the installations covered by the Directive and the quantity of emission allowances to be allocated (amendment 73); the emission reductions carried out previously by businesses should be recognised (amendment 96); stakeholders should be involved in the process of developing harmonised methods for monitoring greenhouse gas emissions (amendment 74).

5. OTHER COUNCIL AMENDMENTS TO THE AMENDED PROPOSAL

The common position contains newly formulated provisions concerning: the validity of emission allowances (recital 8); adjustments of assigned amount units (recital 9); national trading schemes (recital 15): Member States' participation in international emissions trading as envisaged in the Kyoto Protocol (recital 16); taxation (recital 22); definitions of 'installation' and 'new entrant' (Article 3 (e) and (h)); national allocation plans (Article 9.1); the calendar (Articles 12.3, 13.2, 13.3 and 16.4); the amendment of Directive 96/61 (Article 26 and recital 19); allocation criteria (Annex III, points 1, 2, 3, 5, 7, 8 and 11); cases of force majeure (Article 29). The main innovation is the creation of a procedure for pooling allowances (Article 28), according to which Member States may allow operators of installations to pool their emission allowances and appoint a trustee to be responsible for the annual distribution of emission allowances, who will be subject to the penalties applicable for non-compliance.