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Committee on Industry, Research and Energy

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OPINION

of the Committee on Industry, Research and Energy

for the Committee on the Environment, Public Health and Food Safety

on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading system of the Community (COM(2008)0016 – C6-0043/2008 – 2008/0013(COD))

Rapporteur (*): Lena Ek

(*): Associated committees – Rule 47 of the Rules of Procedure

PA_Legam

SHORT JUSTIFICATION

Addressing climate change and the transition to a low carbon society is a key global priority. This is reflected by the fact that Parliament has established a dedicated Temporary Committee on Climate Change. Based on the conclusions of the 2007 Spring Council and previous resolutions from Parliament, the Commission presented in January 2008 a very ambitious package that will achieve reductions in EU greenhouse gas emissions of at least a 20% by 2020, increasing to 30% in case of a comprehensive international agreement. This quantum leap in Europe's policy making provides a crystal clear signal to other countries that the EU is seriously committed to fighting climate change.

The EU Emissions Trading Scheme (EU ETS), launched in 2005, is the world's largest cap-and-trade scheme, covering ten thousands of operators. It is the cornerstone of the EU's approach to climate change. It is also a major economic driver. Many companies covered by the EU ETS view it as one of the key issues in their long-term decision making, with a strong to medium impact on decisions to develop innovative technologies.¹ Financial institutions increasingly see the EU ETS as a serious, working and important market.

The first two phases of EU ETS have proven that a viable internal market in emissions allowances is capable of putting a price on carbon. However, they were not without problems. The dependence of the scheme on national allocation plans led to a plunging of the price for CO₂ due to over allocation by Member States, unjustifiable windfall profits for many power generators, unfair competition within the EU caused by differences in national allocations and uncertainty for market players. These problems have been addressed in a comprehensive review of the EU ETS that was undertaken against the backdrop of international negotiations for a post-Kyoto agreement. In January 2008, the Commission published a proposal for a revised EU ETS

Your draftswoman welcomes the proposed revision of the EU ETS. Firstly, by introducing a single EU-wide cap on the total number of emission allowances (including a single new entrants reserve), harmonizing the allocation method (in principal auctioning - for non-power generating sectors a gradual phase-out of free allocation) and setting key definitions (such as on combustion installation), the proposal will lead to an increased harmonisation and a better level playing field. Secondly, the scheme's predictability will be enhanced by setting a longer allocation period and steady, predictable reductions in the level of the cap. Thirdly, by expanding the scope to cover new industries (e.g. aluminium and ammonia producers) and new gases (nitrous oxide and perfluorocarbons), more opportunities will be created to find cost effective ways to reduce emissions. Finally, the proposal will reduce the administrative burden (especially on SMEs) by creating an opt-out for small installations.

However, in order to further strengthen the proposal and make the scheme even more workable and effective, several elements should be changed. The aim of most of these changes is to reduce the uncertainty and enhance the predictability of the scheme. This is vital from an environmental point of view, since uncertainty is detrimental for the planning of future investments which could lead to emission reductions - e.g. through energy efficiency or through the renewal of old capacity.

¹ Review of EU Emissions Trading Scheme - Survey Highlights, McKinsey, 2005

Rewarding most efficient operators

Energy efficiency is a cornerstone of efforts to achieve a low carbon society. Therefore, where allowances will be allocated for free, it is important not to allocate them on an historical basis (in fact supporting incumbents), but on the basis of Best Available Practices / Best Available Technologies. By allocating the allowances on the basis of the most efficient benchmark(s), the scheme will reward energy efficient companies that have invested in environmental friendly production processes. It is critical for industry to work together to establish those benchmarks as soon as possible, since where no harmonised benchmark exists, no free allocation should be made. Energy efficiency is the most cost effective and immediately available tool for reducing emissions, as well as for enhancing security of energy supply and competitiveness. A range of energy efficiency technologies already exist and can be introduced with short lead times. In the future the EU ETS could be linked to a harmonised 'white certificates'-scheme, that promotes energy savings and energy efficiency. It is important that the Commission properly considers these possibilities.

Auction revenues

It has been estimated that the revenues from the auctioning of allowances will amount at least € 33 billion per year (assuming only auctioning for the power generation sector and a relatively modest CO2 price)¹. In the proposal these revenues will go to the budgets of Member States, with a 'moral obligation' on them to earmark a share of them to tackle climate change in a broad sense. However, this is not strong enough and could lead for the revenues to "disappear" in the national budget. That would be a missed opportunity to use this money for emission reductions and support for the developing world, preferably at an EU level.

Insider information and market manipulation

In an average week, more than 10 million allowances are traded, resulting in a market worth several billion Euros. The legal nature of these allowances is however unclear. Some countries consider them to be financial instruments whose trading is supervised by the financial service authority, while other countries consider them to be normal commodities and only their derivatives are viewed as financial instruments.² In order to avoid market manipulation and inside trading, it is important to consider how to apply the rules for financial markets to emission allowances. By applying similar rules, price formation in the market will be based more on market relevant information and less on anti-competitive speculation, for example by hedge funds or sovereign wealth funds. Furthermore, publication of market sensitive information by the Commission and Member States should be strictly and clearly regulated, since the release of market sensitive data has potentially huge financial consequences. The same rules should apply to those regarding stock market sensitive information.

Carbon leakage

As long as a global framework is not in place yet, an emissions reduction regime which is too burdensome could lead to companies moving their production outside the EU. This would not only have economic and social consequences, but it would also undermine environmental goals - since these companies would no longer be subject to the same emissions controls. The

¹ "Does the EU have sufficient resources to meet its objectives on energy policy and climate change". Policy Department on Budgetary Affairs, European Parliament, 2008.

² Application of the Emissions Trading Directive by EU Member States, European Environment Agency, 2008.

Commission acknowledges this problem, but postpones the solution: By 2010 the sectors that are vulnerable to carbon leakage will be identified and by 2011 the Commission will propose possible measures to prevent it (100% free allocation of allowances and/or coverage of imports under the EU ETS). Furthermore, the list of vulnerable sectors will be reviewed every 3 years. Your draftsman clearly prefers a global agreement, which will cover all relevant companies and sector. In the event that this goal will not be reached, global sectoral agreements (with objective, verifiable emission reduction goals) would be a 'second best' option. However, in case both options do not materialise, the EU needs to have in place a mechanism that will provide the necessary certainty and predictability needed for long term investments and the renewal of asset portfolios in these sectors. Keeping in mind that the scheme will start operating in 2013, companies and investors need earlier and longer term certainty about how many allowances each sector will get. On the other hand, international negotiations could be unnecessarily impeded if the EU specifies now which sectors will be protected through free allowances. The best way to ensure greater certainty for market players without compromising the international negotiations is to speed up the Commission's timing and lengthen the period between reviews, whilst ensuring that no announcements are made before the expected conclusion of international negotiations in December 2009.

SMEs and administrative burden

It is to the benefit of SMEs to take the lead and invest in low carbon technology. However, the precise regulatory environment needs to take into account their particular situation. The proposal allows small combustion installations (below 25MW) to be excluded from the scheme if equivalent measures are in place. This threshold is rather low. One third of the total combustion installations that are covered by the scheme is relatively small (below 50MW), but together they account for only 2% of the overall emissions reported.¹ It seems therefore to be cost effective to raise the threshold for small installations (for example to the threshold of the IPPC) to opt-out from the scheme.

Further harmonization

To provide more legal certainty and to create a true level playing field in the EU, further harmonization should be envisaged. That is the case for definitions (for example for closure), but also for fees/charges and fines/penalties. For example, the maximum fines for similar infringements deviate substantially between Member States: from € 600 to € 15 million.

International aspects

The EU ETS should constitute the first step towards a global system for emissions trading. Therefore, it is vital to make it possible to link other trading schemes to the EU ETS and - making use of all possible Community instruments - to encourage third countries bordering the EU to join the EU ETS. For developing countries, the EU must seize the opportunities offered by the EU ETS to assist these countries in becoming carbon neutral by making the necessary investments and through knowledge transfer.

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on the

¹ idem, p. 7.

Environment, Public Health and Food Safety, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act

Recital 2

Text proposed by the Commission

(2) The ultimate objective of the United Nations Framework Convention on Climate Change, which was approved on behalf of the European Community by Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change (UNFCCC), is to stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. In order to meet that objective, the overall global annual mean surface temperature increase should not exceed 2°C above pre-industrial levels. The latest Intergovernmental Panel on Climate Change Assessment (IPCC) report shows that, in order to reach that objective, global emissions of greenhouse gases must peak by 2020. This implies the increasing of efforts by the Community and the quick involvement of developed countries and **encouraging** the participation of developing countries in the emission reduction process.

Amendment

(2) The ultimate objective of the United Nations Framework Convention on Climate Change, which was approved on behalf of the European Community by Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change (UNFCCC), is to stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. In order to meet that objective, the overall global annual mean surface temperature increase should not exceed 2°C above pre-industrial levels. The latest Intergovernmental Panel on Climate Change Assessment (IPCC) report shows that, in order to reach that objective, global emissions of greenhouse gases must peak by 2020. This implies the increasing of efforts by the Community and the quick involvement of developed **and newly industrialised** countries and the participation of developing countries in the emission reduction process.

Justification

In view of the ever increasing share of newly industrialised countries' emissions, it is necessary to set the aim of ensuring their participation, not only the aim to encourage them to do so. It is necessary to set the aim of ensuring the participation developing countries, not only the aim to encourage them to do so.

Amendment 2

Proposal for a directive – amending act Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) In its resolution of 31 January 2008 on the outcome of the Bali Conference on Climate Change (COP 13 and COP/MOP 3) the European Parliament recalled its position that industrialised countries should commit to reducing their greenhouse gas emissions by at least 30% by 2020 and by 60-80% by 2050, compared to 1990 figures. Given that it anticipates a positive outcome to the COP 15 negotiations to be held in Copenhagen in 2009, the European Union should begin to prepare tougher emissions reduction targets for 2020 and beyond and should seek to ensure that, after 2013, the Community scheme allows, if necessary, for more stringent emissions caps, as part of the Union's contribution to a new international agreement.

Justification

It is important to stress Parliament's strong ambitions with regard to fighting climate change. The best way to accomplish this is through an international agreement, to be reached in Copenhagen by end 2009. This proposal should be seen as a proof of EU's strong commitment in this respect, but also as a signal that the EU is preparing for the tighter targets that will come with the new agreement.

Amendment 3

Proposal for a directive – amending act Recital 4

Text proposed by the Commission

Amendment

(4) In order to contribute to achieving those long-term objectives, it is appropriate to set out a predictable path according to which the emissions of installations covered by the Community scheme should be reduced. To achieve cost-effectively the

(4) In order to contribute to achieving those long-term objectives, it is appropriate to set out a predictable path according to which the emissions of installations covered by the Community scheme should be reduced. To achieve cost-effectively the

commitment of the Community to at least a 20% reduction in greenhouse gas emissions below **1990 levels**, emission allowances allocated in respect of those installations should be 21% below their 2005 emission levels by 2020.

commitment of the Community to at least a 20% reduction in greenhouse gas emissions below **levels in the internationally recognised Kyoto reference year of 1990**, emission allowances allocated in respect of those installations should be 21% below their 2005 emission levels by 2020.

Justification

On this calculation the total permitted emission level would amount to 4.65 billion tonnes by applying a reduction of 20% below 1990. By 2020, reductions of 2.67 billion tonnes are to be achieved by sectors not included in the ETS. The calculation also shows – contrary to the Commission's assertion – that the sectors covered by the ETS must be required to make a 15% reduction compared with 2005.

Amendment 4

Proposal for a directive – amending act Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Standing trees, as well as wood and its derivatives, represent a very important source of carbon sequestration and storage. In addition, timber makes it possible to combat the greenhouse effect by replacing fossil energy. In conclusion, forests represent genuine natural carbon reservoirs, but this carbon is released into the atmosphere when forests are uprooted and burned, hence the importance of introducing forestry protection mechanisms in order to mitigate global warming.

Justification

Change in land use (e.g. deforestation in tropical areas) is said to be responsible for 20% of global greenhouse gas emissions. Annual greenhouse gas emissions linked to deforestation alone amount to 6 billion tonnes of CO₂ equivalent.

In France alone, storage represents 15.6 million tonnes of carbon and traps 10% of greenhouse gas emissions. The replacement value is estimated at 14 million tonnes of carbon. Without forests and timber, France would emit 108 million tonnes more carbon, in other words 20% extra.

Amendment 5

Proposal for a directive – amending act Recital 7 b (new)

Text proposed by the Commission

Amendment

(7b) Given the significant potential of the forestry sector to mitigate global warming, incentives should be introduced to upgrade and develop it, with due regard to the other functions fulfilled by forests.

Justification

The IPCC 2007 report states, ‘in the long term, a sustainable forest management strategy aimed at maintaining or increasing forest carbon stocks, while producing an annual sustained yield of timber, fibre or energy from the forest, will generate the largest sustained mitigation benefit’. Account should also be taken of the European Parliament’s resolution of 15 November 2007, which calls on the Commission to include certain forestry-related activities in the ETS.

Amendment 6

Proposal for a directive – amending act Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) Directive 2003/87/EC and its amending Directive 2004/101/EC should be brought into line with the measures provided for by the Kyoto Protocol concerning activities related to land use, land use change and forestry (LULUCF).

Justification

The Kyoto Protocol assigns statistical targets for greenhouse gas emissions to the industrialised countries listed in Annex B. Several articles refer to LULUCF activities, namely afforestation, reforestation, deforestation, forestry management, agricultural land management, pasture management and revegetation.

Amendment 7

**Proposal for a directive – amending act
Recital 8 b (new)**

Text proposed by the Commission

Amendment

(8b) The Community scheme should be fully linked with the Kyoto Protocol project-based mechanisms by including LULUCF activities within the scope of Directives 2003/87/EC and 2004/101/EC.

Justification

Directive 2004/101/EC of 27 October 2004 amending Directive 2003/87/EC excludes from its scope activities related to forestry and agriculture.

The forestry industry and several environmental organisations support the inclusion of LULUCF activities within the EU ETS. They stress the crucial impact of these activities on climate change, pointing out that deforestation is actually responsible for 20% of global greenhouse gas emissions. Including these activities would also be a way of promoting sustainable development in the non-industrialised countries.

Amendment 8

**Proposal for a directive – amending act
Recital 8 c (new)**

Text proposed by the Commission

Amendment

(8c) The Commission should consider arrangements for including LULUCF activities within the scope of Directives 2003/87/EC and 2004/101/EC, in the light of technical progress and the proposals put forward at the Bali Conference. It should submit a legislative proposal on the matter to the European Parliament and the Council by the end of 2008 at the latest.

Justification

Some Member States have criticised the Commission for failing to provide proper justification of its decision to exclude LULUCF activities and regret this decision, bearing in mind that the conclusions of the European Council of 9 March 2007 and the European Parliament resolution of 15 November 2007 on the Bali Climate Conference called on the Commission to consider including LULUCF activities in the EU ETS. Including these activities in the

developing countries would represent a not inconsiderable source of finance, capable of ensuring biodiversity protection and rehabilitation of damaged forests.

Amendment 9

Proposal for a directive – amending act

Recital 10

Text proposed by the Commission

(10) Where equivalent measures to reduce greenhouse gas emissions, in particular taxation, are in place for small installations whose emissions do not exceed a threshold of **10 000 tonnes** of CO₂ per year, there should be a procedure for enabling Member States to exclude such small installations from the emissions trading system for so long as those measures are applied. This threshold *relatively* offers the maximum gain in terms of reduction of administrative costs for each tonne excluded from the system, for reasons of administrative simplicity. As a consequence of the move from five-year allocation periods, and in order to increase certainty and predictability, provisions should be set on the frequency of revision of greenhouse gas emission permits.

Amendment

(10) Where equivalent measures to reduce greenhouse gas emissions, in particular taxation, are in place for small installations whose emissions do not exceed a threshold of **25 000 tonnes** of CO₂ per year, there should be a procedure for enabling Member States to exclude such small installations from the emissions trading system for so long as those measures are applied, ***albeit that such installations should be allowed to remain voluntarily within the Community scheme.*** This threshold offers the maximum gain in terms of reduction of administrative costs for each tonne excluded from the system, for reasons of administrative simplicity. ***When this Directive is reviewed, consideration should be given to altering this threshold, taking into account the contribution of small installations to total emissions, the weight of the administrative burden and experience gained in introducing equivalent measures.*** As a consequence of the move from five-year allocation periods, and in order to increase certainty and predictability, provisions should be set on the frequency of revision of greenhouse gas emission permits.

Justification

It is important to keep searching for possibilities to further reduce the administrative burden on SMEs, avoid unnecessary administrative costs and bureaucracy and enhance the efficiency of the system. At the moment, one third of the total installations that are covered by the scheme are small installations that together account for only 2% of the overall emissions reported.

Amendment 10

Proposal for a directive – amending act Recital 13

Text proposed by the Commission

(13) The additional effort to be made by the European economy requires inter alia that the revised Community scheme operate with the highest possible degree of economic efficiency and on the basis of fully harmonised conditions of allocation within the Community. Auctioning **should** therefore be the basic principle for allocation, as it is the simplest and generally considered to be the most economically efficient system. This should also eliminate windfall profits and put new entrants and *higher than average* growing economies on the same competitive footing as existing installations.

Amendment

(13) The additional effort to be made by the European economy requires inter alia that the revised Community scheme operate with the highest possible degree of economic efficiency and on the basis of fully harmonised conditions of allocation within the Community. Auctioning **will** therefore be the basic principle for allocation, as it is the simplest and generally considered to be the most economically efficient system. This should also eliminate windfall profits and put new entrants and *fast* growing economies on the same competitive footing as existing installations. ***The Commission should monitor auctioning and the subsequent functioning of the carbon market to ensure that these two objectives are being achieved. To ensure a common and consistent approach to auctioning throughout the Union, auctioning should be administered by the Commission or a competent authority designated by the Commission. This would also ensure that auction revenues can be pooled and used more efficiently and effectively.***

Justification

In order to minimise uncertainty for business, move further towards harmonisation and maximise efficiencies, auctioning should be administered centrally. In addition, the Commission should monitor the impact of auctioning, to ensure that it is delivering the benefits promised.

Amendment 11

Proposal for a directive – amending act Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) In order to ensure an orderly functioning of the carbon and electricity markets, the auctioning of allowances for the period from 2013 onwards should start by 2011 at the latest and be based on clear and objective principles defined well in advance.

Justification

It is essential that the carbon market functions timely, effectively and with sufficient liquidity in order to support the efficient operation of the electricity market. Since this market is characterized by forward contracts, the actual auctioning should start to take place well in advance of the period. Furthermore, the auctioning principles and detailed design provisions should be publicized well in advance in order to allow companies to optimise bid strategies.

Amendment 12

Proposal for a directive – amending act Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) The Commission should continue to investigate other means of promoting the most emission-efficient and energy-efficient practices in sectors covered by the Community scheme, as well as in other sectors. In particular, it should investigate by September 2009 the potential for developing an EU-wide system of white certificates, which would reward energy-efficient investments.

Justification

In Article 4(5) Directive 2006/32/EC on end-use efficiency and energy services the Commission are required to examine whether to bring forward a proposal on white certificates based on the first three years of application of the Directive. But no firm date is set for the conclusion of this important examination. The 'Euro White Cert' Project is currently examining the potential for an EU-wide system of White Certificates, and its

potential links with EU ETS.

Amendment 13

Proposal for a directive – amending act Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) No undue distortion of competition should be created between installations whether they are externalised or not.

Justification

Any distortion in the internal market caused by allocation of allowances which would result in a shift in production from externalised installations to internalised installations with the consequence of increased CO₂ emissions should be avoided. The purpose of the EU ETS is to reduce the emissions of greenhouse gases and the disruption of current production methods of outsourcing in an energy efficient manner could have a perverse effect.

Amendment 14

Proposal for a directive – amending act Recital 29 a (new)

Text proposed by the Commission

Amendment

(29a) In order to improve transparency and to prevent market abuses, including damaging speculation action in the trading of allowances and their derivatives, the Commission should consider the application of Community rules relating to financial instruments to emissions trading, as well as the publication of any market sensitive information that could influence such trading. The Commission should continue to monitor the development of the carbon market to ensure that the Community scheme continues to achieve its primary purpose of reducing greenhouse gas emissions in a cost effective and economically efficient manner.

Justification

It is vital to ensure the application of rules governing financial instruments with regard to the trading of allowances in order to enhance business confidence and increase transparency. Inside trading and market manipulation could not only distort the market, but also reduce its credibility and investors' confidence, leading to wrong price signals and market illiquidity. Furthermore, by defining allowances as financial instruments, their trading will fall under the supervision of the financial authorities and rules governing for example investment funds would apply to them.

Amendment 15

Proposal for a directive – amending act Recital 31 a (new)

Text proposed by the Commission

Amendment

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

Justification

It is vital to encourage third countries bordering the EU to join the EU ETS. This is not only important from an environmental and development point of view, but will also address the issue of carbon leakage by EU companies moving over the border.

Amendment 16

Proposal for a directive – amending act Recital 33 a (new)

Text proposed by the Commission

Amendment

(33a) It is important that the Community scheme be extended in the future so as to

include other significant emitters of greenhouse gases, especially in the transport sector, such as shipping operators. To that aim, the Commission should, as soon as possible, propose appropriate amendments, accompanied by an impact assessment, with a view to incorporating the shipping sector within the Community scheme by 2013 and setting a date for the inclusion of road transport.

Justification

It is important to continue with the inclusion of transport into the EU ETS, especially shipping. For the moment, a proper impact assessment and reliable data are missing. However, in the next review, the Commission should extend the scheme.

Amendment 17

**Proposal for a directive – amending act
Recital 33 b (new)**

Text proposed by the Commission

Amendment

(33b) In order to ensure a level playing field on the internal market, the Commission should, if appropriate, issue guidelines or present proposals with a view to harmonising further the application of this Directive, such as the definitions, charges and penalties.

Justification

To provide more legal certainty and to create a true level playing field in the EU, further harmonization could be envisaged, for example regarding definitions (closure) and fees and penalties put in place by Member States.

Amendment 18

**Proposal for a directive – amending act
Recital 34 a (new)**

Text proposed by the Commission

Amendment

(34a) Information on the application of

this Directive should be easily accessible, in particular for small- and medium-sized enterprises (SMEs). In order to help undertakings, and in particular SMEs, to comply with the requirements of this Directive, Member States should establish national helpdesks.

Justification

Many of the companies that are covered by the EU ETS are SMEs, that lack sufficient resources and that might be at a disadvantage compared to big companies in acquiring allowances through auctioning and trading. The least that could be done is supplying them with easily accessible information on the detailed requirements. The best practical solution to do so vary from one Member States to the other, depending on the specific institutional framework in place, as was done in the REACH Directive.

Amendment 19

Proposal for a directive – amending act

Article 1 – point -1 (new)

Directive 2003/87/EC

Article 1

Text proposed by the Commission

Amendment

(-1) Article 1 shall be replaced by the following:

"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 while promoting innovation and maintaining and improving competitiveness."

Justification

The ETS should lead to low-carbon innovations that give EU companies a long-term advantage over competitors outside the EU. Where the ETS leads to the risk of carbon leakage the competitiveness of EU companies should be maintained.

Amendment 20

Proposal for a directive – amending act

Article 1 - point 2 - point a

Directive 2003/87/EC

Article 3 - point c

Text proposed by the Commission

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

Amendment

(c) 'greenhouse gases' means the gases listed in Annex II and ***any other gases which are regulated as such within the framework of an international agreement;***

Amendment 21

Proposal for a directive – amending act

Article 1 - point 2 - point b

Directive 2003/87/EC

Article 3 - point h

Text proposed by the Commission

(h) 'new entrant' means any installation carrying out one or more of the activities indicated in Annex I, which has obtained a greenhouse gas emission permit subsequent to the submission to the Commission of the list referred to in Article 11(1);

Amendment

(h) 'new entrant' means any installation carrying out one or more of the activities indicated in Annex I, which has obtained a greenhouse gas emission permit ***or an update of its greenhouse gas emissions permit due to a change in its nature or functioning, or a significant capacity increase,*** subsequent to the submission to the Commission of the list referred to in Article 11(1);

Amendment 22

Proposal for a directive – amending act

Article 1 – point 2 – point c

Directive 2003/87/EC

Article 3 – point u

Text proposed by the Commission

(u) 'Electricity generator' means an installation that, on or after 1 January 2005, has produced electricity for sale to third

Amendment

(u) 'Electricity generator' means an installation that, on or after 1 January 2005, has produced electricity for sale to third

parties, and which is only covered by the category 'Supply of power or heat' in Annex I.

parties, **which predominantly delivers to the public electricity grids**, and which is only covered by the category 'Supply of power or heat' in Annex I.

Justification

The exposure to international competition forces to include autoproducers to free allocation. Industry other than public electricity producers must remain the possibility to run their own energy facilities already invested. Therefore the definition should be amended. Autoproducers, as defined in the Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity as “a natural or legal person generating electricity essentially for his own use” should not be excluded from free allocation.

Amendment 23

Proposal for a directive – amending act

Article 1 – point 2 – point c

Directive 2003/87/EC

Article 3 – point u a (new)

Text proposed by the Commission

Amendment

(ua) ‘externalised installation’ means an installation owned and/or operated by a third party, which fulfils a function that may alternatively be provided by an internal production activity integrated into the production process of the economic sector concerned;

Justification

The term ‘externalised installations’ should be defined in order to avoid that they suffer from different allocation methods and thus different costs, higher than those of internal generation in the sectors which they supply.

Amendment 24

Proposal for a directive – amending act

Article 1 - point 2 - point c

Directive 2003/87/EC

Article 3 - point u b (new)

Text proposed by the Commission

Amendment

(ub) ‘international agreement’ means an agreement between countries in the

context of the United Nations Framework Convention on Climate Change (UNFCCC) which aims to reduce global emissions by the magnitude required to address climate change effectively by limiting the global temperature increase to 2°C, and which is legally enforceable, measurable, reportable and verifiable; such international agreement should include a critical mass of global sectoral production.

Amendment 25

Proposal for a directive – amending act

Article 1 – point 4

Directive 2003/87/EC

Article 6 – paragraph 1 - subparagraph 3

Text proposed by the Commission

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

Amendment

The competent authority shall, at least every five years, review the greenhouse gas emissions permit and make any amendments as are appropriate, ***in the light of the most recent scientific findings.***

Justification

It should be stressed that the review of emissions permits and any proposed amendments will take place in the light of new scientific data.

Amendment 26

Proposal for a directive – amending act

Article 1 - point 7

Directive 2003/87/EC

Article 10 - paragraph 1

Text proposed by the Commission

1. From 2013 onwards, ***Member States*** shall auction all allowances which are not allocated free of charge in accordance with Article 10a.

Amendment

1. From 2013 onwards, ***the Commission or a competent body designated by the Commission*** shall auction all allowances which are not allocated free of charge in accordance with Article 10a.

Justification

In order to minimise uncertainty for business, move further towards harmonisation and maximise efficiencies, auctioning should be administered centrally.

Amendment 27

Proposal for a directive – amending act

Article 1 - point 7

Directive 2003/87/EC

Article 10 - paragraph 2 - introductory part

Text proposed by the Commission

2. The total quantity of allowances to be auctioned **by** each Member State shall be composed as follows:

Amendment

2. The total quantity of allowances to be auctioned **in** each Member State shall be composed as follows:

Justification

Whilst there still remains a case for varying the level of auctioning rights made available to participants in the different Member States, auctioning should still be administered centrally. This change is required to clarify this.

Amendment 28

Proposal for a directive – amending act

Article 1 – point 7

Directive 2003/87/EC

Article 10 – paragraph 2 – point a

Text proposed by the Commission

(a) **90** % of the total quantity of allowances to be auctioned being distributed amongst Member States in shares that are identical to the share of verified emissions under the Community scheme in **2005** of the Member State concerned;

Amendment

(a) **80** % of the total quantity of allowances to be auctioned being distributed amongst Member States in shares that are identical to the share of verified emissions under the Community scheme in **2008** of the Member State concerned;

Justification

The year 2008 is a first year with consistent EU ETS data will be common for all 27 Member States. In addition since 2008, the new definition of installation starts applying.

This is a proposition to introduce an additional 10% of the total quantity of allowances to be auctioned amongst Member States based on the achievements accomplished between Kyoto Protocol base year(s) and the year 2008—the first year of the Kyoto Protocol commitment

period. This approach properly reflects the individual countries' Kyoto achievements as provided for in the 2007 and 2008 Spring European Council Conclusions.

Amendment 29

Proposal for a directive – amending act

Article 1 – point 7

Directive 2003/87/EC

Article 10 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) 10 % of the total quantity of allowances to be auctioned being distributed amongst Member States in accordance with achievements accomplished between the Kyoto Protocol base year and the year 2008 in order to account for the efforts made up to the date of the introduction of the Community scheme.

Justification

The year 2008 is a first year with consistent EU ETS data will be common for all 27 Member States. In addition since 2008, the new definition of installation starts applying.

This is a proposition to introduce an additional 10% of the total quantity of allowances to be auctioned amongst Member States based on the achievements accomplished between Kyoto Protocol base year(s) and the year 2008—the first year of the Kyoto Protocol commitment period. This approach properly reflects the individual countries' Kyoto achievements as provided for in the 2007 and 2008 Spring European Council Conclusions.

Amendment 30

Proposal for a directive – amending act

Article 1 - point 7

Directive 2003/87/EC

Article 10 - paragraph 3

Text proposed by the Commission

Amendment

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

3. ***Half*** of the revenues generated from the auctioning of allowances referred to in paragraph 2, including all revenues from the auctioning referred to in point (b) thereof, ***shall*** be used ***in a dedicated fund.*** ***Up to half of this fund shall be used, in***

(a) to reduce greenhouse gas emissions, including by contributing to the Global Energy Efficiency and Renewable Energy Fund, ***to adapt to the impacts of climate change and to fund research and development for reducing emissions and adapting, including participation in initiatives within the framework of European Strategic Energy Technology Plan;***

(b) to develop renewable energies to meet the commitment of the Community to using 20% renewable energies by 2020, and to meet the commitment of the Community to increase energy efficiency by 20% by 2020;

(c) for the capture and geological storage of greenhouse gases, in particular from coal power stations;

(d) for measures to avoid deforestation, in particular in Least Developed Countries;

(e) to facilitate developing countries' adaptation to the impacts of climate change;

(f) to address social aspects in lower and

the most efficient and effective manner,
for the following:

(a) to reduce greenhouse gas emissions ***from developing countries, in particular Least Developed Countries,*** including by contributing to the Global Energy Efficiency and Renewable Energy Fund;

(d) for measures to avoid ***or reverse deforestation or the degradation of soil,*** in particular in Least Developed Countries;

(e) to facilitate developing countries' adaptation to the impacts of climate change;

(ea) to develop institutional capacity in Least Developed Countries to successfully develop and manage emissions reduction projects.

The remaining proportion of the fund referred to in the first subparagraph shall be used for the following:

(i) to fund research and development for reducing emissions and adapting to the impacts of climate change, including participation in initiatives within the framework of the European Strategic Energy Technology Plan or the European Technology Platforms;

(ii) to facilitate adaptation to the impacts of climate change within the Community;

(iii) to address social impacts in lower and

middle income households, for example by increasing their energy efficiency and insulation; **and**

(g) to cover administrative expenses of the management of the Community scheme.

middle income households, for example by increasing their energy efficiency and insulation;

(iv) to mitigate the impact of the Community scheme on regions affected by special geographic and demographic challenges, by assisting them in developing a sustainable energy policy; and

(v) to cover the administrative expenses of the management of the Community scheme.

3a. Member States shall return, in compliance with state aid rules, the remaining proportion of the revenues generated from the auctioning of allowances referred to in paragraph 2, including all revenues from the auctioning referred to in paragraph 2(b), to research, innovation and investments in low-carbon technologies, including, inter alia, renewable energy, the capture and geological storage of greenhouse gases and more energy efficient production processes. Member States shall adopt measures which ensure that the revenues returned are used only for these purposes and shall set out these measures in the report specified in paragraph 4.

Amendment 31

Proposal for a directive – amending act

Article 1 – point 7

Directive 2003/87/EC

Article 10 – paragraph 5

Text proposed by the Commission

5. By **31 December 2010**, the Commission shall adopt a Regulation on timing, administration and other aspects of auctioning to ensure that it is conducted in an open, transparent and non-discriminatory manner. Auctions shall be designed **to ensure that** operators, and in

Amendment

5. By **31 December 2009**, the Commission shall adopt a Regulation on timing, administration and other aspects of auctioning to ensure that it is conducted in an open, transparent and non-discriminatory manner.

particular any small and medium size enterprises covered by the Community scheme, have **full** access and **any other** participants **do** not undermine the operation of the auction. *That* measure, designed to amend *nonessential* elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article [23(3)].

The Commission shall consult all relevant stakeholders in advance of submitting that Regulation. Auctions shall be designed and conducted in accordance with the following:

(a) the purpose of the auctions shall be to allocate allowances to operators and/or market intermediaries for a price determined by the market and not to achieve revenue maximisation or reach a pre-determined price;

(b) sufficient liquidity shall be maintained in the market at all times, in particular in 2013. To this end, the process shall be predictable in particular as regards the timing and sequencing of auctions and the volumes to be made available;

(c) the auctions shall be open to any valid account holder within the Community scheme able to provide financial assurance that bids will be honoured;

(d) operators, and in particular any small and medium size enterprises covered by the Community scheme, shall have fair and equal access and may participate fully;

(e) participation shall not impose unreasonable financial burdens on operators;

(f) all participants shall have access to the same information at the same time; and

(g) participants shall not collude or otherwise act to undermine the operation of the auction.

The measure referred to in the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure

with scrutiny referred to in Article [23(3)].

Justification

Point c seeks to clarify the definition of participant to auctions, and in particular to make sure that participants provide assurance that they are able to honour their bids. Not doing so could create opportunities for speculative behaviour.

Amendment 32

Proposal for a directive – amending act

Article 1 – point 7

Directive 2003/87/EC

Article 10 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The Commission shall, by 31 December 2008, publish a clear definition of emission allowances, which shall exclude the possibility for their securitisation in the financial markets and, in auctioning, give a privileged position to bidders who will use them for power generation or the production of industrial goods.

Justification

In the absence of clear rules the emission rights will be financial products. If the auctioning and the secondary markets are open to all bidders (including institutional investors, hedge funds, state funds etc.) there will be a danger of purely speculative price formation. That is why it must the access to original auctioning procedure should be open only to the bidders who need emission rights in production processes.

Amendment 33

Proposal for a directive – amending act

Article 1 - point 8

Directive 2003/87/EC

Article 10a - paragraph 1

Text proposed by the Commission

Amendment

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

1. The Commission shall, by **30 June 2010**, adopt Community wide and fully-harmonised implementing measures for allocating the allowances referred to in paragraphs 2 to 6 and 8 in a harmonised

manner.

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

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

manner.

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

The measures referred to in the first subparagraph shall ***establish EU-wide ex ante benchmarks set at the level of least CO₂ intensive output per unit for greenhouse gas emissions and energy efficiency for installations in each sector receiving free allocations. These sectoral benchmarks shall be based on the best greenhouse gas and energy efficient techniques, including the technical potential to reduce emissions, and technologies available on the market, including substitutes, generally applicable alternative production processes, use of biomass, cogeneration and greenhouse gas capture and storage. Free allocations to installations shall be made at a level no higher than is indicated by the appropriate sectoral benchmark, so as to reward the most efficient operators. Overall, the measures referred to in the first subparagraph shall not give incentives to increase emissions overall or per unit of production. In establishing the benchmarks, the Commission shall consult the sectors concerned and other relevant stakeholders.*** No free allocation shall be made in respect of any electricity production, ***except for electricity produced either in connection with industrial heat through high efficiency cogeneration as defined in Directive 2004/8/EC or from residues from an industrial process using best available technologies, provided that it is produced for the own consumption of the operator; all of which shall receive allocation under the same principles as applied to that industrial activity as mentioned in Annex 1.***

Where waste gas from a production process is used as fuel all allowances shall be allocated to the operator of the

installation generating the waste gas with the same allocation principles as applied to that industrial activity as mentioned in Annex 1.

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

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

Amendment 34

Proposal for a directive – amending act

Article 1 - point 8

Directive 2003/87/EC

Article 10a - paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Commission shall, by 1 September 2009, draw up a report on the results of its examination of whether it is appropriate to propose a directive on white certificates, as referred to in Article 4(5) of Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services¹. In particular, this report shall set out the potential for a mandatory, Community-wide white certificates trading scheme, providing further incentives for operators benefiting from free allowances to invest in the most energy efficient techniques and technologies, setting mandatory energy efficiency targets or caps for participants, and providing a system of tradable certificates which can be generated from adoption of energy efficient techniques or technologies. If the report indicates that such a scheme would be environmentally beneficial, cost effective and practically feasible, and

would accord with the principles of better regulation, the Commission shall bring forward appropriate legislative proposals by 30 June 2010.

¹ OJ L 114, 27.4.2006, p. 64.

Justification

In Article 4(5) Directive 2006/32/EC on end-use efficiency and energy services the Commission are required to examine whether to bring forward a proposal on white certificates based on the first three years of application of the Directive. But no firm date is set for the conclusion of this important examination. The 'Euro White Cert' Project, supported by Intelligent Energy Europe, is currently examining the potential for an EU-wide system of White Certificates, and its potential links with EU ETS.

Amendment 35

Proposal for a directive – amending act

Article 1 – point 8

Directive 2003/87/EC

Article 10a – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Installations, whether they are externalised or not, will receive equal treatment as regards emissions allowances.

Justification

In order not to create incentives from the current proposal that lead to market distortions and also increases emissions. It is essential that the text of the Directive reflects “outsourcing” of activities by many sectors.

Amendment 36

Proposal for a directive – amending act

Article 1 - point 8

Directive 2003/87/EC

Article 10a - paragraph 3

Text proposed by the Commission

Amendment

3. Free allocation **may** be given to electricity generators in respect of the production of heat through high efficiency cogeneration as defined by Directive

3. Free allocation **shall** be given to electricity generators in respect of the production of heat **that is for sale to third parties, including district heating**

2004/8/EC for economically justifiable demand to ensure equal treatment with regard to other producers of heat. In each year subsequent to 2013, the total allocation to such installations in respect of the production of that heat shall be adjusted by the linear factor referred to in Article 9.

networks, through high efficiency cogeneration as defined by Directive 2004/8/EC **on the basis of standard Community-wide ex-ante per unit of production benchmarks** for economically justifiable demand to ensure equal treatment with regard to other producers of heat. In each year subsequent to 2013, the total allocation to such installations in respect of the production of that heat shall be adjusted by the linear factor referred to in Article 9.

Amendment 37

Proposal for a directive – amending act

Article 1 – point 8

Directive 2003/87/EC

Article 10a – paragraph 6 – subparagraph 1

Text proposed by the Commission

6. Five percent of the Community-wide quantity of allowances determined in accordance with Articles 9 and 9a over the period 2013 to 2020 shall be set aside for new entrants, **as** the maximum that may be allocated to new entrants in accordance with the rules adopted pursuant to paragraph 1 of this Article.

Amendment

6. Five percent of the Community-wide quantity of allowances determined in accordance with Articles 9 and 9a over the period 2013 to 2020 shall be set aside **for providing liquidity** for new entrants **and for market situations creating carbon prices which are unreasonably high or low**. The maximum that may be allocated to new entrants in accordance with the rules adopted pursuant to paragraph 1 of this Article.

Justification

The reserve delivers liquidity (allowances) for new entrants. For the whole carbon market it is essential to have instruments which allow reactions to extraordinary market situations. We urge to use a part of the reserve for increasing liquidity in the event of a critically high carbon price. In the event of too low carbon prices the liquidity should be reduced (this measure should be inserted in the auctioning rules). We suggest a price margin between 20 and 50 Euro. Liquidity measures should be dealt with by the auctioning rules referred to in Art. 10.

Amendment 38

Proposal for a directive – amending act

Article 1 - point 8

Directive 2003/87/EC

Article 10a - paragraph 6 - subparagraph 3

Text proposed by the Commission

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

Amendment

No free allocation shall be made in respect of any electricity production by new entrants, ***except for electricity produced either in connection with industrial heat through high efficiency cogeneration as defined in Directive 2004/8/EC or from residues from an industrial process using best available technologies, provided that it is produced for the own consumption of the operator; all of which shall receive allocation under the same principles as applied to that industrial activity as mentioned in Annex I.***

However, where a waste gas from a production process is used as a fuel all allowances shall be allocated to the operator of the installation generating the waste gas with the same allocation principles as applied to that industrial activity as mentioned in Annex I.

The Commission shall by 31 December 2010 publish Community wide and fully harmonised rules for the allocation of the new entrant reserve. These rules shall include guidelines on the application of the definition of "new entrant" including significant increases in capacity through, inter alia, extensions of the installation.

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

Amendment 39

Proposal for a directive – amending act

Article 1 - point 8

Directive 2003/87/EC

Article 10a - paragraph 7

Text proposed by the Commission

7. Subject to Article 10b, the amount of allowances allocated free of charge under paragraphs 3 to 6 of this Article [and paragraph 2 of Article 3c] in 2013 shall be **80%** of the quantity determined in accordance with the measures referred to in paragraph 1 and thereafter the free allocation shall decrease each year by equal amounts resulting in no free allocation in 2020.

Amendment

7. Subject to Article 10b, the amount of allowances allocated free of charge under paragraphs 3 to 6 of this Article [and paragraph 2 of Article 3c] in 2013 shall be **100%** of the quantity determined in accordance with the measures referred to in paragraph 1 and thereafter the free allocation shall decrease each year by equal amounts resulting in no free allocation in 2020.

Amendment 40

Proposal for a directive – amending act

Article 1 - point 8

Directive 2003/87/EC

Article 10a - paragraphs 8 and 9

Text proposed by the Commission

8. In 2013 and in each subsequent year up to 2020, installations in sectors which are exposed to a significant risk of carbon leakage shall be allocated allowances free of charge up to 100 percent of the quantity determined in accordance with paragraphs 2 to 6.

9. At the latest by **30 June 2010** and every **3 years** thereafter the Commission shall determine the sectors referred to in

Amendment

8. In 2013 and in each subsequent year up to 2020, installations in sectors which are exposed to a significant risk of carbon leakage shall be allocated allowances free of charge up to 100 percent of the quantity determined in accordance with paragraphs 2 to 6. ***Without prejudice to paragraphs 4 and 5 and without exceeding the total quantity of allowances set out in Article 9, the Commission may allocate additional allowances to these installations to take into account the effect of the passing on of the cost of allowances in the electricity price to the sector or sub-sector concerned.***

9. At the latest by **1 June 2010** and every **four years** thereafter the Commission shall determine the sectors referred to in paragraph 8. ***The Commission shall***

paragraph 8.

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

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

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

For the purposes of evaluating whether the cost increase resulting from the Community scheme can be passed on, estimates of lost sales resulting from the increased carbon price or the impact on the

consult the sectors concerned and other relevant stakeholders.

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

In the determination referred to in the first subparagraph the Commission shall take into account the extent to which it is possible for the sector or sub-sector concerned to pass on the cost of the required allowances in product prices without significant loss of market share to less carbon efficient installations ***or investments to installations in countries outside the Community that do not impose comparable and verifiable constraints on emissions***, taking into account the following:

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

(da) the effect of the pass on of the cost of allowances in the electricity price to the sector or sub-sector concerned;

(db) the effect on the security of supply of raw materials in the Community.

For the purposes of evaluating whether the cost increase resulting from the Community scheme can be passed on, estimates of lost sales resulting from the increased carbon price or the impact on the

profitability of the installations concerned may inter alia be used.

profitability of the installations concerned may inter alia be used.

Amendment 41

Proposal for a directive – amending act

Article 1 - point 8

Directive 2003/87/EC

Article 10b

Text proposed by the Commission

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

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

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

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

Amendment

Not later than **June 2010**, the Commission shall, in the light of the outcome of the international negotiations and the extent to which these lead to global greenhouse gas emission reductions, and after consulting with all relevant social partners, submit to the European Parliament and to the Council an analytical report assessing the situation with regard to energy-intensive sectors or sub-sectors that have been determined to be exposed to significant risks of carbon leakage. This shall be accompanied by any appropriate proposals.

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

In the absence of an international agreement and binding sectoral agreements, as specified above, the Commission shall specifically examine, in the abovementioned report, the feasibility

of adjusting the proportion of allowances received free of charge by those sectors or sub-sectors under Article 10a, of including importers of products produced by the sectors or sub-sectors determined in accordance with Article 10a in the Community scheme or of setting up a Border Adjustment Mechanism.

Amendment 42

Proposal for a directive – amending act

Article 1 - point 9

Directive 2003/87/EC

Article 11a

Text proposed by the Commission

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

1. Until a future international agreement on climate change has entered into force, and in advance of the application of paragraphs 3 and 4 of Article 28, paragraphs 2 to 7 of this Article shall apply.

2. Operators may request the competent authority, *to the extent that the levels of CER/ERU use allowed to them by Member States for the period 2008 to 2012 have not been used up*, to issue allowances to them valid from 2013 onwards in exchange for CERs and ERUs issued in respect of emission reductions up until 2012 from project types which were accepted by *all* Member States in the Community scheme during the period 2008 to 2012. Until 31 December 2014, the competent authority shall make such an exchange on request.

3. *To the extent that the levels of CER/ERU use allowed to operators by Member States for the period 2008 to 2012 have not been used up, competent*

Amendment

Use of CERs and ERUs from project activities in the Community scheme

1. Until a future international agreement on climate change has entered into force, and in advance of the application of paragraphs 3 and 4 of Article 28, paragraphs 2 to 7 of this Article shall apply.

2. Operators may request the competent authority to issue allowances to them valid from 2013 onwards in exchange for CERs and ERUs issued in respect of emission reductions up until 2012 from project types which were accepted by *a majority of Member States representing a qualified majority as defined in Article 205(2) of the Treaty* in the Community scheme during the period 2008 to 2012. Until 31 December 2014, the competent authority shall make such an exchange on request.

3. *Competent* authorities shall allow operators to exchange CERs from projects that were established before 2013 issued in respect of emission reductions from 2013

authorities shall allow operators to exchange CERs from projects that were established before 2013 issued in respect of emission reductions from 2013 onwards for allowances valid from 2013 onwards.

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

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

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

5. To the extent that the levels of CER/ERU use allowed to operators by Member States for the period 2008 to 2012 have not been used up and in the event that the conclusion of an international agreement on climate change is delayed, credits from projects or other emission reducing activities may be used in the Community scheme in accordance with agreements concluded with third countries, specifying levels of use. In accordance with such agreements, operators shall be able to use credits from project activities in those third countries to comply with their obligations under the Community scheme.

6. Any agreements referred to in paragraph 5 shall provide for the use of credits in the

onwards for allowances valid from 2013 onwards.

The first subparagraph shall apply for all project types which were accepted by *a majority of* Member States ***representing a qualified majority as defined in Article 205(2) of the Treaty*** in the Community scheme during the period 2008 to 2012.

4. Competent authorities shall allow operators to exchange CERs issued in respect of emission reductions from 2013 onwards for allowances from new projects started from 2013 onwards in Least Developed Countries.

The first subparagraph shall apply to CERs for all project types which were accepted by *a majority of* Member States ***representing a qualified majority as defined in Article 205(2) of the Treaty*** in the Community scheme during the period 2008 to 2012, until those countries have ratified an agreement with the Community or until 2020, whichever is the earlier.

5. To the extent that the levels of CER/ERU use allowed to operators by Member States for the period 2008 to 2012 have not been used up and in the event that the conclusion of an international agreement on climate change is delayed, credits from projects or other emission reducing activities may be used in the Community scheme in accordance with agreements concluded with third countries, specifying levels of use. In accordance with such agreements, operators shall be able to use credits from project activities in those third countries to comply with their obligations under the Community scheme.

6. Any agreements referred to in paragraph 5 shall provide for the use of credits in the

Community scheme from renewable energy or energy efficiency technologies which promote technological transfer, sustainable development. Any such agreement may also provide for the use of credits from projects where the baseline used is below the level of free allocation under the measures referred to in Article 10a or below the levels required by Community legislation.

7. Once an international agreement on climate change has been reached, only CERs from third countries which have ratified that agreement shall be accepted in the Community scheme.

Community scheme from renewable energy or energy efficiency technologies which promote technological transfer, sustainable development. Any such agreement may also provide for the use of credits from projects where the baseline used is below the level of free allocation under the measures referred to in Article 10a or below the levels required by Community legislation.

6a. The use of credits by installations pursuant to paragraphs 2, 3, 4 and 5 shall not exceed a quantity equal to 35% of the greenhouse gas emission reductions required in the period 2008 to 2020 for the installations covered under Directive 2003/87/EC.

7. Once an international agreement on climate change has been reached, only CERs from third countries which have ratified that agreement shall be accepted in the Community scheme.

7a. The Commission shall endeavour to ensure that any agreement referred to in paragraph 5 and the international agreement referred to in paragraph 7 includes a crediting system for sustainable, verifiable and permanent afforestation, reforestation, reduced emissions from deforestation and other sustainable forestry projects and activities, including inter alia soil erosion avoidance and cleaning of waste water. Such projects shall meet high quality criteria to be adopted within the framework established by the United Nations, as specified in Article 28a.

Amendment 43

Proposal for a directive – amending act

Article 1 - point 10 a (new)

Directive 2003/87/EC

Article 12 - paragraph 1 a (new)

(10a) In Article 12, the following paragraph shall be added:

"1a. The Commission shall, by 1 September 2009, bring forward appropriate legislative proposals that will ensure that the market for emissions allowances is protected from insider dealing and market manipulation. In particular, the Commission shall consider whether, for the purpose of this Directive, allowances shall be regarded as financial instruments within the scope of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)¹."

¹ OJ L 96, 12.4.2003, p. 16."

Justification

The legal nature of allowances on the financial market is unclear. Some countries consider them to be financial instruments whose trading is supervised by the financial service authority, while other countries consider them to be normal commodities and only their derivatives are viewed as financial instruments. It is important to create clarity in order to enhance business confidence and increase transparency. Inside trading and market manipulation could distort the market, reduce its credibility and harm investors' confidence.

Amendment 44

Proposal for a directive – amending act

Article 1 - point 13 a (new)

Directive 2003/87/EC

Article 15 a (new)

(13a) The following Article shall be inserted:

"Article 15a

Disclosure of information and professional secrecy

1. Member States and the Commission shall ensure that all decisions and reports

relating to the quantity and allocation of allowances and to the monitoring, reporting and verification of emissions shall immediately be disclosed in a manner ensuring fast access to such information on a non-discriminatory basis.

2. The obligation of professional secrecy shall apply to all persons who work or have worked for the Commission or for Member States' competent authorities and for bodies to which the Commission or Member States' competent authorities may have delegated certain tasks. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the laws, regulations or administrative provisions in place."

Justification

It is vital to ensure the application of rules governing financial instruments with regard to the trading of allowances in order to enhance business confidence and increase transparency. Publication of market sensitive information by the Commission and Member States should be strictly and clearly regulated.

Amendment 45

Proposal for a directive – amending act

Article 1 - point 14 a (new)

Directive 2003/87/EC

Article 18 - paragraph 1 a (new)

Text proposed by the Commission

Amendment

(14a) In Article 18, the following paragraph shall be added:

"The Commission or a competent body designated by the Commission shall administer at Community level the auctioning of allowances set out in Article 10. This competent body shall coordinate its activities closely with the competent authorities designated by Member States. In particular, it shall ensure that the competent authorities in each Member

State are given full and accurate data on the allocation of allowances through the auction to installations within their jurisdiction."

Amendment 46

Proposal for a directive – amending act

Article 1 - point 20

Directive 2003/87/EC

Article 25 - paragraph 1b a (new)

Text proposed by the Commission

Amendment

1ba. The Commission shall in the framework of the European Neighbourhood Policy and the enlargement process aim at concluding agreements with the countries concerned to include them in the Community scheme or to provide for the mutual recognition of allowances.

Justification

It is vital to encourage third countries bordering the EU to join the EU ETS. This is not only important from an environmental and development point of view, but will also address the issue of carbon leakage by EU companies moving over the border.

Amendment 47

Proposal for a directive – amending act

Article 1 - point 21

Directive 2003/87/EC

Article 27 - title and paragraph 1

Text proposed by the Commission

Amendment

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

1. Member States may exclude, from the Community scheme, **combustion** installations which **have a rated thermal input below 25MW**, reported emissions to the competent authority of less than **10 000 tonnes** of carbon dioxide equivalent, excluding emissions from biomass, in each

Exclusion of small installations subject to equivalent measures

1. Member States may **at the request of the operator** exclude, from the Community scheme, installations which reported emissions to the competent authority of less than **25 000 tonnes** of carbon dioxide equivalent, excluding emissions from biomass, in each of the preceding 3 years,

of the preceding 3 years, and which are subject to measures that will achieve an equivalent contribution to emission reductions, if the Member State concerned complies with the following conditions:

- (a) it notifies the Commission of each such installation, specifying the equivalent measures that are in place,
- (b) it confirms that monitoring arrangements are in place to assess whether any installation emits **10 000 tonnes** or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year;
- (c) it confirms that if any installation emits **10 000 tonnes** or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year or the equivalent measures are no longer in place, the installation will be re-introduced into the system;
- (d) it publishes the information referred to in points (a), (b) and (c) for public comment.

Amendment 48

Proposal for a directive – amending act

Article 1 - point 21

Directive 2003/87/EC

Article 28

Text proposed by the Commission

1. Upon the conclusion by the Community of an international agreement on climate change leading, by 2020, to mandatory reductions of greenhouse gas emissions exceeding the minimum reduction levels agreed upon by the European Council, **paragraphs 2, 3 and 4** shall apply.
2. From the year following the conclusion of the international agreement referred to in paragraph 1, the linear factor shall

which, in the case of combustion installations, have a rated thermal input below 35 MW and which are subject to measures that will achieve an equivalent contribution to emission reductions, if the Member State concerned complies with the following conditions:

- (a) it notifies the Commission of each such installation, specifying the equivalent measures that are in place,
- (b) it confirms that monitoring arrangements are in place to assess whether any installation emits **25 000 tonnes** or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year;
- (c) it confirms that if any installation emits **25 000 tonnes** or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year or the equivalent measures are no longer in place, the installation will be re-introduced into the system;
- (d) it publishes the information referred to in points (a), (b) and (c) for public comment.

Amendment

1. Upon the conclusion by the Community of an international agreement on climate change leading, by 2020, to mandatory reductions of greenhouse gas emissions exceeding the minimum reduction levels agreed upon by the European Council, **paragraphs 2 to 4b** shall apply.
2. From the year following the conclusion of the international agreement referred to in paragraph 1, the linear factor shall

increase so that the Community quantity of allowances in 2020 is lower than that established pursuant to Article 9, by a quantity of allowances equivalent to the overall reduction of greenhouse gas emissions by the Community below 20% to which the international agreement commits the Community, multiplied by the share of overall greenhouse gas emission reductions in 2020 which the Community scheme is contributing pursuant to Articles 9 and 9a.

3. Operators may use CERs, ERUs or other credits approved in accordance with paragraph 4 from third countries which have concluded the international agreement, up to half of the reduction taking place in accordance with paragraph 2.

4. The Commission may adopt measures to provide for the use of additional project types by operators in the Community scheme to those referred to in paragraphs 2 to 5 of Article 11a or the use by such operators of other mechanisms created under the international agreement, as appropriate.

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

increase so that the Community quantity of allowances in 2020 is lower than that established pursuant to Article 9, by a quantity of allowances equivalent to the overall reduction of greenhouse gas emissions by the Community below 20% to which the international agreement commits the Community, ***consistent with the European Council conclusions of March 2007***, multiplied by the share of overall greenhouse gas emission reductions in 2020 which the Community scheme is contributing pursuant to Articles 9 and 9a.

3. Operators may use ***high quality*** CERs, ERUs or other credits approved in accordance with paragraph 4 from third countries which have concluded the international agreement, up to half of the reduction taking place in accordance with paragraph 2.

4. The Commission may adopt measures to provide for the use ***and quality*** of additional project types by operators in the Community scheme to those referred to in paragraphs 2 to 5 of Article 11a or the use by such operators of other mechanisms created under the international agreement, as appropriate.

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

4a. Within eight months of the conclusion of the international agreement, the Commission shall carry out and submit it to the European Parliament and Council, a comprehensive impact assessment of the effects of achieving the emissions reductions in the EU required by that agreement and the measures taken to achieve those reductions, as well as any other measures adopted in the agreement. This impact assessment shall in particular set out the extent to which the international agreement is likely significantly to reduce the risk of carbon

leakage for industries exposed to international competition, including by ensuring comparable burdens on industries operating outside of the Community.

4b. If the impact assessment indicates that the international agreement is unlikely significantly to reduce the risk of carbon leakage for industries exposed to international competition, the Commission shall submit an appropriate legislative proposal to the European Parliament and the Council. This proposal shall if appropriate, contain the following proposals :

a) to modify the Community quantity of allowances in 2020, taking into account the overall reduction of greenhouse gas emissions by the Community below 20% to which the international agreement commits the Community, consistent with the European Council conclusions of March 2007;

b) for the use of CERs, ERUs or other credits by operators in the Community scheme;

c) to reduce the risk of carbon leakage including, inter alia, any proposals referred to in Article 10a, paragraphs 1, 8 and 9, and Article 10b.

Amendment 49

Proposal for a directive – amending act

Article 1 - point 21 a (new)

Directive 2003/87/EC

Article 28 a (new)

Text proposed by the Commission

Amendment

(21a) The following Article shall be inserted:

"Article 28a

Use of credits for afforestation, reforestation and forestry

1. Notwithstanding Articles 11a and 28, Member States shall allow operators of installations to use credits, in addition to the limit specified in Article 11a (6a), up to 5% of the greenhouse gas emission reductions required for the installations covered under Directive 2003/87/EC from:

(a) sustainable, verifiable and permanent afforestation and reforestation projects certified by the CDM Executive Board or verified under the Joint Implementation Supervisory Committee procedure;

(b) sustainable, verifiable and permanent forestry activities in developing countries with which an agreement has been concluded in accordance with Article 11a(5); and

(c) any sustainable, verifiable and permanent forestry projects in developing countries in compliance with the international agreement referred to in Article 28.

2. The projects set out in paragraph 1(a) to (c) above shall all meet high quality criteria, to be adopted by the Commission within the framework established by the United Nations.

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

Amendment 50

Proposal for a directive – amending act

Article 1 - point 21 b (new)

Directive 2003/87/EC

Article 30

(21b) Article 30 shall be replaced by the following:

"Article 30

Review and further development

[...]

1. On the basis of experience of the application of this Directive [...] 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 [...] other relevant sectors [...] and [...] activities, *inter alia* the transport sectors, domestic and commercial heating and agriculture, should be included under the Community scheme;

(b) *further harmonisation of definitions, charges and penalties;*

(c) *the threshold for excluding small installations from the Community scheme where equivalent measures are in place;*

(d) *any necessary measures to prevent market abuse and harmful speculation.*

[...]

2. The Commission shall submit this report to the European Parliament and the Council by 30 June 2015, accompanied by proposals as appropriate.

3. *The Commission shall bring forward as soon as possible legislative proposals to incorporate the shipping sector into the Community scheme by 2013.*

4. *The Commission shall, by 2013, bring forward appropriate proposals specifying a date for the incorporation of road transport into the Community scheme, based upon a full evaluation of the costs, benefits and practicalities of the options*

for inclusion."

Justification

The original article on the review clause became obsolete and should be replaced by a new one. It is important to keep reviewing the scheme in order to enhance its efficiency, add other sectors to it and guarantee a level playing field in the EU

PROCEDURE

Title	Greenhouse gas emission allowance trading system			
References	COM(2008)0016 – C6-0043/2008 – 2008/0013(COD)			
Committee responsible	ENVI			
Opinion by Date announced in plenary	ITRE 19.2.2008			
Associated committee(s) - date announced in plenary	10.4.2008			
Drafts(wo)man Date appointed	Lena Ek 18.3.2008			
Discussed in committee	7.4.2008	5.6.2008	16.7.2008	10.9.2008
Date adopted	11.9.2008			
Result of final vote	+: -: 0:	30 21 1		
Members present for the final vote	Jan Březina, Jerzy Buzek, Dragoş Florin David, Pilar del Castillo Vera, Den Dover, Lena Ek, Nicole Fontaine, Adam Gierek, András Gyürk, David Hammerstein, Erna Hennicot-Schoepges, Romana Jordan Cizelj, Werner Langen, Anne Laperrouze, Patrick Louis, Eugenijus Maldeikis, Eluned Morgan, Angelika Niebler, Reino Paasilinna, Aldo Patriciello, Francisca Pleguezuelos Aguilar, Anni Podimata, Miloslav Ransdorf, Vladimír Remek, Teresa Riera Madurell, Mechtild Rothe, Paul Rübig, Britta Thomsen, Catherine Trautmann, Claude Turmes, Nikolaos Vakalis, Adina-Ioana Vălean, Alejo Vidal-Quadras			
Substitute(s) present for the final vote	Danutė Budreikaitė, Dorette Corbey, Avril Doyle, Christian Ehler, Göran Färm, Juan Fraile Cantón, Neena Gill, Matthias Groote, Françoise Grossetête, Satu Hassi, Eija-Riitta Korhola, Toine Manders, Vittorio Prodi, Esko Seppänen, Lambert van Nistelrooij			
Substitute(s) under Rule 178(2) present for the final vote	Giovanna Corda, Lily Jacobs, Johannes Lebech, Linda McAvan			