

Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (Text with EEA relevance)

DIRECTIVE 2009/29/EC OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

of 23 April 2009

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee<sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions<sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>(3)</sup>,

Whereas:

- (1) Directive 2003/87/EC of the European Parliament and of the Council<sup>(4)</sup> establishes a scheme for greenhouse gas emission allowance trading within the Community (Community scheme) in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner.
- (2) The ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC), which was approved on behalf of the European Community by Council Decision 94/69/EC<sup>(5)</sup>, is to stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. In order to meet that objective, the overall global annual mean surface temperature increase should not exceed 2 °C above pre-industrial levels. The latest Intergovernmental Panel on Climate Change (IPCC) Assessment 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, the quick involvement of developed countries and encouraging the participation of developing countries in the emission reduction process.
- (3) The European Council of March 2007 made a firm commitment to reduce the overall greenhouse gas emissions of the Community by at least 20 % below 1990 levels by 2020, and by 30 % provided that other developed countries commit themselves to comparable emission reductions and economically more advanced developing countries

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contribute adequately according to their responsibilities and respective capabilities. By 2050, global greenhouse gas emissions should be reduced by at least 50 % below their 1990 levels. All sectors of the economy should contribute to achieving these emission reductions, including international maritime shipping and aviation. Aviation is contributing to these reductions through its inclusion in the Community scheme. In the event that no international agreement which includes international maritime emissions in its reduction targets through the International Maritime Organisation has been approved by the Member States or no such agreement through the UNFCCC has been approved by the Community by 31 December 2011, the Commission should make a proposal to include international maritime emissions according to harmonised modalities in the Community reduction commitment, with the aim of the proposed act entering into force by 2013. Such a proposal should minimise any negative impact on the Community's competitiveness while taking into account the potential environmental benefits.

- (4) In its resolution of 31 January 2008 on the outcome of the Bali Conference on Climate Change (COP 13 and COP/MOP 3)<sup>(6)</sup>, 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 to 80 % by 2050, compared to 1990 levels. Given that it anticipates a positive outcome to the COP 15 negotiations that will be held in Copenhagen in 2009, the European Union should begin to prepare tougher emission reduction targets for 2020 and beyond, and should seek to ensure that, after 2013, the Community scheme allows, if necessary, for more stringent emission caps, as part of the Union's contribution to a future international agreement on climate change (hereinafter referred to as the international agreement on climate change).
- (5) 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.
- (6) In order to enhance the certainty and predictability of the Community scheme, provisions should be specified to increase the level of contribution of the Community scheme to achieving an overall reduction of more than 20 %, in particular in view of the European Council's objective of a 30 % reduction by 2020 which is considered scientifically necessary to avoid dangerous climate change.
- (7) Once the Community and third countries conclude an international agreement on climate change in accordance with which appropriate global action will be taken beyond 2012, considerable support should be given to credit emission reductions made in those countries. In advance of such an agreement, greater certainty should none the less be provided regarding the continued use of credits from outside the Community.
- (8) While experience gathered during the first trading period shows the potential of the Community scheme and the finalisation of national allocation plans for the second trading period will deliver significant emission reductions by 2012, a review undertaken

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in 2007 has confirmed that a more harmonised emission trading system is imperative in order to better exploit the benefits of emission trading, to avoid distortions in the internal market and to facilitate the linking of emissions trading systems. Furthermore, more predictability should be ensured and the scope of the system should be extended by including new sectors and gases with a view to both reinforcing a carbon price signal necessary to trigger the necessary investments and by offering new abatement opportunities, which will lead to lower overall abatement costs and the increased efficiency of the system.

- (9) The definition of greenhouse gases should be aligned with the definition contained in the UNFCCC, and greater clarity should be given on the setting and updating of global warming potentials for individual greenhouse gases.
- (10) The Community scheme should be extended to other installations the emissions of which are capable of being monitored, reported and verified with the same level of accuracy as that which applies under the monitoring, reporting and verification requirements currently applicable.
- (11) Where equivalent measures to reduce greenhouse gas emissions, in particular taxation, are in place for small installations the emissions of which do not exceed a threshold of 25 000 tonnes of CO<sub>2</sub> equivalent per year, there should be a procedure enabling Member States to exclude such small installations from the emissions trading system for as long as those measures are applied. Hospitals may also be excluded if they undertake equivalent measures. This threshold offers the maximum gain, in relative terms, of reduction of administrative costs for each tonne of CO<sub>2</sub> equivalent 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 laid down regarding the frequency of revision of greenhouse gas emission permits. It is for Member States to propose measures applying to small installations which will achieve a contribution to emission reductions equivalent to those achieved by the Community scheme. Such measures could include taxation, agreements with industry and regulation. Taking into account the need to reduce unnecessary administrative burdens for smaller emitters, Member States may set up simplified procedures and measures to comply with this Directive.
- (12) Information on the application of this Directive should be easily accessible, in particular for small and medium-sized enterprises (SMEs).
- (13) The Community-wide quantity of allowances should decrease in a linear manner calculated from the mid-point of the period from 2008 to 2012, ensuring that the emissions trading system delivers gradual and predictable reductions of emissions over time. The annual decrease of allowances should be equal to 1,74 % of the allowances issued by Member States pursuant to Commission Decisions on Member States' national allocation plans for the period from 2008 to 2012, so that the Community scheme contributes cost-effectively to achieving the commitment of the Community to an overall reduction in emissions of at least 20 % by 2020.
- (14) This contribution is equivalent to a reduction of emissions in 2020 in the Community scheme of 21 % below reported 2005 levels, including the effect of the increased scope

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from the period from 2005 to 2007 to the period from 2008 to 2012 and the 2005 emission figures for the trading sector used for the assessment of the Bulgarian and Romanian national allocation plans for the period from 2008 to 2012, leading to an issue of a maximum of 1 720 million allowances in 2020. Exact quantities of emissions will be calculated once Member States have issued allowances pursuant to Commission decisions on their national allocation plans for the period from 2008 to 2012, as the approval of allocations to some installations was contingent upon their emissions having been substantiated and verified. Once the issue of allowances for the period from 2008 to 2012 has taken place, the Commission will publish the Community-wide quantity of allowances. Adjustments should be made to the Community-wide quantity in relation to installations which are included in, or excluded from, the Community scheme during the period from 2008 to 2012 or from 2013 onwards.

- (15) The additional effort to be made by the Community 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 economies growing faster than average on the same competitive footing as existing installations.
- (16) In order to maintain the environmental and administrative efficiency of the Community scheme, avoid distortions of competition and the early depletion of the new entrants reserve, the rules on new entrants should be harmonised so as to ensure that all Member States adopt the same approach, in particular in relation to the meaning of 'significant extensions' of installations. Provisions for the adoption of harmonised rules for the implementation of this Directive should therefore be included. In these rules, 'significant extension' should, wherever appropriate, be defined as an extension by at least 10 % of the installation's existing installed capacity or a substantial increase in the emissions of the installation linked to the increase in the installed capacity. Allocation from the new entrants reserve should only take place in respect of the significant extension of the installation.
- (17) All Member States will need to make substantial investments to reduce the carbon intensity of their economies by 2020 and those Member States where income per capita is still significantly below the Community average and the economies of which are in the process of catching up with the richer Member States will need to make a significant effort to improve energy efficiency. The objectives of eliminating distortions to intra-Community competition and of ensuring the highest degree of economic efficiency in the transformation of the Community economy towards a safe and sustainable low-carbon economy make it inappropriate to treat economic sectors differently under the Community scheme in individual Member States. It is therefore necessary to develop other mechanisms to support the efforts of those Member States with relatively lower income per capita and higher growth prospects. 88 % of the total quantity of allowances to be auctioned should be distributed amongst Member States according to their relative share of emissions in the Community scheme for 2005 or the average of the period from 2005 to 2007, whichever one is the highest. 10 % of the total quantity should

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be distributed to the benefit of certain Member States for the purpose of solidarity and growth in the Community, to be used to reduce emissions and adapt to the effects of climate change. The distribution of this 10 % should take into account levels of income per capita in 2005 and the growth prospects of Member States, and be higher for Member States with low income levels per head and high growth prospects. Member States with an average level of income per capita that is more than 20 % higher than the average in the Community should contribute to this distribution, except where the direct costs of the overall package estimated in the Commission's impact assessment accompanying the package of implementation measures for the EU's objectives on climate change and renewable energy for 2020 exceed 0,7 % of GDP. A further 2 % of the total quantity of allowances to be auctioned should be distributed amongst Member States, the greenhouse gas emissions of which were, in 2005, at least 20 % below their emissions in the base year applicable to them under the Kyoto Protocol.

- (18) Given the considerable efforts necessary to combat climate change and to adapt to its inevitable effects, it is appropriate that at least 50 % of the proceeds from the auctioning of allowances should be used to reduce greenhouse gas emissions, to adapt to the impacts of climate change, to fund research and development for reducing emissions and adaptation, to develop renewable energies to meet the Union's commitment to using 20 % renewable energies by 2020, to meet the commitment of the Community to increase energy efficiency by 20 % by 2020, to provide for the environmentally safe capture and geological storage of greenhouse gases, to contribute to the Global Energy Efficiency and Renewable Energy Fund and to the Adaptation Fund as made operational by the Poznan Conference on Climate Change (COP 14 and COP/MOP 4), to provide for measures to avoid deforestation and facilitate adaptation in developing countries, and to address social aspects such as possible increases in electricity prices in lower and middle income households. This proportion is significantly below the expected net revenues for public authorities from auctioning, taking into account potentially reduced income from corporate taxes. In addition, proceeds from the auctioning of allowances should be used to cover administrative expenses of the management of the Community scheme. This Directive should also include provisions on monitoring the use of funds from auctioning for these purposes. Providing information on the use of funds does not release Member States from the obligation laid down in Article 88(3) of the Treaty to notify certain national measures. This Directive does not prejudice the outcome of any future State aid procedures that may be undertaken in accordance with Articles 87 and 88 of the Treaty.
- (19) Consequently, full auctioning should be the rule from 2013 onwards for the power sector, taking into account its ability to pass on the increased cost of CO<sub>2</sub>, and no free allocation should be given for the capture and storage of CO<sub>2</sub> as the incentive for this arises from allowances not being required to be surrendered in respect of emissions which are stored. In order to avoid distortions of competition, electricity generators may receive free allowances for district heating and cooling and for heating and cooling produced through high-efficiency cogeneration as defined by Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of

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cogeneration based on a useful heat demand in the internal energy market<sup>(7)</sup> where such heat produced by installations in other sectors would be given free allocations.

- (20) The main long-term incentive for the capture and storage of CO<sub>2</sub> and new renewable energy technologies is that allowances will not need to be surrendered for CO<sub>2</sub> emissions which are permanently stored or avoided. In addition, to accelerate the demonstration of the first commercial facilities and of innovative renewable energy technologies, allowances should be set aside from the new entrants reserve to provide a guaranteed reward for the first such facilities in the Union for tonnes of CO<sub>2</sub> stored or avoided on a sufficient scale, provided an agreement on knowledge-sharing is in place. The additional financing should apply to projects of sufficient scale, which are innovative in nature and which are significantly co-financed by the operator covering, in principle, more than half of the relevant investment cost, and taking into account the viability of the project.
- (21) For other sectors covered by the Community scheme, a transitional system should be put in place for which free allocation in 2013 would be 80 % of the amount that corresponded to the percentage of the overall Community-wide emissions throughout the period from 2005 to 2007 that those installations emitted as a proportion of the annual Community-wide total quantity of allowances. Thereafter, the free allocation should decrease each year by equal amounts resulting in 30 % free allocation in 2020, with a view to reaching no free allocation in 2027.
- (22) 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 and be based on clear and objective principles defined well in advance.
- (23) Transitional free allocation to installations should be provided for through harmonised Community-wide rules (ex-ante benchmarks) in order to minimise distortions of competition with the Community. Those rules should take account of the most greenhouse gas and energy-efficient techniques, substitutes, alternative production processes, use of biomass, renewables and CO<sub>2</sub> capture and storage. Any such rules should not give incentives to increase emissions and should ensure that an increasing proportion of these allowances is auctioned. Allocations must be fixed prior to the trading period so as to enable the market to function properly. Those harmonised rules may also take into account emissions related to the use of combustible waste gases when the production of these waste gases cannot be avoided in the industrial process. In this respect, the rules may provide for allowances to be allocated for free to operators of installations combusting the waste gases concerned or to operators of the installations where these gases originate. They should also avoid undue distortions of competition on the markets for electricity and heating and cooling supplied to industrial installations. Furthermore, they should avoid undue distortions of competition between industrial activities carried out in installations operated by a single operator and production in out sourced installations. Those rules should apply to new entrants carrying out the same activities as existing installations receiving transitional free allocations. To avoid any distortion of competition within the internal market, no free allocation should be made

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in respect of the production of electricity by new entrants. Allowances which remain in the new entrants' reserve in 2020 should be auctioned.

- (24) The Community will continue to take the lead in the negotiation of an ambitious international agreement on climate change that will achieve the objective of limiting global temperature increase to 2 °C and is encouraged by the progress made at the 13th Conference of the Parties to the UNFCCC, and 3rd Meeting of the Parties to the Kyoto Protocol, held in Bali, Indonesia from 3-14 December 2007 towards this objective. In the event that other developed countries and other major emitters of greenhouse gases do not participate in this international agreement, this could lead to an increase in greenhouse gas emissions in third countries where industry would not be subject to comparable carbon constraints (carbon leakage), and at the same time could put certain energy-intensive sectors and subsectors in the Community which are subject to international competition at an economic disadvantage. This could undermine the environmental integrity and benefit of actions by the Community. To address the risk of carbon leakage, the Community should allocate 100 % of allowances free of charge to sectors or subsectors meeting the relevant criteria. The definition of these sectors and subsectors and the measures required should be subject to reassessment to ensure that action is taken where necessary and to avoid overcompensation. For those specific sectors or subsectors where it can be duly substantiated that the risk of carbon leakage cannot be prevented otherwise, where electricity constitutes a high proportion of production costs and is produced efficiently, the action taken may take into account the electricity consumption in the production process, without changing the total quantity of allowances. The carbon leakage risk in these sectors or subsectors should be assessed, as a starting point, at a 3-digit level (NACE-3 code) or, where appropriate and where the relevant data are available, at a 4-digit level (NACE-4 code).
- (25) The Commission should therefore review the situation by 30 June 2010, consult with all relevant social partners, and, in the light of the outcome of the international negotiations, submit a report accompanied by any appropriate proposals. In this context, the Commission should identify which energy-intensive industry sectors or subsectors are likely to be subject to carbon leakage by 31 December 2009. It should base its analysis on the assessment of the inability of industries to pass on the cost of required allowances in product prices without significant loss of market share to installations outside the Community which do not take comparable action to reduce their emissions. Energy-intensive industries which are determined to be exposed to a significant risk of carbon leakage could receive a higher amount of free allocation or an effective carbon equalisation system could be introduced with a view to putting installations from the Community which are at significant risk of carbon leakage and those from third countries on a comparable footing. Such a system could apply requirements to importers that would be no less favourable than those applicable to installations within the Community, for example by requiring the surrender of allowances. Any action taken would need to be in conformity with the principles of the UNFCCC, in particular the principle of common but differentiated responsibilities and respective capabilities, taking into account the particular situation of least developed countries

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- (LDCs). It would also need to be in conformity with the international obligations of the Community, including the obligations under the WTO agreement.
- (26) Discussions in the European Council concerning the determination of the sectors or subsectors exposed to a significant risk of carbon leakage are of an exceptional character and in no way affect the procedures for the exercise of the implementing powers conferred on the Commission under Article 202 of the Treaty.
- (27) Member States may deem it necessary to temporarily compensate certain installations which have been determined to be exposed to a significant risk of carbon leakage for costs related to greenhouse gas emissions passed on in electricity prices. Such support should only be granted where it is necessary and proportionate and should ensure that the Community scheme incentives to save energy and to stimulate a shift in demand from 'grey' to 'green' electricity are maintained.
- (28) In order to ensure equal conditions of competition within the Community, the use of credits for emission reductions outside the Community to be used by operators within the Community scheme should be harmonised. The Kyoto Protocol sets out quantified emission targets for developed countries for the period from 2008 to 2012, and provides for the creation of certified emission reductions (CERs) from clean development mechanism (CDM) projects and emission reduction units (ERUs) from joint implementation (JI) projects and their use by developed countries to meet part of these targets. While the Kyoto framework does not enable ERUs to be created from 2013 onwards without new quantified emission targets being in place for host countries, CDM credits can potentially continue to be generated. Once there is an international agreement on climate change, additional use of CERs and ERUs should be provided for, from countries which have ratified that agreement. In the absence of such an agreement, providing for further use of CERs and ERUs would undermine this incentive and make it more difficult to achieve the objectives of the Community regarding the increase of renewable energy use. The use of CERs and ERUs should be consistent with the goal set by the Community of generating 20 % of energy from renewable sources by 2020, and promoting energy efficiency, innovation and technological development. Where it is consistent with achieving these goals, the possibility should be foreseen to conclude agreements with third countries to provide incentives for reductions in emissions in these countries which bring about real, additional reductions in greenhouse gas emissions while stimulating innovation by companies established within the Community and technological development in third countries. Such agreements may be ratified by more than one country. Upon the approval by the Community of a satisfactory international agreement on climate change, access to credits from projects in third countries should be increased simultaneously with the increase in the level of emission reductions to be achieved through the Community scheme.
- (29) In order to provide predictability, operators should be provided with certainty about the possibility to use after 2012 CERs and ERUs up to the remainder of the level which they were allowed to use in the period from 2008 to 2012, from project types which were eligible for use in the Community scheme during the period from 2008 to 2012. As Member States cannot carry over CERs and ERUs held by operators between



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commitment periods under international agreements ('banking' of CERs and ERUs) before 2015, and only if Member States choose to allow the banking of those CERs and ERUs within the context of limited rights to bank such credits, this certainty should be provided by requiring Member States to allow operators to exchange such CERs and ERUs issued in respect of emission reductions before 2012 for allowances valid from 2013 onwards. However, as Member States should not be obliged to accept CERs and ERUs which it is not certain they will be able to use towards their existing international commitments, this requirement should not extend beyond 31 March 2015. Operators should be provided with the same certainty concerning such CERs issued from projects that have been established before 2013 in respect of emission reductions from 2013 onwards. It is important that credits from projects used by operators represent real, verifiable, additional and permanent emission reductions and have clear sustainable development benefits and no significant negative environmental or social impacts. A procedure should be established which allows for the exclusion of certain project types.

- (30) In the event of the conclusion of an international agreement on climate change being delayed, the possibility should be provided for to use credits from high-quality projects in the Community scheme through agreements with third countries. Such agreements, which may be bilateral or multilateral, could enable projects that generated ERUs until 2012 but are no longer able to do so under the Kyoto framework to continue to be recognised in the Community scheme.
- (31) LDCs are especially vulnerable to the effects of climate change, and are responsible only for a very low level of greenhouse gas emissions. Therefore, particular priority should be given to addressing the needs of LDCs when revenues generated from auctioning are used to facilitate developing countries' adaptation to the impacts of climate change. Given that very few CDM projects have been established in those countries, it is appropriate to provide certainty on the acceptance of credits from projects started in LDCs after 2012, even in the absence of an international agreement on climate change, when these projects are clearly additional and contribute to sustainable development. This entitlement should apply to LDCs until 2020 provided that they have by then either ratified an international agreement on climate change or a bilateral or multilateral agreement with the Community.
- (32) Once an international agreement on climate change has been reached, additional credits of up to half of the additional reduction taking place in the Community scheme may be used, and high quality CDM credits from third countries should only be accepted in the Community scheme from 2013, once those countries have ratified the international agreement.
- (33) The Community and its Member States should only authorise project activities where all project participants have headquarters either in a country that has concluded the international agreement relating to such projects, so as to discourage 'free-riding' by companies in States which have not concluded an international agreement, except where those companies are based in third countries, or in sub-federal or regional entities which are linked to the Community scheme.

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- (34) The fact that certain provisions of this Directive refer to the approval of an international agreement on climate change by the Community is without prejudice to the conclusion of that agreement also by the Member States.
- (35) In the light of experience, the provisions of the Community scheme relating to monitoring, reporting and verifying emissions should be improved.
- (36) The Union should work to establish an internationally recognised system for reducing deforestation and increasing afforestation and reforestation, supporting the objective, within the UNFCCC, of developing financing mechanisms, taking into account existing arrangements, as part of an effective, efficient, equitable and coherent financial architecture within the international agreement on climate change to be reached in the Copenhagen Conference on Climate Change (COP 15 and COP/MOP 5).
- (37) In order to clarify the coverage of all kinds of boilers, burners, turbines, heaters, furnaces, incinerators, calciners, kilns, ovens, dryers, engines, fuel cells, chemical looping combustion units, flares, and thermal or catalytic post-combustion units by Directive 2003/87/EC, a definition of ‘combustion’ should be added.
- (38) In order to ensure that allowances can be transferred between persons within the Community without any restriction, and to ensure that the Community scheme can be linked to emissions trading systems in third countries and sub-federal and regional entities, from January 2012 onwards, all allowances should be held in the Community registry established under Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol<sup>(8)</sup>. This should be without prejudice to the maintenance of national registries for emissions not covered by the Community scheme. The Community registry should provide the same quality of services as national registries.
- (39) From 2013 onwards, the environmentally safe capture, transport and geological storage of CO<sub>2</sub> should be covered by the Community scheme in a harmonised manner.
- (40) Arrangements should be provided to enable the mutual recognition of allowances between the Community scheme and other mandatory greenhouse gas emissions trading systems capping absolute emissions established in any third country or sub-federal or regional entity.
- (41) 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, 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.
- (42) This Directive should provide for agreements to be made for the recognition of allowances between the Community scheme and other mandatory greenhouse gas emissions trading systems with absolute emissions caps, which are compatible with the

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Community scheme taking into account the level of environmental ambition and the presence of a robust and comparable emissions monitoring, reporting and verification mechanism and compliance system.

- (43) Taking into account experience under the Community scheme, it should be possible to issue allowances in respect of projects that reduce greenhouse gas emissions, provided that these projects take place in accordance with harmonised rules adopted at Community level and these projects would not result in the double-counting of emission reductions or impede the extension of the scope of the Community scheme or the undertaking of other policy measures to reduce emissions not covered by the Community scheme.
- (44) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(9)</sup>.
- (45) In particular, the Commission should be empowered to adopt measures for the harmonisation of rules on the definition of ‘new entrant’, the auctioning of allowances, the transitional Community-wide allocation of allowances, the establishment of the criteria and modalities applicable to the selection of certain demonstration projects, the establishment of a list of sectors or subsectors which are exposed to a significant risk of carbon leakage, the use of credits, the monitoring, reporting and verification of emissions, the accreditation of verifiers, the implementation of harmonised rules for projects as well as the amendment of certain annexes. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2003/87/EC, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (46) Directive 2003/87/EC should therefore be amended accordingly.
- (47) It is appropriate to provide for an early transposition of those provisions which prepare for the revised operation of the Community scheme from 2013 onwards.
- (48) In order to correctly complete the trading-period from 2008 to 2012, the provisions of Directive 2003/87/EC, as amended by Directive 2004/101/EC<sup>(10)</sup>, Directive 2008/101/EC<sup>(11)</sup> and Regulation (EC) No 219/2009<sup>(12)</sup>, should continue to apply without affecting the possibility for the Commission to adopt the measures necessary for the revised operation of the Community scheme from 2013 onwards.
- (49) The application of this Directive is without prejudice to Articles 87 and 88 of the Treaty.
- (50) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (51) Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the

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principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

- (52) In accordance with point 34 of the Interinstitutional Agreement on better lawmaking<sup>(13)</sup>, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 27, 3.2.2009, p. 66.](#)
- (2) [OJ C 325, 19.12.2008, p. 19.](#)
- (3) Opinion of the European Parliament of 17 December 2008 (not yet published in the Official Journal) and Council Decision of 6 April 2009.
- (4) [OJ L 275, 25.10.2003, p. 32.](#)
- (5) [OJ L 33, 7.2.1994, p. 11.](#)
- (6) [OJ C 68 E, 21.3.2009, p. 13.](#)
- (7) [OJ L 52, 21.2.2004, p. 50.](#)
- (8) [OJ L 49, 19.2.2004, p. 1.](#)
- (9) [OJ L 184, 17.7.1999, p. 23.](#)
- (10) Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms ([OJ L 338, 13.11.2004, p. 18.](#))
- (11) Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community ([OJ L 8, 13.1.2009, p. 3.](#))
- (12) Regulation (EC) No 219/2009 of the European Parliament and of the Council of 11 March 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny Adaptation to the regulatory procedure with scrutiny — Part Two ([OJ L 87, 31.3.2009, p. 109.](#))
- (13) [OJ C 321, 31.12.2003, p. 1.](#)