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Speakers' contributions

LITIGATING EUROPEAN UNION LAW

SEMINAR FOR LAWYERS

Trier, 3-4 April 2019

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COMPOSITION, ORGANISATION AND COMPETENCES OF THE CJEU. THE REFORM OF THE GENERAL COURT.

Academy of European Law

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April 3rd 2019

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ARTICLE 19 TUE

1. The Court of Justice of the European Union shall include the Court of Justice, the General Court adn specialised courts. It shall ensure that in the interpretation of the Treaties the law is observed.

   Member States shall provide remedies sufficient to ensure effective legal protection in the fields of Union law.

2. […]

3. The Court of Justice of the European Union shall, in accordance with the Treaties:

   (a) rule on actions brought by a Member State, an institution or a natural or legal person;

   (b) give preliminary ruling […]on the interpretation of Union law or the validity of an act adopted by the institutions.

   (c) rule in other cases provided for in the Treaties.

COURT OF JUSTICE OF EU

- 1 EU Institution – 3 Courts
  - Court of Justice (1952)
  - General Court (1989)
  - Civil Service Tribunal (2005-2016)

MISSION

- **Review the legality** of the acts of the institutions of the European Union,
- Ensures that the Member States **comply with obligations** under the Treaties, and
- **Interprets European Union law** at the request of the national courts and tribunals

COURT OF JUSTICE (1952)

- 28 judges (appointed for 6 years)
  - Chambers of 3 or 5 judges, Grand Chamber (13) and Full Court (28)
  - Advocates General
  - The role of the AG and his opinion (the so-called "conclusions")
  - The first AG and his function
- 1 Registrar
- Administration
  - Registry
  - Same services as the Court of Justice (Translation; Interpretation; Research and Documentation; Library …)

COMPETENCE

- **Court of Justice**
  - Judicial remedies
    - Preliminary rulings (article 267 TFEU)
    - Direct actions (articles 258, 259, and 260 TFEU)
    - Appeals of General Court judgments (article 256.2 TFEU)
  - Opinions (Consultative rôle)
    - Request for an opinion (article 218.11 TFEU) the actors
    - The content of a request (compatibility of int'l agreements with the EU Treaties and secondary legislation and external competence of the EU institutions)
    - Examples: Opinion 1/94 (WTO Agreement); Opinion 2/94 (EHRC)

PROCEDURE

- **WRITTEN PHASE**
  - **Preliminary ruling**
    - Referral by the national court
    - Translation into all the official languages
    - Publication of the questions in the Official Journal (Series C)
    - Notification (parties, Member States, institutions, EEE)
    - Written observations
  - **Application for legal aid**
  - **Determination of the reporting judge and Advocate General**
  - **Preliminary report, general meeting, attribution and measure of organization of procedure**

PROCEDURE

- **WRITTEN PHASE**
  - **Direct actions and appeals**
    - Lodging of the application
    - Notification to the defendant via the registry
    - Publication of the application in the Official Journal (series C)
    - Interim measure, intervention, confidentiality
    - Defense/Plea of inadmissibility
    - Joinder and rejoinder
  - **Application for legal aid**
  - **Determination of the reporting judge and Advocate General**
  - **Preliminary report, general meeting, attribution and measure of organization of procedure**

PROCEDURE

- **ORAL PHASE**
  - Hearing
  - Opinion of the Advocate General
  - Deliberation of Judges
  - Judgment / Order

GENERAL COURT (1989)

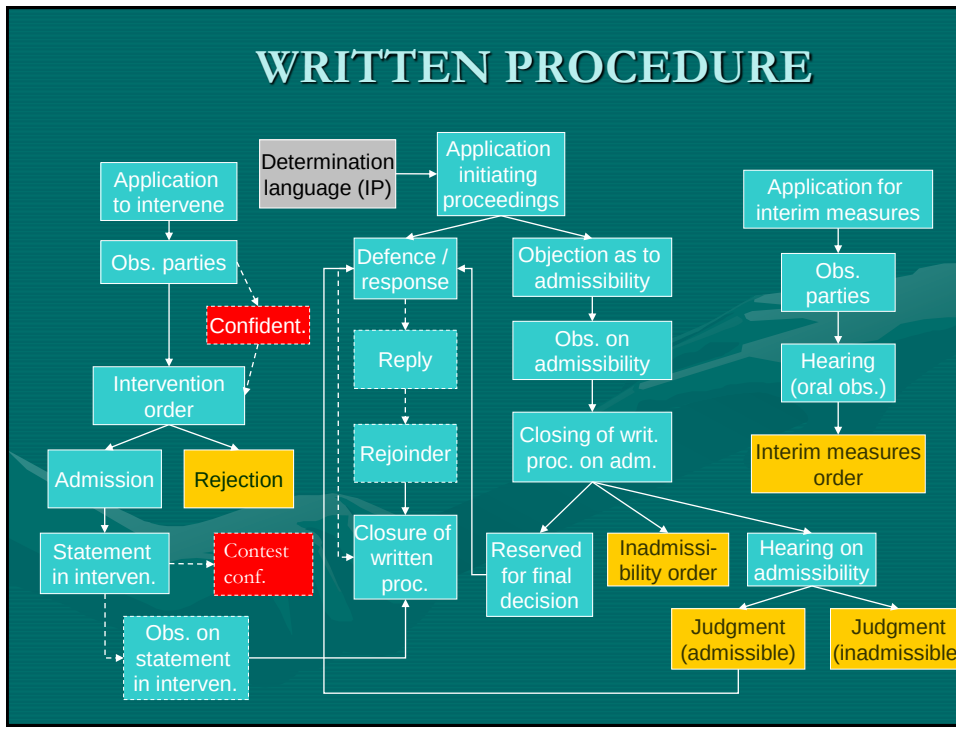
- 28 judges (appointed for 6 years) (+28 after reform 2016-2019)
- 1 President & 1 Vice-president, elected for 3 years
- 8 Presidents of Chambers of 3 Judges, elected for 3 years
  - Chambers of 3 or 5 judges, Grand Chamber (13) and Full Court
  - No permanent Advocates General
- 1 Registrar
- Administration
  - Registry
  - Same services as the Court of Justice (Translation; Interpretation; Research and Documentation; Library …)

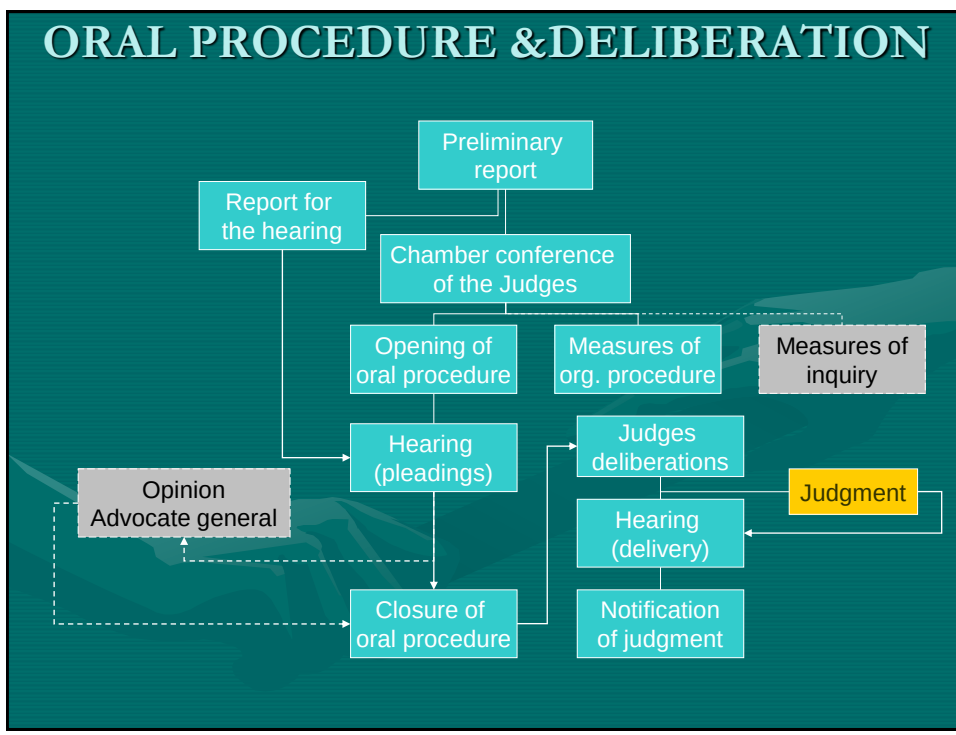
COMPETENCE

- **General Court**
  - Judicial remedies
    - Actions for annulment (Art. 263 TFEU)
    - Actions for failure to act (Art. 265 TFEU)
    - Actions for damages (Arts. 268 et 340 TFEU)
    - Appeals of Cour of civil servants judgments (Art. 270 TFEU)
    - Arbitration clause (Art. 272 TFEU)
    - Appeals against the decisions on Community trademarks rendered by the Office for Harmonization in the internal market
    - Preliminary rulings (Art. 256.3 TFEU)
  - No consultative rôle

DOMAINS

- **Competition**
  - Cartels (Article 101 TFUE)
  - Abuse of dominant position (Article 102 TFUE)
  - Mergers (Regulation (EC) No 139/2004)
  - State Aid (Article 108 TFUE)
- **Trade marks (Regulation No 207/2009)**
- **Public access to institutions' documents (Regulation (EC) No 1049/2001)**
- **Agriculture, environment, consumer protection, fight against terrorism, structural funds, public procurement**

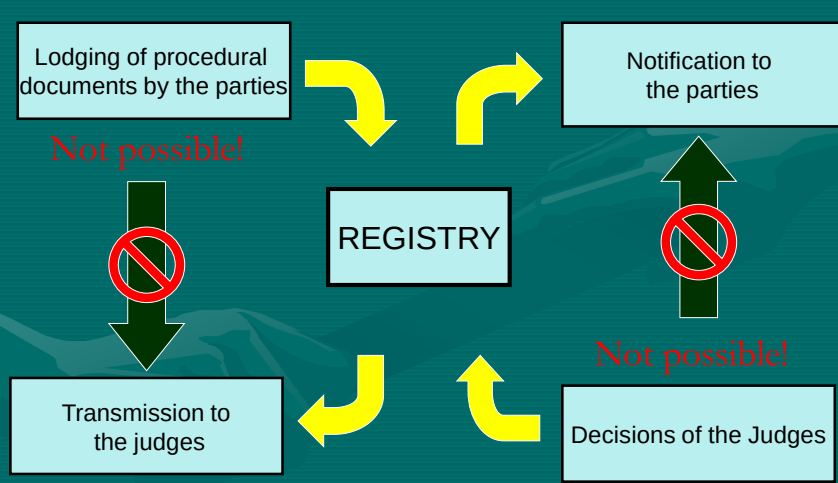

WRITTEN PROCEDURE
Application to intervene
Determination language (IP)
Application initiating proceedings
Application for interim measures
Obs. parties
Defence / response
Objection as to admissibility
Obs. parties
Confident.
Reply
Obs. on admissibility
Hearing (oral obs.)
Intervention order
Rejoinder
Closing of writ. proc. on adm.
Interim measures order
Admission
Rejection
Closure of written proc.
Statement in interven.
Contest conf.
Reserved for final decision
Inadmissi-bility order
Hearing on admissibility
Obs. on statement in interven.
Judgment (admissible)
Judgment (inadmissible)


ORAL PROCEDURE &DELIBERATION
Preliminary report
Report for the hearing
Chamber conference of the Judges
Opening of oral procedure
Measures of org. procedure
Measures of inquiry
Hearing (pleadings)
Judges deliberations
Opinion Advocate general
Judgment
Hearing (delivery)
Closure of oral procedure
Notification of judgment

LANGUAGE

- **Principle :** the language of the case is chosen by the applicant (or by the national court making the preliminary reference)
- Choice of 25 official languages
- Language used in deliberations: French
- Interpretation possible during public hearings into all 23 languages
- Publication in 25 languages
- The working version and the authentic version (*faisant foi*) of judicial decisions

THE ROLE OF THE REGISTRY



COST OF PROCEEDINGS

- No court fees for proceedings before the CJ
- The Court does not meet the fees and expenses of lawyers by whom the parties must be represented.
- A party unable to meet all or part of the costs may apply for legal aid
- Application must be accompanied by evidence establishing the party's lack of means

EU SYSTEM OF JUDICIAL PROTECTION

- Preliminary rulings (Article 267 TFUE)
- Review of legality (Article 263 TFUE)
- Failure to act (Article 265 TFUE)
- Plea of ilegality
- Action for damages (Article 268 & 340 TFUE)
- Interim measures (Article 270 TFUE)

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COMPOSITION, ORGANISATION AND COMPETENCES OF THE CJEU. THE REFORM OF THE GENERAL COURT.

Academy of European Law

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April 3rd 2019

Applying to the Court of Justice of the European Union

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Dr. Richard Himmer, Legal Secretary
Cabinet Judge A. Dittrich
General Court

Applying to the CJUE

Three topics:

- Proceedings before the CJEU – introduction
- Common procedural issues in the recent case-law
- Difficulties in written and oral submissions

Applying to the CJUE – proceedings in general – individuals

- Infringement of EU law by one of the authorities of the Member State: generally national courts – references for preliminary rulings, article 267 TFUE – Court of Justice
- Infringement of EU law by an EU institution or its staff:
  - actions before the national courts, article 267 TFUE
  - actions directly before the General Court; appeal before the Court of Justice, article 56 of the Statute

3

Applying to the GC – proceedings – individuals

- Actions for annulment, art. 263 TFEU - individuals ./. acts of the institutions, agencies of the EU…
  - Actions relating to intellectual property brought against the EUIPO
- Actions against a failure to act, art. 265 TFUE
- Actions seeking compensation for damage caused by the institutions, agencies of the EU…, art. 268 TFEU

4

General Court – common procedural issues

- The classic four
  - Time and deadlines
  - Challengeable act
  - Locus standi (legal standing)*
  - Interest in taking action
- The new four
  - New pleas
  - New evidence
  - Modification of the application
  - Confidentiality*

General Court – procedural issues – locus standi

- A distinct procedural requirement for the admissibility of actions; privileged /non-privileged applicants
- Art. 263 (1) & (4) TFEU: a non-privileged applicant can institute proceedings

  (1) against an act addressed to that person or which is of direct and individual concern to them, and

  (2) against a regulatory act which is of direct concern to them and does not entail implementing measures

General Court – locus standi – general

- Direct concern: EU measure must directly affect the legal situation of the individual and leave no discretion to its addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules without the application of other intermediate rules (Deutsche Post , C-463/10 P, para 66)
- Individual concern: the applicants must show that the decision "affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed" (Plaumann, C-25/62, para. 107)

General Court – locus standi – direct concern

- Economic situation vs. legal position – economic situation not suffient; in particular a direct effect on an applicant cannot be deduced from the mere potential existence of a competitive relationship
- But: EU judicature has to ascertain whether the applicant has adequately explained the reasons why the decision is liable to place him in an unfavourable competitive position and thus to produce effects on his legal situation (Montessori, C-622/16, para 46-48)

General Court – locus standi – individual concern (1)

- General criterion: demonstrating a substantial adverse effect on a competitor's position on the market (Castelnou Energía, T-57/11, para 29 – 33)
- P 1 – other criterion: participation in the procedure:
  - anti-dumping : Timex, C-264/82; but criterion not sufficient & not indispensable, Distilleri Bonollo, T-431/12, para 79, 83
  - anti-dumping : Timex, C-264/82; but criterion not sufficient; only indication under some circumstances, Adeas, T-7/13, para 37
  - competition investigations : Metro SB, C-75/84

General Court – locus standi – individual concern (2)

- P 2 – environmental NGO's: neither the statutory aim of the applicant NGO to protect the environment, nor its special status allowing it to participate in the decision-making process of the contested regulation were criteria considered by the Court as giving the right to challenge the contested regulation (WWF-UK, T-91/07)
- P 3 – unsubstantiated affirmations: „it must be held that, neither in their action at first instance, nor in the context of the present appeal, have they adduced evidence to substantiate that claim. In addition, they have failed to provide the Court with any information concerning the structure of the market at issue and their competitive position on that market "(Mory, C-33/14, para 110; Greenpeace, T-382/15, para 77)

General Court – locus standi – individual concern (3)

- P4 – *free riders*:

"as regards the *locus standi* of ClientEarth, it must be observed that the applicants have submitted one and the same action. According to case-law which is now well established, where one and the same action is involved, as soon as one of the applicants has *locus standi*, there is no need to consider whether or not other applicants are entitled to bring proceedings except where considerations of procedural economy exist" (ClientEarth/ECHA, T-245/11, para 97; CIRFS, C-313/90, para 31)

General Court – confidentiality (1)

- In principle no confidentiality between main parties; but articles 103, 105 RoP
- Confidentiality towards the public, article 66 RoP; separate document
- In the past few months, main parties have been asking for confidential treatment of a written pleading lodged by either party vis-à-vis an intervener, article 144 (5) RoP
  - The intervener may object to such request; the intervener cannot request confidentiality treatment
  - President of the chamber will settle the matter by order

General Court – confidentiality (2)

No confidentiality for

- information available, if not to the public at large, at least to specialist circles; information of which the interveners are already or may already become aware legitimately and information which is largely apparent, or may be deduced, from information of which they are aware or which will be disclosed to them cannot be regarded as either secret or confidential (PlasticsEurope/ECHA, T-185/17, order 1.3.2018, para 19)
- when the same information is reproduced a number of times in the pleadings and a party neglects to request that each of the passages in which it appears be treated confidentially, so that that information will in any event be disclosed to the interveners, the request concerning it can only be refused, given that it is pointless (PlasticsEurope/ECHA, T-185/17, order 1.3.2018, para 27)

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General Court – confidentiality (3)

- No confidentiality, when unsubstantiated allegations :
  - the applicant has not adduced concrete and verifiable evidence capable of demonstrating that, in the present case, disclosure of the registration number in question would effectively reveal a commercial relationship between the company concerned and one of its business partners (PlasticsEurope/ECHA, T-185/17, order 1.3.2018, para 38)
  - the applicant has not demonstrated how the disclosure of the name of the company (…) could harm the commercial interests of that company. Neither the reference to a possible alteration of the functioning of the internal market nor the reference to a risk that the company concerned will suffer unspecified financial consequences is sufficient to support the argument that the name of the author of the data sheet in question falls within the category of confidential information (PlasticsEurope/ECHA, T-185/17, order 1.3.2018, para 45)

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Applying to the CJUE – Appeals

- Article 56 Statute CJUE
- An appeal is not brought against a measure of an institution, a body or an office or agency of the European Union, but against the decision of the General Court ruling on an action brought at first instance, articles 168, 169 RoP
- The pleas in law and legal arguments (< 25 pages) must identify precisely those points in the grounds of the contested decision; reasons for which that decision is alleged to be vitiated by an error of law

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Difficulties in written and oral submissions (1)

Practice directions (37)

- The documents must, as a general rule, be translated by the Court or the institution which produced them
- So the written pleadings or observations should therefore be
  - drafted in clear, concise language, without use of technical terms specific to a national legal system.
  - Repetition should be avoided and
  - short sentences should, as far as possible, be used in preference to long and complex sentences which include parenthetical and subordinate clauses.

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Difficulties in written and oral submissions (2)

Practice directions (38):

Accurate quotations of a specific text or piece of legislation, of national or European Union law; the date of adoption and, where possible, the date of publication of that document and so far as concerns its temporal applicability

Accurate quotations of judgments or Opinions of an Advocate General; specification of both the name and number of the case concerned; exact references of the extract or the passage at issue

Difficulties in written and oral submissions (3)

Practice directions (39)

The legal argument of the parties or the interested persons referred to in Article 23 of the Statute must appear in the written pleadings or observations, and not in any attached annexes; T-804/16, LG Electronics/EUIPO, para 9, 11

Annexes: only documents mentioned in the written pleadings or observations.

Schedule of annexes: for each document annexed, the number of the annex, a short description of the document and the page or paragraph of the written pleadings or observations in which the document is cited and which justifies its production.

Language difficulties in written and oral submissions

- Article 57(f) Regulation 1907/2006 (REACH - JO 2006 L 396/1) – Substances of very high concern
- Article 1(4) Common position of 27.12.2001 on the application of specific measures to combat terrorism (JO 2001 L 344/93): FR, EN vs. DE
- Article 6(1) Regulation 6/2002 on Community Designs

Thank you for your attention !

Reference for a Preliminary Ruling: Practical Advice for Lawyers

Gráinne Gilmore BL

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What does national lawyer need to consider?

- Do I want a reference?
- Is a reference possible?
- How do I persuade the judge to make a reference?
- Can I influence the question / order for reference?
- How do I approach written observations?
- Should I request an oral hearing?
- What if there are questions from CJEU?
- What happens at oral hearing?
- How do I use my speaking time effectively?
- Post hearing, can oral procedure be re-opened or reference withdrawn?

Duty and Role of National Court

- Article 267 TFEU and relationship between national courts/tribunals and CJEU
- Article 4(3) TEU,
- Duty to give full effect to Union provisions (C-378/17 *Boyle)*
- Courts/tribunals which **may** refer and courts/tribunals which **shall** refer
- Own motion (without request) (C-312/93 *Peterbroeck)*

When can/should a reference be made?

- Court or tribunal (Case C-210/06 *Cartesio)*
- Interpretation, Validity (Union law)
- **Not** interpretation of national law or issues of fact in national proceedings. What is link with Union law?
- Doubt/Question and "Acte Clair" (C-283/81 *CILFIT)*
- Necessary to enable court to give judgment (Not hypothetical, relevant to resolution of dispute). Relevance to stage at which reference should be made.
- CJEU on admissibility

Helping the national judge

- Making the judge's job easier
- Form and content of a reference: Article 94 Rules of Procedure of the Court (dispute/facts, national provisions, reasons for request, summary of arguments, questions), Recommendations issued by CJEU
- Submissions to suggest the question and frame the reference
- Staying national proceedings, informing CJEU of developments

Submissions on Order for Reference

- Prerogative of national court
- Context/jurisdiction specific
- Is there possibility to make submissions or agree suggested questions with other side?
- Accuracy of grounds
- National appeals re order for reference

Expedited Procedure

- Article 105 Rules of Procedure, derogation from rules – ie. shorter terms
- Date for hearing immediately fixed, time-limit for written observations can be 15 days
- Examples of refusal (eg: Large number of persons or legal situations affected – does not justify procedure)
- Examples of acceptance
- Request: Set out matters of law and fact which establish urgency, as well as risks of ordinary procedure
- Specify which procedure (expedited or urgent)

Urgent Procedure

- Article 107 Rules of Procedure: Urgent procedure
- Applies only in the areas covered by Title V of Part Three of the TFEU, relating to the area of freedom, security and justice
- Only where absolutely necessary for Court to give ruling very quickly
- Very different to ordinary procedure – importance of oral phase, possibility of written part being omitted (Article 23a of Statute)
- Request: Set out matters of law and fact which establish urgency, as well as risks of ordinary procedure
- Specify which procedure (expedited or urgent)

Written Observations

- Two months from notification (Article 23 of Statute), 10 day extension on account of distance (Article 51 Rules of Procedure)
- Do not exceed 20 pages (try to keep shorter)
- Repetition of factual and legal background unnecessary– unless you have particular comments
- Clear structure, short sentences, precise points.
- Facilitate good translation
- Avoid national legal terminology
- Admissibility/reformulation of questions
- Suggest answers

Reasoned Request for Oral Hearing

- Not automatic
- Receipt of written observations
- Must be reasoned: Why should the matter not be determined solely on written observations? Are there matters arising from written observations to which you wish to reply?

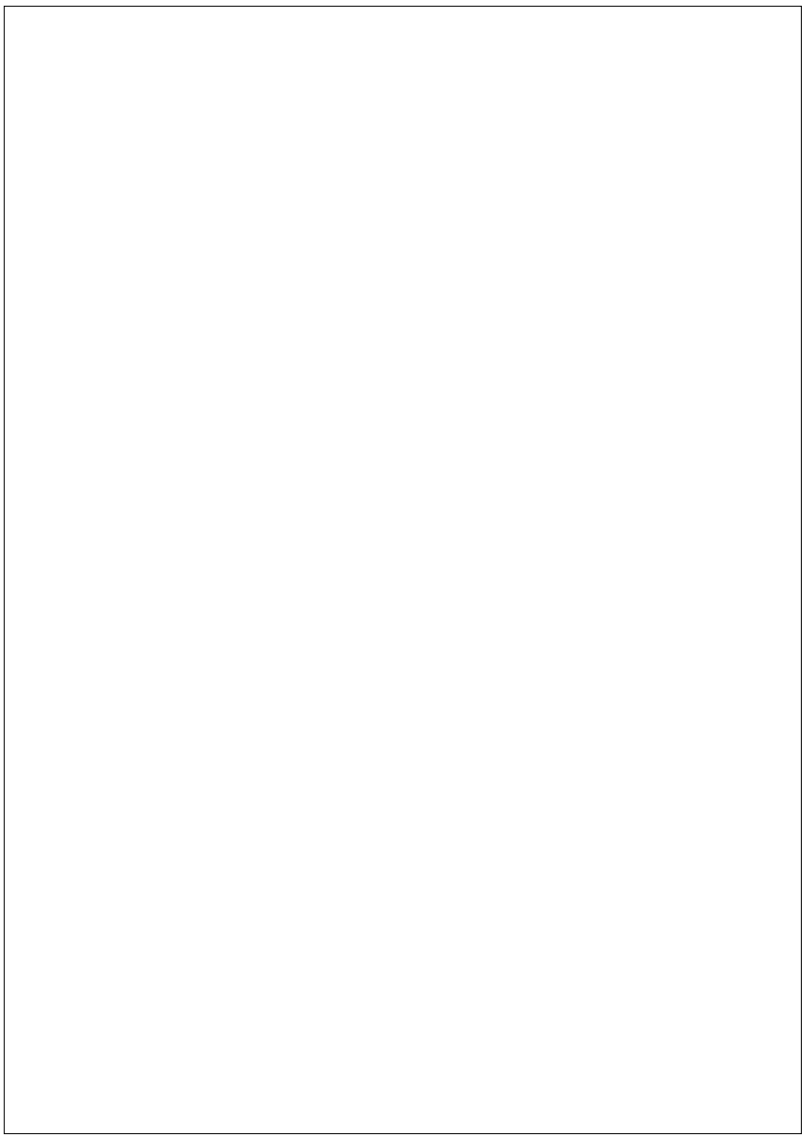
Oral Hearing

- Notification of hearing
- Speaking time, Composition of court, Art 62 RoP
- Best use of speaking time
- Do not rehearse written observations
- Speaking note & pace of delivery (Think of interpreter!)
- Questions from bench and possibility of reply

Post-hearing

- Opinion of Advocate General: No right to respond
- Reopening oral procedure
- Withdrawing reference
- Notice of date of delivery of judgment

Good luck!



Baker McKenzie.

Litigating European Union Law

Direct actions before the General Court | Nina Niejahr – Bram Hoorelbeke, 3 April 2019

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In 45' "*en direct*" to the General Court

1. "What you want" determines the direct action to bring
2. Basics & practicalities: How to bring an action
3. Written Procedure – Avoiding the pitfalls
5. What to expect in Luxembourg – The oral hearing
6. Judgment & costs (appeal?)

1

"*What you want*" determines the direct action to bring

What do you want?

Direct actions

- EU-level act to be found illegal? Decision of an EU institution, body or agency (EUIPO, CPVO, etc.)
  → Annulment action, Art. 263 TFEU
- Illegality of inaction by EU institution or body to be confirmed ?
  → Action for failure to act, Art. 265 TFEU
- Damages for illegal EU-level act/action/inaction?
  → Action for non-contractual damages, Art. 268, 340(2), (3) TFEU
- Urgent relief?
  → Interim measures, 278, 279 TFEU
  → Expedited procedure, 23a Statute
- Support an applicant or defendant in a pending case?
  → Intervention Art. 40 Statute

1. Annulment action (Art. 263 TFEU)

Direct actions

- Challengeable act?
  Action intended to create legal effects regardless of its nature and form
- Standing of non-privileged applicants
  - Addressees (personal interest to bring action, vested and present)
  - Non-addressees:
    - Plaumann formula for direct & individual concern
      (*Plaumann* 25/62; *Infront* T-33/01 confirmed on appeal C-125/06 P)
    - Regulatory act of direct concern and does not entail implementing measures
      (*Telefonica* C-274/12 P; *Inuit* T-18/10 confirmed on appeal C-583/11 P; *Tate & Lyle* T-279/11 confirmed on appeal C-456/13 P)
- Deadline – careful!
  2 months (plus 10 days on account of distance) from notification if addressee (if not: publication in the OJEU calculation starts 14 days from publication; if not: knowledge)

2. Action for failure to act (Art. 265 TFEU)

Direct actions

- Inaction?
  Failure to address to the applicant any act other than a recommendation or an opinion
  (*Parliament v Council* 13/83)
- Standing
  "Would be"-addressee or direct and individual concern
  (*ENU* C-107/91)
- Request for action
  Call upon the institution/agency/etc. to act and, within 2 months of being so called upon ("deadline to act") addressee has not defined its position
- Deadline
  2 months from the expiry of deadline to act plus 10 days

3. Action for non-contractual damages

Direct actions

- Art. 268, 340(2), (3) TFEU

  Non-contractual liability of the EU for damage caused by its institutions or servants in the performance of their duties
- Conditions (*Bergaderm* C-352/98 P)
  1. Sufficiently serious breach of a rule of EU law intended to confer rights on individuals
  2. Existence of damage
  3. Causal link between breach of law (conduct of the institution or servant) and damage
- Deadline

  5 years from the event giving rise to the damage (Art. 46 Statute)

4. Urgent procedures (Art. 278, 279 TFEU, 23a Statute)

Direct actions

- Accessory to main action!
- Expedited procedure, Art. 151 et seq. RoP
  - Bring at the same time as main action
  - Demonstrate urgency
  - For simple cases, few pleas, no complex facts or legal questions

  → Priority treatment & shorter deadlines, one round of pleadings
- Suspension or other interim measures, Art. 156 et seq. RoP
  - Bring at the same time or after the main action
  - Must show
    - *Prima facie* case
    - Urgency (where most applications fail)
    - Balance of interest in favour of measure

5. Intervention (Art. 40 Statute, Art. 142 et seq. RoP GC)

Direct actions

- Short deadline!
  6 weeks plus 10 days from publication of the application in the OJEU
- Non-privileged interveners
  Must support one of the main parties & show interest in the outcome of the case in request for leave to intervene (application to intervene)
- Statement in intervention (max. 20 pages)
  - Intervener receives non-confidential versions of the parties' submissions; can add new, additional, other arguments
  - Other parties have right to submit observations (max. 15 pages)
- Right to address the Court at the oral hearing
- On appeal: party to the appeal proceedings (≠ intervener)
  - No need to intervene in the appeal
  - Automatically invited to present observations (like successful party)

Additional/special procedures …

Direct actions

- Additional direct actions and procedures
  - Staff cases, Art. 270 TFEU
  - Arbitration clauses contained in agreements concluded by or on behalf of the EU, Art. 272 TFEU
  - Intellectual property cases, Art. 171 et seq. RoP
- Special forms of procedure (pt. 17 Practice Rules)
  - Rectification or interpretation
  - Application for the Court to remedy a failure to adjudicate
  - Revision
  - Applications for the Court to set aside judgments by default or initiating third-party proceedings
  - Taxation of costs
  - Legal aid

2

Basics & practicalities

Sui generis system of legal recourse

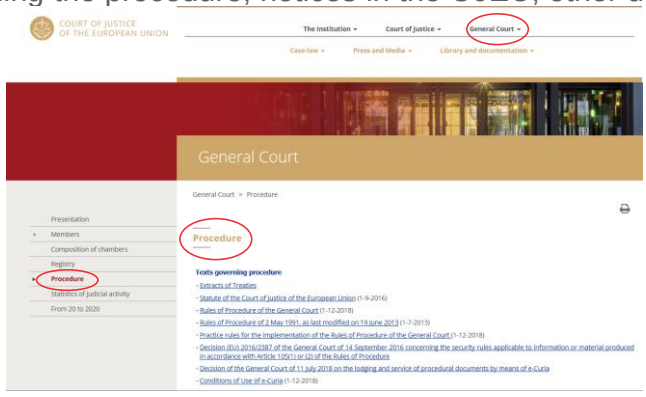
Direct actions

- ≠ national systems of the EU Member States
- Note:
  - Language of the case (one of 24) & language of the court (French)
  - Composition of chambers
  - Own strict rules of procedure, including on evidence
  - Highly formalised
- Essentially written procedure
- Oral hearing relatively short, but can be decisive!
- Duration to judgment at first instance varies 2017 on average: 16.3 months

http://curia.europa.eu/jcms/jcms/Jo2_7040/en/

Direct actions

- Texts governing the procedure, notices in the OJEU, other useful information



A word of caution: Always check & confirm guidance against current versions of legal documents! They change frequently.

Practicalities: need to know basics

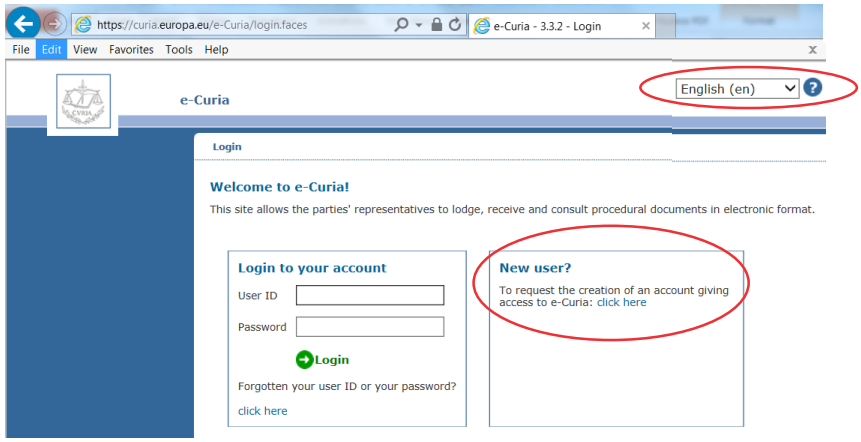
Direct actions

- Deadlines
  - Calculate carefully! (Art. 58-62 RoP)
  - Only some may be extended on reasoned written request
- Obligation to be represented (Art. 19 Statute, Art. 51 RoP)
- Method of lodging and service: e-Curia (Art. 56a-57 RoP, pts. 77-79, 89-91 Practice Rules)
  - Advantages: quick, no need for paper copies/signatures, ease of access in all languages (all named lawyers can submit and receive procedural documents, files must be pdf and uploaded separately)
  - Disadvantages: need to register in good time, familiarize yourself with the system & train assistants (who can also receive but not lodge), deemed service seven days from e-mail notification
  - Alternatives only if technically impossible to lodge the application and/or annexes by e-Curia

https://curia.europa.eu/e-Curia/login.faces

Direct actions

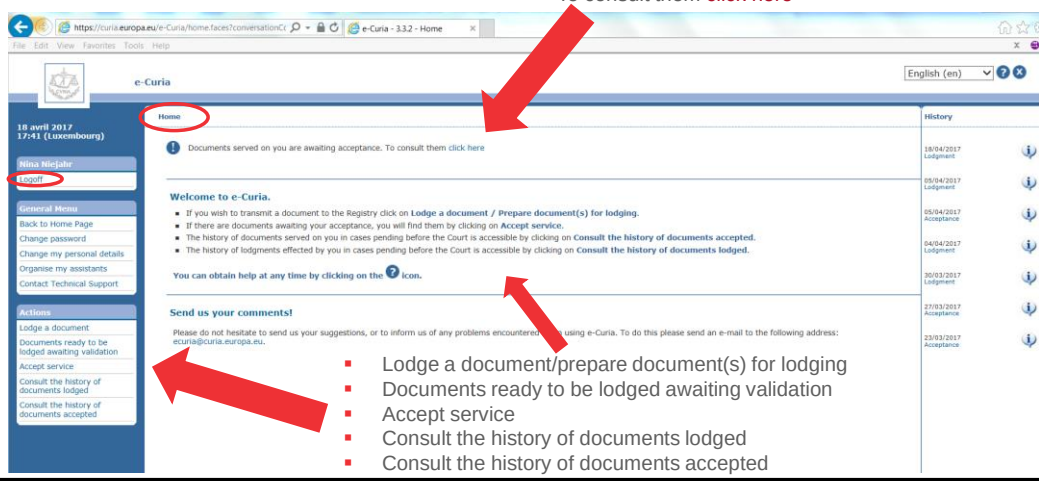
- e-Curia user login screen:



e-Curia home screen view & functionalities

Direct actions

Documents served on you are awaiting acceptance.
To consult them click here



- Lodge a document/prepare document(s) for lodging
- Documents ready to be lodged awaiting validation
- Accept service
- Consult the history of documents lodged
- Consult the history of documents accepted

Role of the registry

Direct actions

- Organizes written & prepares oral procedure
- Effects service of procedural documents
- Ensures compliance with the very formalistic procedural requirements
  - For instance: page limitations, formatting, schedules and annexes, summary of pleas, PoA, register excerpts, etc. (pts. 105-122 Practice Rules)
  - Generally, failure to comply may hold up service but can be remedied (pts. 101-104 Practice Rules)
  - Persistent failure to comply may lead to refusal of acceptance or inadmissibility (see Art. 21 Statute, Art. 78(6) RoP, pt. 101, 102 and Annex 1 & 2 Practice Rules)

Basic procedural steps

Direct actions

- Written procedure (Art. 76-105 RoP)
  - Application, defence (max. 50 pages)
  - Reply, rejoinder (max. 25 pages) unless not necessary, but applicant can submit reasoned request
  - Possibly also measures of inquiry and questions
  - Report for the hearing
- Oral procedure (Art. 106-115 RoP) on the Court's motion, on reasoned request or not at all (Art. 106 RoP)
  - Applicant, defendant (15 minutes)
  - Questions & answers
  - Closing statements (2-5 minutes)
- Judgment
  - Operative part delivered, full version online same day (& e-Curia)
- Appeal to the European Court of Justice
  - Limited to points of law, no suspensive effect, deadline: 2 months (plus 10 days on account of distance)

3

Written procedure – avoiding the pitfalls

General tips – before you get started

Direct actions

- Carefully calculate deadline
- Plan timeline backwards from deadline, allow for slippage particularly in the run-up to submission
- Review procedural rules in detail
  - RoP, Practice Rules, consult guidance (aides mémoires, etc.) as well
  - Note all formal requirements and allocate responsibilities
- Request from the client
  - Mandatory documentation (PoA, proof of existence in law)
  - Any supporting evidence
- Remember: Majority of your judges
  - Will not share your legal background
  - Will read the French version of your submissions

Application (Art. 76-78 RoP, pts. 112-122 Practice Rules)

Direct actions

- Cover page
  (applicant's & representative's information, defendant, subject matter)
- Table of contents
- Introduction, summary
- Facts
- Admissibility
- Grounds of appeal (pleas in law and arguments) (include all evidence, offers and requests for measures of organisation
- Form of order sought
- Date, signature (e-Curia proof of lodgement suffices)
- Annexes and schedule (challenged act = A.1, in language of the case)
- Submit at the same time but separately from the application:
  - Mandatory procedural documents (PoA, practicing certificate, etc.)
  - Summary of pleas

21

Legal grounds and arguments

Direct actions

- Infringement of the EU-Treaties or of any rule of law relating to their application
- Lack of competence
- Misuse of power
- Violation of essential procedural requirements
  - Institutional procedures
  - Procedural rights

Note: *ex officio* the Court may raise

- Lack of competence and
- Violation of essential procedural requirements

Additional tips

Direct actions

- Be complete, include relevant context
  - all legal pleas, consider alternative pleas as well
  - all available evidence
- Be concise, clear, compelling and structured
  - no arguments in footnotes (may be overlooked) or annexes (will be ignored; note: annexes are not translated!)
  - avoid complex sentences, legal jargon, figures of speech, humour, get to the point quickly and make it simple
- Consider the form of order you are seeking (include costs)
- Keep separate files from the start (procedural & precedent files)
- Avoid repetition, address defence arguments in required detail
- Remember the defendant has the last word!

4

What to expect in Luxembourg – The oral hearing

Preparation

Direct actions

- Reserve hotel rooms early, communicate with registry
- Agree timeline with client
- Re-read substantive submissions and identify "lose-ends"
- Review report for the hearing, identify any incompleteness and inaccuracy (minutes of the hearing ≠ transcript of the French simultaneous interpretation)
- Re-read key precedents again
- Update yourself on new legal developments (procedural & substantive) and review guidance for hearings: e-Curia!
- Identify and focus on key arguments/issues
- Prepare for tricky questions and closing statement
- Map out presentation and practice (keep to time, speak freely)
- Bring your gown & "mobile office" to Luxembourg

On the day

Direct actions

- Get to the Court early (clear security, register, find room)
- Settle in the court room (applicant sits on the right, put on gown, adjust earpieces & stand, organize materials, etc., greet registrar and interpreter)
- Greet judges behind closed doors (judges may have questions to be addressed or other instructions)
- Wait for the Court to be announced; rise to receive the Court
- President opens oral hearing, delivery of judgments and opinions if any, then applicant is called upon
- Applicant delivers opening arguments (followed by interveners), then defendant (followed by intervener)
- Questions from the bench & parties' answers/comments
- President invites closing statements (order = opening arguments)
- President closes hearing

Remember…

Direct actions

1. Get there in good time
2. Calm down, address court (make & keep eye contact)
3. "Judges are human, too!" Make it as interesting as possible
4. Speak slowly (simultaneous interpretation!) and only when you have the word (microphone!) –
   do not interrupt, signal!
5. Keep to time limits (you may be cut off!), avoid repetition
6. Judges ask questions to inform their deliberation and your judgment!
7. Respond always, confer with colleagues/client if necessary, be brief and to the point & respectful of other parties' views
8. Judges go into deliberation straight after the hearing!

5

Judgment & costs (appeal?)

Judgment/Order (Art. 264(2), 266 TFEU)

Direct actions

- Judgment, delivered in open Court, binding from date of delivery (Art. 117, 118, 121(1) RoP)
- Order, binding from date of service (Art. 119, 120, 121(2) RoP)
- Actions and issues determined by order: Art. 126-132 RoP
- Effect is declaratory, can be partial, *ex tunc* and *erga omnes* (exceptionally the Court may limit temporal effect)
- The institution whose act has been declared void (or whose failure to act has been declared to violate EU law) is required to take the necessary measures to comply with the judgment if any
- Can be appealed to the European Court of Justice (Art. 56, 57 Statute)

Costs (Art. 133-141 RoP)

Direct actions

- General principle: no procedural costs, parties pay their costs unless a request has been made for the Court to decide on costs
- Where costs have been applied for by the successful party the losing party pays own costs and bears the cost of the litigation necessarily incurred by the successful party (Art. 134, 140(b) RoP)
- But the Court can allocate costs particularly if there is more than one unsuccessful party or if parties have won on some and lost on other heads of claim (note: no appeal lies on costs only)
- Costs of interveners: (partly-)privileged interveners pay their own costs, others may be required to bear their own costs
- Note: only notional cost recovery from the institutions!
  See the very restrictive taxation precedents of the EU Courts (T-213/17 DEP and C-657/15 P-DEP)

Appeal (Art. 56-61 Statute)

Direct actions

- To the European Court of Justice
- By any (partly-)unsuccessful party – including interveners!
- No suspensive effect
- On legal grounds only (no factual review): lack of competence, breach of procedure, infringement of EU law
- Deadline: Two months (plus ten days on account of distance)
- Only one round of written submissions
- Hearing at the discretion of the Court (less intense)
- Advocate General
- Some 2017 statistics:
  - 27.75% of GC judgments went on appeal (completed cases)
  - Average duration of proceedings: 16.4 months

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Litigating European Union Law

Workshop on drafting an action | Nina Niejahr & Bram Hoorelbeke, 3 April 2019

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Agenda

1. Introduction to the case
2. Background reading
3. Key issues & questions to consider
4. Discussion in groups
5. Outline arguments in groups
6. Present arguments & discussion

10'

Introduction to the case

EU Directive 2003/87 (ETS Directive)

- The ETS Directive, EU Directive 2003/87 on Greenhouse Gas Emmission Allowance Trading (as amended by EU Directive 2009/29), provides for a linear reduction in the total quantity of greenhouse gas emission allowances issued each year throughout the EU.
  - Articles 10, 10a and 10c contain rules for the distribution of the total quantity of allowances issued each year throughout the EU:
    - A proportion of the allowances is auctioned by the Member States, and another (decreasing) proportion is allocated free of charge.
    - The free allocation of allowances to installations should be provided for through harmonised EU-wide rules (*ex-ante* benchmarks) in order to minimise distortions of competition within the EU.
  - Articles 11(1) and 11(3) require Member States to publish and submit to the EU Commission the list of installations covered in their territories and any free allocation of allowances to these installations. Member States may not issue allowances free of charge to installations whose inscription in the list has been rejected by the EU Commission.

4

Commission Decision 2011/278 (ETS Decision)

- The ETS Decision, based on Article 10a of the ETS Directive, establishes fully harmonised EU-rules for the free allocation of emission allowances (see recital 12 and Art. 11 ETS Directive):
  - Sets product benchmarks per ton (e.g., coke, hot metal, aluminium, lime, float glass, glass bottles and jars, carton board).
  - Where deriving a product benchmark was not feasible, a hierarchy of three fallback approaches applies:
    i. heat benchmark;
    ii. fuel benchmark; and
    iii. historical emissions benchmark (for process emissions).

5

German ETS law

- Treibhausgas-Emissionshandelsgesetz ("TEHG", German ETS law) implements the ETS Decision in Germany
  - Article 9(5) contains a "hardship clause":
    "[i]f the allocation of allowances…entails undue hardship for the operator of the installation and for a connected undertaking which, for reasons relating to commercial law and company law, is liable for the economic risks of that operator, the competent authority shall allocate, at the request of the operator, supplementary allowances in the amount required for fair compensation, provided the European Commission does not reject that allocation on the basis of Article 11(3) of [the ETS Directive]."

6

The case

- Emitfuture applied to the German authorities for free allocation of allowances for its installations on the basis of the hardship clause in Article 9(5) of the German ETS law.
- Germany sent the EU Commission the list of installations covered by the ETS Directive including any free allocation to listed installations.
- For Emitfuture's installations, the German authorities calculated the preliminary number of free emission allowances, *inter alia*, on the basis of the German ETS law's hardship clause.
- By Commission Decision 2013/448, the Rejection Decision, the EU Commission rejected the preliminary total preliminary number of free emission allowances allocated to Emitfuture's installations.

7

15'

Background reading

5'

Key issues & questions to consider

Key issues & questions

Admissibility	Substance	Strategic Aspects
Which act can be challenged?	What grounds for annulment would you consider?	What parties would you turn to increase support for your action?
Which Court is competent to hear the case?	What forms of order would you seek?	Would expedited proceedings be an option?
Does Emitfuture have standing to challenge the act?		
What is the deadline to challenge the act?		

10

30'

Discussion in groups

15'

Outline arguments in groups

45'

All, present arguments & discussion

Thank you!

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II

(Non-legislative acts)

DECISIONS

COMMISSION DECISION

of 27 April 2011

determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council

(notified under document C(2011) 2772)

(2011/278/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty of the Functioning of the European Union,

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC [1], and in particular Article 10a thereof,

Whereas:

(1) Article 10a of the Directive requires that the Community-wide and fully-harmonised implementing measures for the allocation of free emission allowances should, to the extent feasible, determine *ex-ante* benchmarks so as to ensure that the free allocation of emission allowances takes place in a manner that provides incentives for reductions in greenhouse gas emissions and energy efficient techniques, by taking account of the most efficient techniques, substitutes, alternative production processes, high efficiency cogeneration, efficient energy recovery of waste gases, use of biomass and capture and storage of carbon dioxide, where such facilities are available, and should not provide incentives to increase emissions. Allocations must be fixed prior to the trading period so as to enable the market to function properly.

(2) In defining the principles for setting *ex-ante* benchmarks in individual sectors or sub-sectors, the starting point should be the average performance of the 10 % most efficient installations in a sector or sub-sector in the EU in the years 2007-2008. The benchmarks should be calculated for products rather than for inputs, in order to maximise greenhouse gas emissions reductions and energy efficiency savings throughout each production process of the sector or the sub-sector concerned.

(3) In order to establish the benchmarks, the Commission has consulted the relevant stakeholders, including the sectors and sub-sectors concerned. Information necessary for setting the benchmarks, installation data on the production, emissions and energy use, was collected as of February 2009 from industry associations, Member States, publicly and commercially available sources and through a survey asking installations to participate.

(4) To the extent feasible, the Commission has developed benchmarks for products, as well as intermediate products that are traded between installations, produced from activities listed in Annex I to Directive 2003/87/EC. In principle, for each product one benchmark should be defined. Where a product is a direct substitute of another product, both should be covered by the same product benchmark and the related product definition.

(5) The Commission considered that setting a benchmark for a product was feasible where, taking into account the complexity of the production processes, product definitions and classifications were available that allow for verification of production data and a uniform application of the product benchmark across the Union for the purposes of allocating emission allowances. No differentiation was made on the basis of geography or on the basis of technologies, raw materials or fuels used, so as not to distort comparative advantages in carbon efficiency across the Union economy, and to enhance harmonisation of the transitional free allocation of emission allowances.

[1] OJ L 275, 25.10.2003, p. 32.

(6) The benchmark values should cover all production-related direct emissions, including emissions related to the production of measurable heat used for production, regardless of whether the measurable heat was produced on-site or by another installation. Emissions related to the production of electricity and to the export of measurable heat, including avoided emissions of alternative heat or electricity production in cases of exothermic processes or the production of electricity without direct emissions, were deducted when setting the benchmark values. In case the deduction of emissions related to the export of measurable heat was not feasible, this heat should not be eligible for the free allocation of emission allowances.

(7) In order to ensure that benchmarks lead to reductions in greenhouse gas emissions, for some production processes in which direct emissions eligible for the free allocation of emission allowances and indirect emissions from electricity production not eligible for free allocation on the basis of Directive 2003/87/EC are to a certain extent interchangeable, the total emissions including indirect emissions related to the production of electricity have been considered for the determination of the benchmark values to ensure a level playing field for fuel and electro-intensive installations. For the purpose of the allocation of emission allowances on the basis of the benchmarks concerned, only the share of the direct emissions in the total emissions should be taken into account in order to avoid providing free allocation of emission allowances for emissions related to electricity.

(8) For the determination of benchmark values, the Commission has used as a starting point the arithmetic average of the greenhouse gas performance of the 10 % most greenhouse gas efficient installations in 2007 and 2008 for which data has been collected. In addition, the Commission has in accordance with Article 10a(1) of Directive 2003/87/EC analysed for all sectors for which a product benchmark is provided for in Annex I, on the basis of additional information received from several sources and on the basis of a dedicated study analysing most efficient techniques and reduction potentials at European and international level, whether these starting points sufficiently reflect the most efficient techniques, substitutes, alternative production processes, high efficiency cogeneration, efficient energy recovery of waste gases, use of biomass and capture and storage of carbon dioxide, where such facilities are available. Data used for determining the benchmark values has been collected from a wide range of sources in order to cover a maximum of installations producing a benchmarked product in the years 2007 and 2008. First, data on the greenhouse gas performance of ETS installations producing benchmarked products has been collected by or on behalf of the respective European sector associations based on defined rules, so-called 'sector rule books'. As reference for these rule books, the Commission provided guidance on quality and verification criteria for benchmarking data for the EU-ETS. Second, to complement the data collection by European sector associations, consultants on behalf of the European Commission collected data from installations not covered by industry's data and also competent authorities of Member States provided data and analyses.

(9) To ensure that the benchmark values are based on correct and compliant data, the Commission, supported by consultants, carried out in-depth compliance checks of the sector rule books as well as plausibility checks of the starting point values derived from the data. As indicated in the guidance on quality and verification, data has been verified to the extent necessary by independent verifiers.

(10) Where several products are produced in one installation and an assignment of emissions to the individual products has not been regarded feasible, only single product installations have been covered by the data collection and included in the benchmark setting. This concerns the product benchmarks for lime, dolime, bottles and jars of colourless glass, bottles and jars of coloured glass, facing bricks, pavers, spray-dried powder, uncoated fine paper, tissue, testliner and fluting, uncoated carton board as well as coated carton board. To increase the significance and check the plausibility of the results, the values for the average performance of the 10 % most efficient installations have been compared against literature on most efficient techniques.

(11) In case no data or no data collected in compliance with the benchmarking methodology has been available, information on present levels of emissions and consumptions and on most efficient techniques, mainly derived from the Reference Documents on Best Available Techniques (BREF) established in accordance with Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control [1] has been used to derive benchmark values. In particular, due to a lack of data on the treatment of waste gases, heat exports and electricity production, the values for the product benchmarks for coke and hot metal have been derived from calculations of direct and indirect emissions based on information on relevant energy flows provided by the relevant BREF and default emission factors set out in Commission Decision 2007/589/EC of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council [2]. For the product benchmark for sintered ore,

[1] OJ L 24, 29.1.2008, p. 8.
[2] OJ L 229, 31.8.2007, p. 1.

data has also been corrected based on relevant energy flows provided by the relevant BREF, taking into account the combustion of waste gases in the sector.

(12) Where deriving a product benchmark was not feasible, but greenhouse gases eligible for the free allocation of emission allowances occur, those allowances should be allocated on the basis of generic fallback approaches. A hierarchy of three fallback approaches has been developed in order to maximise greenhouse gas emission reductions and energy savings for at least parts of the production processes concerned. The heat benchmark is applicable for heat consumption processes where a measurable heat carrier is used. The fuel benchmark is applicable where non-measurable heat is consumed. The heat and fuel benchmark values have been derived based upon the principles of transparency and simplicity, using the reference efficiency of a widely available fuel that can be regarded as second-best in terms of greenhouse gas efficiency, considering energy efficient techniques. For process emissions, emission allowances should be allocated on the basis of historical emissions. In order to ensure that the free allocation of emission allowances for such emissions provides sufficient incentives for reductions in greenhouse gas emissions and to avoid any difference in treatment of process emissions that are allocated on the basis of historical emissions and those within the system boundaries of a product benchmark, the historical activity level of each installation should be multiplied by a factor equal to 0,9700 to determine the number of free emission allowances.

(13) From 2013 onwards, all free allocations pursuant to Article 10a of Directive 2003/87/EC should be done in accordance with these rules. To give effect to the transitional system provided for by Article 10a(11) of Directive 2003/87/EC, according to which the free allocation of emission allowances should decrease from 80 % of the amount that corresponded to the allowances to be allocated in 2013 to 30 % of this amount in 2020 with a view to reaching no free allocation in 2027, the factors set out in Annex VI apply. Where a sector or subsector has been put on the list determined by Commission Decision 2010/2/EU of 24 December 2009 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage [1], these factors do not apply. Allocations under this Decision will be taken into account in determining future lists of sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage.

(14) To facilitate the data collection from operators and the calculation of the emission allowances to be allocated by Member States, each installation should be divided into sub-installations where required. Member States should ensure that emissions are correctly attributed to the relevant sub-installations and that there are no overlaps between sub-installations.

(15) Member States should ensure that data collected from the operators and used for allocation purposes is complete, consistent and presents the highest achievable accuracy. It should be verified by an independent verifier so as to ensure that the free allocation of emission allowances is based on solid and reliable data. This decision should provide for specific minimum requirements for data collection and verification to facilitate a harmonised and consistent application of the allocation rules.

(16) The amount of allowances to be allocated free of charge to incumbent installations should be based on historical production data. In order to ensure that the reference period is as far as possible representative of industry cycles, covers a relevant period where good quality data is available and reduces the impact of special circumstances, such as temporary closure of installations, the historical activity levels have been based on the median production during the period from 1 January 2005 to 31 December 2008, or, where it is higher, on the median production during the period from 1 January 2009 to 31 December 2010. It is also appropriate to take account of any significant capacity change that has taken place in the relevant period. For new entrants, the determination of activity levels should be based on standard capacity utilisation based on sector-specific information or on installation-specific capacity utilisation.

(17) The information collected by Member States should facilitate the application of this Decision by competent authorities and by the Commission.

(18) In order to avoid any distortion of competition and to ensure an orderly functioning of the carbon market, Member States should ensure that when determining the allocation of individual installations no double counting and no double allocation takes place. In this context, Member States should pay particular attention to cases where a benchmarked product is produced in more than one installation, where more than one benchmarked product is produced in the same installation or where intermediate products are exchanged across installation boundaries.

[1] OJ L 1, 5.1.2010, p. 10.

(19) To ensure that the emissions trading system delivers reductions over time, Directive 2003/87/EC provides for the Union-wide quantity of allowances to decrease in a linear manner. As this decreasing Union-wide quantity is taken into account for determining the maximum annual amount of allowances pursuant to Article 10a(5) of Directive 2003/87/EC, all free emission allowances allocated on the basis of this Decision to installations not covered by this maximum annual amount referred to in Article 10a(5) should be adjusted in the same linear manner as the Union-wide quantity of allowances, using the year 2013 as a reference.

(20) The uniform cross-sectoral correction factor that is applicable in each year of the period from 2013 to 2020 to installations that are not identified as electricity generators, and that are not new entrants, pursuant to Article 10a(5) of Directive 2003/87/EC, should be determined on the basis of the preliminary total annual amount of emission allowances allocated free of charge over the period from 2013 to 2020 calculated for these installations pursuant to this Decision, including the installations that might be excluded according to Article 27 of that Directive. This amount of free emission allowances allocated in each year of the period should be compared with the annual amount of allowances that is calculated in accordance with Article 10a(5) of Directive 2003/87/EC for installations that are not electricity generator or new entrants, taking into account the relevant share of the annual Community-wide total quantity, as determined pursuant to Article 9 of that Directive, and the relevant amount of emissions that are only included in the Union scheme from 2013 onwards.

(21) Where measurable heat is exchanged between two or more installations, the free allocation of emission allowances should be based on the heat consumption of an installation and take account of the risk of carbon leakage. Thus, to ensure that the number of free emission allowances to be allocated is independent from the heat supply structure, emission allowances should be allocated to the heat consumer.

(22) To enhance the significance of the available data on the greenhouse gas performance of the installations covered by the Union scheme, the product benchmarks for sulphite pulp, thermo-mechanical pulp and mechanical pulp as well as for recovered paper are based on BREF information on most efficient techniques reflecting the use of fossil start-up fuels, the use of fossil fuels (for sulphite pulp, thermo-mechanical and mechanical pulp) and of thermal energy (for recovered paper). The product benchmark for newsprint has also been based on most efficient techniques reflecting the use of thermal energy to derive a significant benchmark value.

(23) In order to take account of additional greenhouse gas emissions not reflected in the data for determining the benchmark values for some installations, in particular methane emissions, and to ensure that the allocation of free emission allowances on the basis of the product benchmark takes into account the greenhouse gas efficiency of the processes and does not provide incentives to increase emissions, the individual data points of the installations on the benchmark curve for nitric acid have been corrected on the basis of information on the average of these emissions provided by industry and of information derived from the BREF. The product benchmark for nitric acid reflects this correction.

(24) In order to take into account differences in refinery configurations, the product benchmark for the refinery sector should be based on the 'CO_2 weighted tonne' (hereinafter 'CWT') approach. Thereby the single product of the refinery is the CWT and its production has been calculated on the basis of defined generic process units each of which has been weighted with an emission factor relative to crude distillation, denoted as the CWT factor and representative of the CO_2 emission intensity at an average level of energy efficiency, for the same standard fuel type for each process unit for combustion, and for average process emissions of the process unit. On this basis, the data points used for setting the product benchmark have been derived by comparing the actual emissions to the total CWT of each refinery. The free allocation of emission allowances to refineries is then corrected to exclude electricity use and production in order to be consistent with Article 10a(1) of Directive 2003/87/EC.

(25) Given the wide range of product qualities that can be achieved, the product benchmarks for lime and dolime refer to a standard composition concerning calcium oxide and magnesium oxide. Regarding combustion emissions data for specific combustion emissions of the production of these standard products has been used based on Decision 2007/589/EC.

(26) Whereas several product benchmarks, such as the ammonia and soda ash benchmarks, assume that all CO_2 resulting from the production processes is emitted to the atmosphere, emissions should be monitored and reported in accordance with the regulation for the monitoring and reporting of emissions from the activities listed in Annex I, to be adopted by 31 December 2011 pursuant to Article 14(1) of Directive 2003/87/EC, assuming that all CO_2 produced during these production processes was emitted to the atmosphere, irrespective of any potential use of the CO_2 as feedstock in chemical production processes.

(27) The steam cracking benchmark does not cover the so-called supplemental feed, high value chemicals that are not produced in the main process as well as the related emissions, but, where applicable, supplemental feed should be considered for the free allocation of emission allowances using specific emission factors.

(28) In order to ensure a level playing field for the production of aromatics in refineries and in chemical plants, the free allocation of emission allowances for aromatics should be based on the CWT approach and the benchmark value of the refineries product benchmark should be applied.

(29) Considering that in the production of vinyl chloride monomer, hydrogen is used to some extent as fuel substituting conventional fuels such as natural gas, thus reducing the direct emissions of the combusting process, but considering also that the use of hydrogen as a feedstock is preferable in terms of total greenhouse gas efficiency, the vinyl chloride monomer benchmark accounts for the fuel use of hydrogen as if it was natural gas.

(30) In order to ensure a level playing field for the production of hydrogen and synthesis gas in refineries and in chemical plants, the benchmark for these products should be based on the CWT approach and the benchmark value of the refineries benchmark. Both product benchmarks refer to a defined volumetric concentration of hydrogen.

(31) Given that 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 carbon dioxide, and that no free allocation should be made in respect of any electricity production, except for transitional free allocation for the modernisation of electricity generation and electricity produced from waste gases, this Decision should not cover the free allocation of emission allowances related to the production or consumption of electricity. Nevertheless, according to Article 10a(6) of Directive 2003/87/EC, sectors or subsectors deemed to be exposed to a significant risk of carbon leakage may be compensated for costs related to greenhouse gas emissions passed on in electricity prices by financial measures adopted by Member States in accordance with state aid rules applicable and to be adopted by the Commission in this area.

(32) It is also appropriate that the product benchmarks take account of the efficient energy recovery of waste gases and emissions related to their use. To this end, for the determination of the benchmark values for products of which the production generates waste gases, the carbon content of these waste gases has been taken into account to a large extent. Where waste gases are exported from the production process outside the system boundaries of the relevant product benchmark and combusted for the production of heat outside the system boundaries of a benchmarked process as defined in Annex I, related emissions should be taken into account by means of allocating additional emission allowances on the basis of the heat or fuel benchmark. In the light of the general principle that no emission allowances should be allocated for free in respect of any electricity production, to avoid undue distortions of competition on the markets for electricity supplied to industrial installations and taking into account the inherent carbon price in electricity, it is appropriate that, where waste gases are exported from the production process outside the system boundaries of the relevant product benchmark and combusted for the production of electricity, no additional allowances are allocated beyond the share of the carbon content of the waste gas accounted for in the relevant product benchmark.

(33) The product benchmarks also take account of the historical emissions from flaring of waste gases related to the production of a given product and fuel used for safety flaring should be considered fuel used for the production of non-measurable heat in order to take account of the compulsory nature of these flares.

(34) Substantial investment efforts are necessary to combat climate change and to reduce the carbon intensity of economies. This Decision should therefore be applied in a manner to foster investment in clean technologies in each sector and sub-sector. In accordance with Directive 2003/87/EC, other policies and measures may in the future supplement this goal and encourage the effective use of allowances in order to generate substantial investments in more energy-efficient technologies. In particular, if the final annual amount of allowances allocated free of charge for all incumbent installations determined in accordance with this Decision falls significantly below the maximum annual amount of allowances referred to in Article 10a(5) of Directive 2003/87/EC, an amendment to this Decision could provide incentives for further reductions in greenhouse gas emissions in accordance with Article 10a(1) of Directive 2003/87/EC by allocating allowances to installations capable of implementing innovative technologies that further reduce greenhouse gas emissions.

(35) Investments in significant capacity extensions giving access to the reserve for new entrants provided for in Article 10a(7) of Directive 2003/87/EC should be unambiguous and of a certain scale in order to avoid an early depletion of the reserve of emission allowances created for new entrants, to avoid distortions of competition, to avoid any undue administrative burden and to ensure equal treatment of installations across Member States. It is therefore appropriate to define the threshold for a significant capacity change by 10 % of the installation's installed capacity and require that the change in the installed capacity triggers a significantly higher or lower activity level of the installation concerned. However,

incremental capacity extensions or reductions should be taken into account when assessing whether this threshold is reached.

(36) Considering the limited number of allowances in the reserve for new entrants, it is appropriate to assess, when a considerable amount of these allowances is issued to new entrants, whether a fair and equitable access to the remaining allowances in this reserve is guaranteed. In the light of the outcome of this assessment, the possibility for a queuing system may be provided. The design and the definition of the eligibility criteria of such a system should take account of different permitting practices in Member States, avoid any misuse and not provide incentives to reserve allowances over an unreasonable period of time.

(37) To ensure that no emission allowances are allocated free of charge to an installation that has ceased its operations, this Decision should provide for measures defining such installations and prohibiting the issuance of allowances, unless it can be established that the installation will resume its operations within a specified and reasonable amount of time.

(38) In order to adapt the number of emission allowances to be allocated to an installation having partially ceased operations, specific thresholds comparing the reduced activity level to the initial activity level have been defined. The number of emission allowances to be allocated should then be adjusted accordingly as of the year following the year during which the installation partially ceased operations. Where such an installation again reaches an activity level above the thresholds, the initial number of emission allowances to be allocated should be partly or even fully be reinstated depending of the installation's level of operation.

(39) Where applicable, account has been taken of the guidance on interpretation of Annex I to Directive 2003/87/EC.

(40) The measures provided for in this Decision are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS DECISION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Decision lays down transitional Union-wide rules for the harmonised free allocation of emission allowances under Directive 2003/87/EC from 2013 onwards.

Article 2

Scope

This Decision shall apply to the free allocation of emission allowances under Chapter III (stationary installations) of Directive 2003/87/EC in trading periods from 2013 with the exception of transitional free allocation of emission allowances for the modernisation of electricity generation pursuant to Article 10c of Directive 2003/87/EC.

Article 3

Definitions

For the purposes of this Decision, the following definitions shall apply:

(a) 'incumbent installation' means any installation carrying out one or more activities listed in Annex I to Directive 2003/87/EC or an activity included in the Union scheme for the first time in accordance with Article 24 of that Directive which:

(i) obtained a greenhouse gas emission permit before 30 June 2011; or

(ii) is in fact operating, obtained all relevant environmental permits, including a permit provided for in Directive 2008/1/EC where applicable, by 30 June 2011 and fulfilled by 30 June 2011 all other criteria defined in the national legal order of the Member State concerned on the basis of which the installation would have been entitled to receive the greenhouse gas permit;

(b) 'product benchmark sub-installation' means inputs, outputs and corresponding emissions relating to the production of a product for which a benchmark has been set in Annex I;

(c) 'heat benchmark sub-installation' means inputs, outputs and corresponding emissions not covered by a product benchmark sub-installation relating to the production, the import from an installation or other entity covered by the Union scheme, or both, of measurable heat which is:

— consumed within the installation's boundaries for the production of products, for the production of mechanical energy other than used for the production of electricity, for heating or cooling with the exception of the consumption for the production of electricity, or

— exported to an installation or other entity not covered by the Union scheme with the exception of the export for the production of electricity;

(d) 'fuel benchmark sub-installation' means inputs, outputs and corresponding emissions not covered by a product benchmark sub-installation relating to the production of non-measurable heat by fuel combustion consumed for the production of products, for the production of mechanical energy other than used for the production of electricity, for heating or cooling with the exception of the consumption for the production of electricity, including safety flaring;

(e) 'measurable heat' means a net heat flow transported through identifiable pipelines or ducts using a heat transfer medium, such as, in particular, steam, hot air, water, oil, liquid metals and salts, for which a heat meter is or could be installed;

(f) 'heat meter' means a heat meter within the meaning of Annex MI-004 to Directive 2004/22/EC of the European Parliament and of the Council [1] or any other device to measure and record the amount of heat energy produced based upon flow volumes and temperatures;

(g) 'non-measurable heat' means all heat other than measurable heat;

(h) 'process emissions sub-installation' means greenhouse gas emissions listed in Annex I to Directive 2003/87/EC other than carbon dioxide, which occur outside the system boundaries of a product benchmark listed in Annex I, or carbon dioxide emissions, which occur outside the system boundaries of a product benchmark listed in Annex I, as a result of any of the following activities and emissions stemming from the combustion of incompletely oxidised carbon produced as a result of the following activities for the purpose of the production of measurable heat, non-measurable heat or electricity provided that emissions that would have occurred from the combustion of an amount of natural gas, equivalent to the technically usable energy content of the combusted incompletely oxidised carbon, are subtracted:

(i) the chemical or electrolytic reduction of metal compounds in ores, concentrates and secondary materials;

(ii) the removal of impurities from metals and metal compounds;

(iii) the decomposition of carbonates, excluding those for flue gas scrubbing;

(iv) chemical syntheses where the carbon bearing material participates in the reaction, for a primary purpose other than the generation of heat;

(v) the use of carbon containing additives or raw materials for a primary purpose other than the generation of heat;

(vi) the chemical or electrolytic reduction of metalloid oxides or non-metal oxides such as silicon oxides and phosphates;

(i) 'significant capacity extension' means a significant increase in a sub-installation's initial installed capacity whereby all of the following occur:

(i) one or more identifiable physical changes relating to its technical configuration and functioning other than the mere replacement of an existing production line take place; and

(ii) the sub-installation can be operated at a capacity that is at least 10 % higher compared to the initial installed capacity of the sub-installation before the change; or

(iii) the sub-installation to which the physical changes relate has a significantly higher activity level resulting in an additional allocation of emission allowances of more than 50 000 allowances per year representing at least 5 % of the preliminary annual number of emission allowances allocated free of charge for this sub -installation before the change;

(j) 'significant capacity reduction' means one or more identifiable physical changes leading to a significant decrease in a sub-installation's initial installed capacity and its activity level of the magnitude considered to constitute a significant capacity extension;

(k) 'significant capacity change' means either a significant capacity extension or a significant capacity reduction;

(l) 'added capacity' means the difference between the initial installed capacity of a sub-installation and the installed capacity of that same sub-installation after having had a significant extension determined on the basis of the average of the 2 highest monthly production volumes within the first 6 months following the start of changed operation;

(m) 'reduced capacity' means the difference between the initial installed capacity of a sub-installation and the installed capacity of that same sub-installation after having had a significant capacity reduction determined on the basis of the average of the 2 highest monthly production volumes within the first 6 months following the start of changed operation;

(n) 'start of normal operation' means the verified and approved first day of a continuous 90-day period, or, where the usual production cycle in the sector concerned does not foresee continuous production, the first day of a 90-day period split in sector-specific production cycles, during which the installation operates at least at 40 % of the capacity that the equipment is designed to accommodate taking into account, where appropriate, the installation-specific operating conditions;

(o) 'start of changed operation' means the verified and approved first day of a continuous 90-day period, or, where the usual production cycle in the sector concerned does not foresee continuous production, the first day of a 90-day period split in sector-specific production cycles, during which the changed sub-installation operates at least at 40 % of the capacity that the equipment is designed to accommodate taking into account, where appropriate, the sub-installation-specific operating conditions;

(p) 'safety flaring' means the combustion of pilot fuels and highly fluctuating amounts of process or residual gases in a unit open to atmospheric disturbances which is explicitly required for safety reasons by relevant permits for the installation;

[1] OJ L 135, 30.4.2004, p. 1.

(q) 'private household' means a residential unit in which persons make arrangements, individually or in groups, for providing themselves with measurable heat;

(r) 'verifier' means a competent, independent, person or verification body with responsibility for performing and reporting on the verification process, in accordance with the detailed requirements established by the Member State pursuant to Annex V to Directive 2003/87/EC;

(s) 'reasonable assurance' means a high but not absolute level of assurance, expressed positively in the verification opinion, whether the data subject to verification is free from material misstatement;

(t) 'level of assurance' means the degree to which the verifier is confident in the verification conclusions that it has been proved whether or not the data submitted for an installation is free from material misstatement;

(u) 'material misstatement' means a substantial misstatement (omissions, misrepresentations and errors, not considering the permissible uncertainty) in the data submitted that, according to the professional judgment of the verifier, could affect subsequent use of the data by the competent authority in the calculation of the allocation of emission allowances.

Article 4

Competent authority and rounding

1. Member States shall make the appropriate administrative arrangements, including designation of the competent authority or authorities in accordance with Article 18 of Directive 2003/87/EC, for the implementation of the rules of this Decision.

2. All calculations relating to a number of allowances carried out in accordance with this Decision shall be rounded up to the nearest allowance.

CHAPTER II

INCUMBENT INSTALLATIONS

Article 5

Identification of installations

1. Each Member State shall identify all installations in its territory and eligible for free allocation under Article 10a of Directive 2003/87/EC.

2. Each Member State shall also identify all heat producing electricity generators and small installations, which may be excluded from the Union scheme pursuant to Article 27 of Directive 2003/87/EC.

Article 6

Division into sub-installations

1. For the purposes of this Decision, Member States shall divide each installation eligible for the free allocation of emission allowances under Article 10a of Directive 2003/87/EC into one or more of the following sub-installations, as required:

(a) a product benchmark sub-installation;

(b) a heat benchmark sub-installation;

(c) a fuel benchmark sub-installation;

(d) a process emissions sub-installation.

Sub-installations shall correspond, to the extent possible, to physical parts of the installation.

For heat benchmark sub-installations, fuel benchmark sub-installations and process emissions sub-installations, Member States shall clearly distinguish on the basis of NACE and Prodcom codes between whether or not the relevant process serves a sector or subsector deemed to be exposed to a significant risk of carbon leakage as determined by Decision 2010/2/EU.

Where an installation included in the Union scheme has produced and exported measurable heat to an installation or other entity not included in the Union scheme, Member States shall consider that the relevant process of the heat benchmark sub-installation for this heat does not serve a sector or subsector deemed to be exposed to a significant risk of carbon leakage as determined by Decision 2010/2/EU unless the competent authority is satisfied that the consumer of the measurable heat belongs to a sector or subsector deemed to be exposed to a significant risk of carbon leakage as determined by Decision 2010/2/EU.

2. The sum of the inputs, outputs and emissions of each sub-installation shall not exceed the inputs, outputs and total emissions of the installation.

Article 7

Baseline data collection

1. For each incumbent installation eligible for the free allocation of emission allowances under Article 10a of Directive 2003/87/EC, including installations that are operated only occasionally, in particular, installations that are kept in reserve or on standby and installations operating on a seasonal schedule, Member States shall, for all years of the period from 1 January 2005 to 31 December 2008, or 1 January 2009 to 31 December 2010 where applicable, during which the installation has been operating, collect from the operator all relevant information and data regarding each parameter listed in Annex IV.

2. Member States shall collect data for each sub-installation separately. If necessary, Member States may require the operator to submit more data.

Where 95 % of the inputs, outputs and corresponding emissions of the heat benchmark sub-installation, of the fuel benchmark sub-installation or of the process emissions sub-installation, serve sectors or subsectors deemed to be exposed to a significant risk of carbon leakage as determined by Decision 2010/2/EU or where 95 % of the inputs, outputs and corresponding emissions of the heat benchmark sub-installation, of the fuel benchmark sub-installation or of the process emissions sub-installation serve sectors or subsectors not deemed to be exposed to a significant risk of carbon leakage, Member States may exempt the operator from providing data allowing for the distinction in terms of carbon leakage exposure.

3. Member States shall require the operator to submit the initial installed capacity of each product benchmark sub-installation, determined as follows:

(a) in principle, the initial installed capacity shall be the average of the 2 highest monthly production volumes in the period from 1 January 2005 to 31 December 2008 assuming that the sub-installation has been operating at this load 720 hours per month for 12 months per year;

(b) Where it is not possible to determine the initial installed capacity according to point (a), an experimental verification of the sub-installation's capacity under the supervision of a verifier shall take place in order to ensure that the parameters used are typical for the sector concerned and that the results of the experimental verification are representative.

4. Where a sub-installation has had a significant capacity change between 1 January 2005 and 30 June 2011, Member States shall require the operator to submit in addition to the initial installed capacity of that sub-installation, determined in accordance with paragraph 3, until the start of changed operation, the added or, where applicable, the reduced capacity as well as the installed capacity of the sub-installation after having had a significant capacity change determined on the basis of the average of the 2 highest monthly production volumes within the first 6 months following the start of changed operation. Member States shall consider this installed capacity of the sub-installation after having had a significant capacity change as the sub-installation's initial installed capacity when assessing any further significant capacity change.

5. Member States shall obtain, record and document data in a manner that enables an appropriate use of it by the competent authority.

Member States may require the operator to use an electronic template or specify a file format for submission of the data. However, Member States shall accept an operator's use of any electronic template or file format specification published by the Commission for the purpose of data collection under this Article, unless the Member State's template or file format specification requires at least input of the same data.

6. Inputs, outputs and corresponding emissions for which only data for the installation as a whole is available, shall be proportionally attributed to the relevant sub-installations, as follows:

(a) where different products are produced one after the other in the same production line, inputs, outputs and corresponding emissions shall be attributed sequentially based on the usage time per year for each sub-installation;

(b) where it is not possible to attribute inputs, outputs and corresponding emissions according to point (a), they shall be attributed based on the mass or volume of individual products produced or estimates based on the ratio of free reaction enthalpies of the chemical reactions involved or based on another suitable distribution key that is corroborated by a sound scientific methodology.

7. Member States shall require operators to submit complete and consistent data and to ensure that there are no overlaps between sub-installations and no double counting. Member States shall, in particular, ensure that operators exercise due diligence and submit data that presents highest achievable accuracy so as to enable reasonable assurance of the integrity of data.

To this end, Member States shall ensure that each operator also submits a methodology report containing, in particular, a description of the installation, the compilation methodology applied, different data sources, calculation steps and, where applicable, assumptions made and the methodology applied to attribute emissions to the relevant sub-installations in accordance with paragraph 6. Member States may order the operator to demonstrate the accuracy and completeness of the data provided.

8. Where data is missing, Member States shall require the operator to duly justify any lack of data.

Member States shall require the operator to substitute all missing data with conservative estimates, in particular, based on best industry practice, recent scientific and technical knowledge before or, at the latest, during verification by the verifier.

Where data are partly available, conservative estimate means that the value extrapolated shall be not more than 90 % of the value obtained by using the data available.

Where no data on measurable heat flows for the heat benchmark sub-installation is available, a proxy value may be derived from the corresponding energy input multiplied by the measured efficiency of the heat production as verified by a verifier. In case no such efficiency data is available, a reference efficiency of 70 % shall be applied on the corresponding energy input of the production of measurable heat.

9. Upon request, each Member State shall make the data collected on the basis of paragraph 1 to 6 available to the Commission.

Article 8

Verification

1. In the process of collecting data in accordance with Article 7, Member States shall only accept data that has been verified as satisfactory by a verifier. The verification process shall relate to the methodology report and the reported parameters referred to in Article 7 and Annex IV. The verification shall address the reliability, credibility and accuracy of the data provided by the operator and shall come to a verification opinion that states with reasonable assurance whether the data submitted is free from material misstatements.

2. Member States shall ensure that the verifier is independent of the operator, carries out his activities in a sound and objective professional manner, and understands each of the following:

(a) the provisions of this Decision, as well as relevant standards and guidance;

(b) the legislative, regulatory, and administrative requirements relevant to the activities being verified;

(c) the generation of all information related to each parameter or source of emissions in the installation, in particular, relating to the collection, measurement, calculation and reporting of the data.

3. In addition to the requirements set out in Decision 2007/589/EC, Member States shall ensure that all of the following minimum requirements are met:

(a) the verifier has planned and performed the verification with an attitude of professional scepticism recognising that circumstances may exist that cause the information and data submitted to be materially misstated;

(b) the verifier has only validated reported parameters determined with a high degree of certainty. A high degree of certainty requires the operator to show that:

(i) the reported parameters are free of inconsistencies;

(ii) the collection of the parameters has been carried out in accordance with applicable standards or guidance;

(iii) the relevant records of the installation are complete and consistent;

(c) the verifier has commenced the verification process with a strategic analysis of all relevant activities carried out in the installation and has an overview of all the activities and their significance for allocation purposes;

(d) the verifier has taken account of the information contained in the greenhouse gas emissions permit or other relevant environmental permits, such as the permit provided for in Directive 2008/1/EC, in particular when assessing the initial installed capacity of sub-installations;

(e) the verifier has analysed the inherent risks and control risks related to the scope and complexity of the operator's activities and related to allocation parameters, which could lead to material misstatements and has drawn up a verification plan following this risk analysis;

(f) the verifier has conducted a site visit, when appropriate, to inspect the operation of meters and monitoring systems, conduct interviews, and collect sufficient information and evidence. If the verifier has deemed a site visit is not appropriate, he should be able to fully justify his decision to an appropriate authority;

(g) the verifier has carried out the verification plan by gathering data in accordance with the defined sampling methods, walkthrough tests, document reviews, analytical procedures and data review procedures, including any relevant additional evidence, upon which the verifier's verification opinion will be based;

(h) the verifier has requested the operator to provide any missing data or complete missing sections of audit trails, explain variations in parameters or emissions data, or revise calculations, or adjust reported data;

(i) the verifier has prepared an internal verification report. The verification report shall record evidence showing that the strategic analysis, the risk analysis and the verification plan has been performed in full, and provide sufficient information to support verification opinions. The internal verification report shall as well facilitate a potential evaluation of the audit by the competent authority, and accreditation body;

(j) the verifier has made a judgment with respect to whether the reported parameters contain any material misstatement and whether there are other issues relevant for the verification opinion based on the findings contained in the internal verification report;

(k) the verifier has presented the verification methodology, his findings and verification opinion in a verification report, addressed to the operator, to be submitted by the operator with the methodology report and the reported parameters to the competent authority.

4. Member States shall not allocate emission allowances free of charge to an installation where data relating to this installation has not been verified as satisfactory.

Member States may only decide to allocate emission allowances free of charge to an installation where data relating to this installation has not been verified as satisfactory, if they are satisfied that the data gaps leading to the verifier's judgment are due to exceptional and unforeseeable circumstances that could not have been avoided even if all due care had been exercised and that are beyond the control of the operator of the installation concerned, in particular because of circumstances such as natural disasters, war, threats of war, terrorist acts, revolution, riot, sabotage or acts of vandalism.

5. Upon verification, Member States shall, in particular, ensure that there are no overlaps between sub-installations and no double counting.

Article 9

Historical activity level

1. For incumbent installations, Member States shall determine historical activity levels of each installation for the baseline period from 1 January 2005 to 31 December 2008, or, where they are higher, for the baseline period from 1 January 2009 to 31 December 2010, on the basis of the data collected under Article 7.

2. The product-related historical activity level shall, for each product for which a product benchmark has been determined as referred to in Annex I, refer to the median annual historical production of this product in the installation concerned during the baseline period.

3. The heat-related historical activity level shall refer to the median annual historical import from an installation covered by the Union scheme, production, or both, during the baseline period, of measurable heat consumed within the installation's boundaries for the production of products, for the production of mechanical energy other than used for the production of electricity, for heating or cooling with the exception of the consumption for the production of electricity, or exported to installations or other entity not covered by the Union scheme with the exception of the export for the production of electricity expressed as terajoule per year.

4. The fuel-related historical activity level shall refer to the median annual historical consumption of fuels used for the production of non-measurable heat consumed for the production of products, for the production of mechanical energy other than used for the production of electricity, for heating or cooling with the exception of the consumption for the production of electricity, including safety flaring, during the baseline period expressed as terajoule per year.

5. For process emissions, which occurred in relation with the production of products in the installation concerned during the baseline period referred to in paragraph 1, the process-related historical activity level shall refer to the median annual historical process emissions expressed as tonnes of carbon dioxide equivalent.

6. For the purposes of the determination of the median values referred to in paragraphs 1 to 5 only calendar years during which the installation has been operating for at least 1 day shall be taken into account.

If the installation has been operating less than 2 calendar years during the relevant baseline period, the historical activity levels shall be calculated on the basis of the initial installed capacity determined in accordance with the methodology set out in Article 7(3) of each sub-installation multiplied by the relevant capacity utilisation factor determined in accordance with Article 18(2).

7. By way of derogation from paragraph 2, Member States shall determine the product-related historical activity level for products to which the product benchmarks referred to in Annex III apply on the basis of the median annual historical production according to the formulas set out in this same Annex.

8. Incumbent installations that are operated only occasionally, including, in particular, installations that are kept in reserve or on standby and installations operating on a seasonal schedule and that have not been operating for at least 1 day in a given calendar year during the baseline period, shall be taken into account when determining the median values referred to in paragraph 1, where all of the following conditions are met:

(a) it is clearly demonstrated that the installation is used occasionally, in particular, operated regularly as standby or reserve capacity or operated regularly following a seasonal schedule;

(b) the installation is covered by a greenhouse gas emissions permit and by all other relevant permits required in the national legal order of the Member State to operate the installation;

(c) it is technically possible to start operation on short notice and maintenance is carried out on a regular basis.

9. Where an incumbent installation has had a significant capacity extension or a significant reduction of capacity between 1 January 2005 and 30 June 2011, the historical activity levels of the installation concerned shall be the sum of the median values determined in accordance with paragraph 1 without the significant capacity change and the historical activity levels of the added or reduced capacity.

The historical activity levels of the added or reduced capacity shall be the difference between the initial installed capacities of each sub-installation having had a significant capacity change determined in accordance with Article 7(3) until the start of changed operation and the installed capacity after the significant capacity change determined in accordance with Article 7(4) multiplied by the average historical capacity utilisation of the installation concerned of the years prior to the start of changed operation.

Article 10

Allocation at installation level

1. Based on the data collected in accordance with Article 7, Member States shall, for each year, calculate the number of emission allowances allocated free of charge from 2013 onwards to each incumbent installation on their territory in accordance with paragraphs 2 to 8.

2. For the purpose of this calculation, Member States shall first determine the preliminary annual number of emission allowances allocated free of charge for each sub-installation separately as follows:

(a) for each product benchmark sub-installation, the preliminary annual number of emission allowances allocated free of charge for a given year shall correspond to the value of this product benchmark as referred to in Annex I multiplied by the relevant product-related historical activity level;

(b) for:

(i) the heat benchmark sub-installation, the preliminary annual number of emission allowances allocated free of charge for a given year shall correspond to the value of the heat benchmark for measurable heat as referred to in Annex I multiplied by the heat-related historical activity level for the consumption of measurable heat;

(ii) the fuel benchmark sub-installation, the preliminary annual number of emission allowances allocated free of charge for a given year shall correspond to the value of the fuel benchmark as referred to in Annex I multiplied by the fuel-related historical activity level for the fuel consumed;

(iii) the process emissions sub-installation, the preliminary annual number of emission allowances allocated free of charge for a given year shall correspond to the process-related historical activity level multiplied by 0,9700.

3. To the extent that measurable heat is exported to private households and the preliminary annual number of emission allowances determined in accordance with paragraph 2(b), point (i), for 2013 is lower than the median annual historical emissions related to the production of measurable heat exported to private households by that sub-installation in the period from 1 January 2005 to 31 December 2008, the preliminary annual number of emission allowances for 2013 shall be adjusted by the difference. In each of the years 2014 to 2020, the preliminary annual number of emission allowances determined in accordance with paragraph 2(b), point (i), shall be adjusted to the extent that the preliminary annual number of emission allowances for that year is lower than a percentage of the abovementioned median annual historical emissions. This percentage shall be 90 % in 2014 and decline by 10 percentage points each subsequent year.

4. For the purpose of implementing Article 10a(11) of Directive 2003/87/EC, the factors referred to in Annex VI shall be applied to the preliminary annual number of emission allowances allocated free of charge determined for each sub-installation pursuant to paragraph 2 of this Article for the year concerned where the processes in those sub-installations serve sectors or subsectors deemed not to be exposed to a significant risk of carbon leakage as determined by Decision 2010/2/EU.

Where the processes in those sub-installations serve sectors or subsectors deemed to be exposed to a significant risk of carbon leakage as determined by Decision 2010/2/EU, the factor to be applied for the years 2013 and 2014 shall be 1. The sectors or subsectors for which the factor is 1 for the years 2015 to 2020 shall be determined pursuant to Article 10a(13) of Directive 2003/87/EC.

5. Where at least 95 % of the historical activity level of the heat benchmark sub-installation, of the fuel benchmark sub-installation or of the process emissions sub-installation serve sectors or subsectors deemed to be exposed to a significant risk of carbon leakage as determined by Decision 2010/2/EU, the sub-installation as a whole is deemed to be exposed to a significant risk of carbon leakage.

Where at least 95 % of the historical activity level of the heat benchmark sub-installation, of the fuel benchmark sub-installation or of the process emissions sub-installation serve sectors or subsectors not deemed to be exposed to a significant risk of carbon leakage as determined by Decision 2010/2/EU, the sub-installation as a whole is not deemed to be exposed to a significant risk carbon leakage.

6. The preliminary annual number of emission allowances allocated free of charge for sub-installations that received measurable heat from sub-installations producing products covered by the nitric acid benchmarks referred to in Annex I shall be reduced by the annual historical consumption of that heat during the baseline period referred to in Article 9(1) multiplied by the value of the heat benchmark for this measurable heat as referred to in Annex I.

7. The preliminary total annual amount of emission allowances allocated free of charge for each installation shall be the sum of all sub-installations' preliminary annual numbers of emission allowances allocated free of charge calculated in accordance with paragraphs 2, 3, 4, 5 and 6.

Where an installation encompasses sub-installations producing pulp (short fibre kraft pulp, long fibre kraft pulp, thermo-mechanical pulp and mechanical pulp, sulphite pulp or other pulp not covered by a product benchmark) exporting measurable heat to other technically connected sub-installations, the preliminary total amount of emission allowances allocated free of charge shall, without prejudice to the preliminary annual numbers of emission allowances allocated free of charge for other sub-installations of the installation concerned, only take into account the preliminary annual number of emission allowances allocated free of charge to the extent that pulp products produced by this sub-installation are placed on the market and not processed into paper in the same or other technically connected installations.

8. When determining the preliminary total annual amount of emission allowances allocated free of charge for each installation, Member States shall ensure that emissions are not double counted and that the allocation is not negative. In particular, where an intermediate product that is covered by a product benchmark according to the definition of the respective system boundaries set out in Annex I is imported by an installation, emissions shall not be double counted when determining the preliminary total annual amount of emission allowances allocated free of charge for both installations concerned.

9. The final total annual amount of emission allowances allocated free of charge for each incumbent installation, except for installations covered by Article 10a(3) of Directive 2003/87/EC, shall be the preliminary total annual amount of emission allowances allocated free of charge for each installation determined in accordance with paragraph 7 multiplied by the cross-sectoral correction factor as determined in accordance with Article 15(3).

For installations covered by Article 10a(3) of Directive 2003/87/EC and eligible for the allocation of free emission allowances, the final total annual amount of emission allowances allocated free of charge shall correspond to the preliminary total annual amount of emission allowances allocated free of charge for each installation determined in accordance with paragraph 7 annually adjusted by the linear factor referred to in Article 10a(4) of Directive 2003/87/EC, using the preliminary total annual amount of emission allowances allocated free of charge for the installation concerned for 2013 as a reference.

Article 11

Allocation in respect of steam cracking

By way of derogation from Article 10(2)(a), the preliminary annual number of emission allowances allocated free of charge for a product benchmark sub-installation relating to the production of high value chemicals (hereinafter 'HVC') shall correspond to the value of the steam cracking product benchmark referred to in Annex I multiplied by the historical activity level determined in accordance with Annex III and multiplied by the quotient of the total direct emissions including emissions from net imported heat over the baseline period referred to in Article 9(1) of this Decision expressed as tonnes of carbon dioxide equivalent and the sum of these total direct emissions and the relevant indirect emissions over the baseline period referred to in Article 9(1) of this Decision calculated in accordance with Article 14(2) To the result of this calculation, 1,78 tonnes of carbon dioxide per ton of hydrogen times the median historical production of hydrogen from supplemental feed expressed in tons of hydrogen, 0,24 tonnes of carbon dioxide per ton of ethylene times the median historical production of ethylene from supplemental feed expressed in tons of ethylene and 0,16 tonnes of carbon dioxide per ton of HVC times the median historical production of other high value chemicals than hydrogen and ethylene from supplemental feed expressed in tons of HVC shall be added.

Article 12

Allocation in respect of vinyl chloride monomer

By way of derogation from Article 10(2)(a), the preliminary annual number of emission allowances allocated free of charge for a sub-installation relating to the production of vinyl chloride monomer (hereinafter 'VCM') shall correspond to the value of the VCM benchmark multiplied by the historical activity level for VCM production expressed as tonnes and multiplied by the quotient of the direct emissions for the production of VCM including emissions from net imported heat over the baseline period referred to in Article 9(1) of this Decision, calculated in accordance with Article 14(2), expressed as tonnes of carbon dioxide equivalent and the sum of these direct emissions and the hydrogen-related emissions for the production of VCM over the baseline period referred to in Article 9(1) of this Decision expressed as tonnes of carbon dioxide equivalent calculated on the basis of the historical heat consumption stemming from hydrogen combustion expressed as terajoules (TJ) times 56,1 tonnes of carbon dioxide per TJ.

Article 13

Heat flows between installations

Where a product-benchmark sub-installation encompasses measurable heat imported from an installation or other entity not included in the Union scheme, the preliminary annual number of emission allowances allocated free of charge for the product benchmark sub-installation concerned determined pursuant to Article 10(2)(a) shall be reduced by the amount of heat historically imported from an installation or other entity not included in the Union scheme in the year concerned multiplied by the value of the heat benchmark for measurable heat set out in Annex I.

Article 14

Exchangeability of fuel and electricity

1. For each product benchmark sub-installation referred to in Annex I with consideration of exchangeability of fuel and electricity, the preliminary annual number of emission allowances allocated free of charge shall correspond to the value of the relevant product benchmark set out in Annex I multiplied by the product-related historical activity level and multiplied by the quotient of the total direct emissions including emissions from net imported heat over the baseline period referred to in Article 9(1) of this Decision expressed as tonnes of carbon dioxide equivalent and the sum of these total direct emissions and the relevant indirect emissions over the baseline period referred to in Article 9(1) of this Decision.

2. For the purposes of the calculation pursuant to paragraph 1, the relevant indirect emissions refer to the relevant electricity consumption as specified in the definition of processes and emissions covered in Annex I during the baseline period referred to in Article 9(1) of this Decision expressed in megawatt-hours for the production of the product concerned times 0,465 tonnes of carbon dioxide per megawatt-hour and expressed as tonnes of carbon dioxide.

For the purposes of the calculation pursuant to paragraph 1, the emissions from net imported heat refer to the amount of measurable heat for the production of the product concerned imported from installations covered by the Union scheme during the baseline period referred to in Article 9(1) of this Decision multiplied by the value of the heat benchmark as referred to in Annex I.

CHAPTER III

ALLOCATION DECISIONS

Article 15

National Implementation measures

1. In accordance with Article 11(1) of Directive 2003/87/EC, Member States shall submit to the Commission by 30 September 2011 a list of installations covered by Directive 2003/87/EC in their territory, including installations identified pursuant to Article 5, using an electronic template provided by the Commission.

2. The list referred to in paragraph 1 shall for each incumbent installation contain, in particular:

(a) an identification of the installation and its boundaries using the installation identification code in the CITL;

(b) an identification of each sub-installation of an installation;

(c) for each product benchmark sub-installation the initial installed capacity together with the annual production volumes of the product concerned in the period 1 January 2005 to 31 December 2008;

(d) for each installation and sub-installation information on whether or not it belongs to a sector or subsector deemed to be exposed to a significant risk of carbon leakage as determined by Decision 2010/2/EU;

(e) for each sub-installation the preliminary annual number of emission allowances allocated free of charge over the period from 2013 to 2020 as determined in accordance with Article 10(2);

(f) in addition to point (d), for sub-installations not serving a sector or subsector deemed to be exposed to a significant risk of carbon leakage as determined by Decision 2010/2/EU, the preliminary annual numbers of emission allowances allocated free of charge over the period from 2013 to 2020 decreasing by equal amounts from 80 % of the quantity in 2013 to 30 % in 2020 as determined in accordance with Article 10(4);

(g) for each installation the preliminary total annual amounts of emission allowances allocated free of charge over the period from 2013 to 2020 as determined in accordance with Article 10(6).

The list shall also identify all heat producing electricity generators, and small installations that may be excluded from the Union scheme pursuant to Article 27 of Directive 2003/87/EC.

3. Upon receipt of the list referred to in paragraph 1 of this Article, the Commission shall assess the inclusion of each installation in the list and the related preliminary total annual amounts of emission allowances allocated free of charge.

After notification by all Member States of the preliminary total annual amounts of emission allowances allocated free of charge over the period from 2013 to 2020, the Commission shall determine the uniform cross-sectoral correction factor as referred to in Article 10a(5) of Directive 2003/87/EC. It shall be determined by comparing the sum of the preliminary total annual amounts of emission allowances allocated free of charge to installations that are not electricity generators in each year over the period from 2013 to 2020 without application of the factors referred to in Annex VI with the annual amount of allowances that is calculated in accordance with Article 10a(5) of Directive 2003/87/EC for installations that are not electricity generator or new entrants, taking into account the relevant share of the annual Union-wide total quantity, as determined pursuant to Article 9 of that Directive, and the relevant amount of emissions which are only included in the Union scheme from 2013 onwards.

4. If the Commission does not reject an installation's inscription on this list, including the corresponding preliminary total annual amounts of emission allowances allocated free of charge for this installation, the Member State concerned shall proceed to the determination of the final annual amount of emission allowances allocated free of charge for each year over the period from 2013 to 2020 in accordance with Article 10(9) of this Decision.

5. After determination of the final annual amount for all incumbent installations in their territory, Member States shall submit to the Commission a list of the final annual amounts of emission allowances allocated free of charge over the period from 2013 to 2020 as determined in accordance with Article 10(9).

Article 16

Changes to carbon leakage exposure

Within 3 months of the adoption of the list referred to in Article 10a(13) of Directive 2003/87/EC for the years 2015 to 2020 or of the adoption of any addition to the list determined by Commission Decision 2010/2/EU for the years 2013 and 2014, each Member State shall revise the list referred to in Article 15(1) of this Decision clearly indicating the changes to the deemed carbon leakage exposure of installations and sub-installations and the related preliminary annual amount of free allocation where applicable and submit that list to the Commission.

CHAPTER IV

NEW ENTRANTS AND CLOSURES

Article 17

Application for free allocation

1. Upon application by a new entrant, Member States shall determine on the basis of the present rules the amount of allowances to be allocated free of charge once the installation concerned has started normal operation and its initial installed capacity has been determined.

2. Member States shall only accept applications that are submitted to the competent authority within 1 year following the start of normal operation of the installation or sub-installation concerned.

3. Member States shall divide the installation concerned in sub-installations in accordance with Article 6 of this Decision and shall require the operator to submit together with the application referred to in paragraph 1 all relevant information and data regarding each parameter listed in Annex V for each sub-installation separately to the competent authority. If necessary, Member States may require the operator to submit more disaggregated data.

4. For installations referred to in Article 3(h) of Directive 2003/87/EC, with the exception of installations that have had a significant extension after 30 June 2011, Member States shall require the operator to determine the initial installed capacity for each sub-installation according to the methodology set out in Article 7(3) using the continuous 90-day period on the basis of which the start of normal operation is determined as a reference. Member States shall approve this initial installed capacity of each sub-installation before calculating the allocation to the installation.

5. Member States shall only accept data submitted pursuant to this Article that has been verified as satisfactory by a verifier, in accordance with the requirements set out in Article 8, to ensure that reliable and correct data is reported.

Article 18

Activity levels

1. For installations referred to in Article 3(h) of Directive 2003/87/EC, with the exception of installations that have had a significant extension after 30 June 2011, Member States shall determine activity levels of each installation as follows:

(a) the product-related activity level shall, for each product for which a product benchmark has been determined as referred to in Annex I, be the initial installed capacity for the production of this product of the installation concerned multiplied by the standard capacity utilisation factor;

(b) the heat-related activity level shall be the initial installed capacity for the import from installations covered by the Union scheme, production, or both, of measurable heat consumed within the installation's boundaries for the production of products, for the production of mechanical energy other than used for the production of electricity, for heating or cooling with the exception of the consumption for the production of electricity, or exported to an installation or other entity not covered by the Union scheme with the exception of the export for the production of electricity multiplied by the relevant capacity utilisation factor;

(c) the fuel-related activity level shall be the initial installed capacity for the consumption of fuels used for the production of non-measurable heat consumed for the production of products, for the production of mechanical energy other than used for the production of electricity, for heating or cooling with the exception of the consumption for the production of electricity, including safety flaring, of the installation concerned multiplied by the relevant capacity utilisation factor;

(d) the process emissions-related activity level shall be the initial installed capacity for the production of process emissions of the process unit multiplied by the relevant capacity utilisation factor.

2. The standard capacity utilisation factor referred to in paragraph 1(a) shall be determined and published by the Commission on the basis of the data collection carried out by Member States in accordance with Article 7 of this Decision. For each product benchmark set out in Annex I, it shall be the 80-percentile of the average annual capacity utilisation factors of all installations producing the product concerned. The average annual capacity utilisation factor of each installation producing the product concerned shall correspond to the average annual production of the period 2005 to 2008 divided by the initial installed capacity.

The relevant capacity utilisation factor referred to in paragraphs 1(b) to (d) shall be determined by Member States on the basis of duly substantiated and independently verified information on the installation's intended normal operation, maintenance, common production cycle, energy efficient techniques and typical capacity utilisation in the sector concerned compared to sector-specific information.

When determining the relevant capacity utilisation factor referred to in paragraph 1(d) in accordance with the previous sentence, Member States shall also take account of duly substantiated and independently verified information on the emission intensity of the input and greenhouse gas efficient techniques.

3. For installations which had a significant capacity extension after 30 June 2011, Member States shall determine in accordance with paragraph 1 the activity levels only for the added capacity of the sub-installations to which the significant capacity extension relates.

For installations which had a significant capacity reduction after 30 June 2011, Member States shall determine in accordance with paragraph 1 the activity levels only for the reduced capacity of the sub-installations to which the significant capacity reduction relates.

Article 19

Allocation to new entrants

1. For the purposes of the allocation of emission allowances to new entrants, with the exception of allocations to installations referred to in the third indent of Article 3(h) of Directive 2003/87/EC, Member States shall calculate the preliminary annual number of emission allowances allocated free of charge as of the start of normal operation of the installation for each sub-installation separately, as follows:

(a) for each product benchmark sub-installation, the preliminary annual number of emission allowances allocated free of charge for a given year shall correspond to the value of that product benchmark multiplied by the product-related activity level;

(b) for each heat benchmark sub-installation, the preliminary annual number of emission allowances allocated free of charge shall correspond to the value of the heat benchmark for this measurable heat as referred to in Annex I multiplied by the heat-related activity level;

(c) for each fuel benchmark sub-installation, the preliminary annual number of emission allowances allocated free of charge shall correspond to the value of the fuel benchmark as referred to in Annex I multiplied by the fuel-related activity level;

(d) for each process emissions sub-installation, the preliminary annual number of emission allowances allocated free of charge for a given year shall correspond to the process-related activity level multiplied by 0,9700.

Articles 10(4) to (6) and (8), 11, 12, 13 and 14 of this Decision shall apply mutatis mutandis to the calculation of the preliminary annual number of emission allowances allocated free of charge.

2. For independently verified emissions of the new entrant which occurred prior to the start of normal operation, additional allowances shall be allocated on the basis of historic emissions expressed as tonnes of carbon dioxide equivalent.

3. The preliminary total annual amount of emission allowances allocated free of charge shall be the sum of all sub-installations' preliminary annual numbers of emission allowances allocated free of charge calculated in accordance with paragraph 1 and the additional allowances referred to in paragraph 2. The second sentence of Article 10(7) shall apply.

4. Member States shall notify to the Commission without delay the preliminary total annual amount of emission allowances allocated free of charge. Emission allowances from the new entrants reserve created pursuant to Article 10a(7) of Directive 2003/87/EC shall be allocated on a first come, first served basis with regard to the receipt of this notification.

The Commission may reject the preliminary total annual amount of emission allowances allocated free of charge for the installation concerned. If the Commission does not reject this preliminary total annual amount of emission allowances allocated free of charge, the Member State concerned shall proceed to the determination of the final annual amount of emission allowances allocated free of charge.

5. The final annual amount of emission allowances allocated free of charge shall correspond to the preliminary total annual amount of emission allowances allocated free of charge for each installation determined in accordance with paragraph 3 of this Article annually adjusted by the linear reduction factor referred to in Article 10a(7) of Directive 2003/87/EC, using the preliminary total annual amount of emission allowances allocated free of charge for the installation concerned for 2013 as a reference.

6. When half of the amount of allowances set aside for new entrants pursuant to Article 10a(7) of Directive 2003/87/EC, notwithstanding the amount of allowances available pursuant to Article 10a(8) of Directive 2003/87/EC, is issued or to be issued until 2020 to new entrants, the Commission shall assess whether a queuing system should be put in place to ensure that access to the reserve is managed in a fair way.

Article 20

Allocation as new entrant following a significant capacity extension

1. Where an installation has had a significant capacity extension after 30 June 2011, Member States shall, upon application by the operator and without prejudice to the allocation to an installation pursuant to Article 10, determine on the basis of the methodology set out in Article 19 the number of free emission allowances to be allocated, in so far as the extension is concerned.

2. Member States shall require the operator to submit together with the application evidence demonstrating that the criteria for a significant capacity extension have been met and to provide the information referred to in Article 17(3) to support any allocation decision. In particular, Member States shall require the operator to submit the added capacity and the installed capacity of the sub-installation after having had a significant capacity extension verified as satisfactory by a verifier, in accordance with the requirements set out in Article 8. Member States shall consider this installed capacity of the sub-installation after having had a significant capacity extension as the sub-installation's initial installed capacity when assessing any subsequent significant capacity change.

Article 21

Significant capacity reduction

1. Where an installation has had a significant capacity reduction after 30 June 2011, Member States shall determine the amount by which the number of allowances to be allocated for free is reduced, in so far as this reduction is concerned. To this end, the Member States shall require the operator to submit the reduced capacity and the installed capacity of the sub-installation after having had a significant capacity reduction verified as satisfactory by a verifier, in accordance with the requirements set out in Article 8. Member States shall consider this installed capacity of the sub-installation after having had a significant capacity reduction as the sub-installation's initial installed capacity when assessing any subsequent significant capacity change.

2. Member States shall reduce the preliminary annual number of emission allowances allocated free of charge for each sub-installation by the preliminary annual number of emission allowances allocated free of charge for the sub-installation concerned calculated in accordance with Article 19(1) in so far as the significant capacity reduction is concerned.

Member States shall then determine the preliminary total annual amount of the installation concerned according to the methodology applied to determine the preliminary total annual amount prior to the significant capacity reduction and the final total annual amount of emission allowances allocated free of charge to the installation concerned in accordance with Article 10(9).

3. The allocation to the installation shall be adjusted accordingly as of the year following the one during which the capacity reduction took place or as of 2013, if the significant capacity reduction took place before 1 January 2013.

Article 22

Cessation of operations of an installation

1. An installation is deemed to have ceased operations, where any of the following conditions is met:

(a) the greenhouse gas emissions permit, the permit in force in accordance with Directive 2008/1/EC or any other relevant environmental permit has expired;

(b) the permits referred to under point (a) have been withdrawn;

(c) operation of the installation is technically impossible;

(d) the installation is not operating, but has been operating before and it is technically impossible to resume operation;

(e) the installation is not operating, but has been operating before and the operator cannot establish that this installation will resume operation at the latest within 6 months after having ceased operations. Member States may extent this period up to a maximum of 18 months if the operator can establish that the installation cannot resume operation within 6 months due to exceptional and unforeseeable circumstances that could not have been avoided even if all due care had been exercised and that are beyond the control of the operator of the installation concerned, in particular because of circumstances such as natural disasters, war, threats of war, terrorist acts, revolution, riot, sabotage or acts of vandalism.

2. Paragraph 1(e) shall not apply to installations that are kept in reserve or standby and installations that are operated on a seasonal schedule, where all of the following conditions are fulfilled:

(a) the operator holds a greenhouse gas emissions permit and all other relevant permits;

(b) it is technically possible to start operations without making physical changes to the installation;

(c) regular maintenance is carried out.

3. Where an installation has ceased operation, the Member State concerned shall not issue emission allowances to this installation as of the year following the cessation of operations.

4. Member States may suspend the issuance of the emission allowances to installations referred to in paragraph 1(e) as long as it is not established that the installation will resume operations.

Article 23

Partial cessation of operations of an installation

1. An installation is deemed to have partially ceased operations, provided that one sub-installation, which contributes to at least 30 % of the installation's final annual amount of emission allowances allocated free of charge or to the allocation of more than 50 000 allowances, reduces its activity level in a given calendar year by at least 50 % compared to the activity level used for calculating the sub-installation's allocation in accordance with Article 9 or, where applicable, with Article 18 (hereinafter 'initial activity level').

2. The allocation of emission allowances to an installation that partially ceases operations shall be adjusted as of the year following the year during which it partially ceased operations or as of 2013, if the partial cessation took place before 1 January 2013, as follows:

if the activity level of the sub-installation referred to in paragraph 1 is reduced by 50 % to 75 % compared to the initial activity level, the sub-installation shall only receive half of the initially allocated allowances;

if the activity level of the sub-installation referred to in paragraph 1 is reduced by 75 % to 90 % compared to the initial activity level, the sub-installation shall only receive 25 % of the initially allocated allowances;

if the activity level of the sub-installation referred to in paragraph 1 is reduced by 90 % or more compared to the initial activity level, no allowances shall be allocated free of charge in respect of the sub-installation concerned.

3. If the activity level of the sub-installation referred to in paragraph 1 reaches an activity level of more than 50 % compared to the initial activity level, the installation having partially ceased operations shall receive the allowances initially allocated to it as of the year following the calendar year during which the activity level exceeded the threshold of 50 %.

4. If the activity level of the sub-installation referred to in paragraph 1 reaches an activity level of more than 25 % compared to the initial activity level, the installation having partially ceased operations shall receive half of the allowances initially allocated to it as of the year following the calendar year during which the activity level exceeded the threshold of 25 %.

Article 24

Changes to the operation of an installation

1. Member States shall ensure that all relevant information about any planned or effective changes to the capacity, activity level and operation of an installation is submitted by the operator to the competent authority by 31 December of each year.

2. Where there is a change to an installation's capacity, activity level or operation which has an impact on the installation's allocation, Member States shall submit, using an electronic template provided by the Commission, all relevant information, including the revised preliminary total annual amount of emission allowances allocated free of charge for the installation concerned determined in accordance with this Decision, to the Commission before determining the final total annual amount of emission allowances allocated free of charge. The Commission may reject the revised preliminary total annual amount of emission allowances allocated free of charge for the installation concerned.

CHAPTER V

FINAL PROVISION

Article 25

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 27 April 2011.

For the Commission

Connie HEDEGAARD

Member of the Commission

ANNEX I

PRODUCT BENCHMARKS

1. **Definition of product benchmarks and system boundaries without consideration of exchangeability of fuel and electricity**

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
Coke	Coke-oven coke (obtained from the carbonisation of coking coal, at high temperature) or gas-works coke (by-product of gas-works plants) expressed as tons of dry coke. Lignite coke is not covered by this benchmark	All processes directly or indirectly linked to the process units coke ovens, H_2S/NH_3 incineration, coal preheating (defreezing), coke gas extractor, desulphurisation unit, distillation unit, steam generation plant, pressure control in batteries, biological water treatment, miscellaneous heating of by-products and hydrogen separator are included. Coke oven gas cleaning is included	yes	0,286
Sintered ore	Agglomerated iron-bearing product containing iron ore fines, fluxes and iron-containing recycling materials with the chemical and physical properties such as the level of basicity, mechanical strength and permeability required to deliver iron and necessary flux materials into iron ore reduction processes	All processes directly or indirectly linked to the process units sinter strand, ignition, feedstock preparation units, hot screening unit, sinter cooling unit, cold screening unit and steam generation unit are included	yes	0,171
Hot metal	Liquid iron saturated with carbon for further processing	All processes directly or indirectly linked to the process units blast furnace, hot metal treatment units, blast furnace blowers, blast furnace hot stoves, basic oxygen furnace, secondary metallurgy units, vacuum ladles, casting units (including cutting), slag treatment unit, burden preparation, BF gas treatment unit, dedusting units, scrap pre-heating, coal drying for PCI, vessels preheating stands, casting ingots preheating stands, compressed air production, dust treatment unit (briquetting), sludge treatment unit (briquetting), steam injection in BF unit, steam generation plant, converter BOF gas cooling and miscellaneous are included	yes	1,328

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
Pre-bake anode	Anodes for aluminium electrolysis use consisting of petrol coke, pitch and normally recycled anodes, which are formed to shape specifically intended for a particular smelter and baked in anode baking ovens to a temperature of around 1 150 °C	All processes directly or indirectly linked to the production of pre-bake anodes are included	yes	0,324
Aluminium	unwrought non-alloy liquid aluminium from electrolysis	All processes directly or indirectly linked to the production step electrolysis are included	yes	1,514
Grey cement clinker	Grey cement clinker as total clinker produced	All processes directly or indirectly linked to the production of grey cement clinker are included	yes	0,766
White cement clinker	White cement clinker for use as main binding component in the formulation of materials such as joint filers, ceramic tile adhesives, insulation, and anchorage mortars, industrial floor mortars, ready mixed plaster, repair mortars, and water-tight coatings with maximum average contents of 0,4 mass-% Fe_2O_3, 0,003 mass-% Cr_2O_3 and 0,03 mass-% Mn_2O_3	All processes directly or indirectly linked to the production of white cement clinker are included	yes	0,987
Lime	Quicklime: calcium oxide (CaO) produced by the decarbonation of limestone ($CaCO_3$) as 'standard pure' lime with a free CaO content of 94,5 %. Lime produced and consumed in the same installation for purification processes is not covered by this product benchmark	All processes directly or indirectly linked to the production of lime are included	yes	0,954

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
Dolime	Dolime or calcined dolomite as mixture of calcium and magnesium oxides produced by the decarbonation of dolomite ($CaCO_3.MgCO_3$) with a residual CO_2 exceeding 0,25 %, a free MgO content between 25 % and 40 % and a bulk density of the commercial product below 3,05 g/cm^3. Dolime shall be expressed as 'standard pure dolime' quality with a free CaO content of 57,4 % and a free MgO content of 38,0 %	All processes directly or indirectly linked to the production of dolime are included	yes	1,072
Sintered dolime	Mixture of calcium and magnesium oxides used solely for the production of refractory bricks and other refractory products with a minimum bulk density of 3,05 g/cm^3	All processes directly or indirectly linked to the production of sintered dolime are included	yes	1,449
Float glass	Float/ground/polish glass (as tons of glass exiting the lehr)	All processes directly or indirectly linked to the production steps melter, refiner, working end, bath and lehr are included	yes	0,453
Bottles and jars of colourless glass	Bottles of colourless glass of a nominal capacity < 2,5 litres, for beverages and foodstuffs (excluding bottles covered with leather or composition leather; infant's feeding bottles) except extra-white flint products with an iron oxide content expressed as percent Fe_2O_3 by weight lower than 0,03 % and colour coordinates of L in the range 100 to 87, of a in the range 0 to − 5 and of b in the range 0 to 3 (using the CIELAB advocated by the Commission internationale d'éclairage) expressed as tons of packed product	All processes directly or indirectly linked to the production steps materials handling, melting, forming, downstream processing, packaging and ancillary processes are included	yes	0,382

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
Bottles and jars of coloured glass	Bottles of coloured glass of a nominal capacity < 2,5 litres, for beverages and foodstuffs (excluding bottles covered with leather or composition leather; infant's feeding bottles) expressed as tons of packed product	All processes directly or indirectly linked to the production steps materials handling, melting, forming, downstream processing, packaging and ancillary processes are included	yes	0,306
Continuous filament glass fibre products	Melted glass for the production of continuous filament glass fibre products namely chopped strands, rovings, yarns and staple glass fibre and mats (expressed as tons of melted glass exiting the foreheath). Mineral wool products for thermal, acoustic and fire insulation are not included	All processes directly or indirectly linked to the production processes glass melting in the furnaces and glass refining in the foreheaths are included. Downstream processes to convert the fibres into sellable products are not included in this product benchmark	yes	0,406
Facing bricks	Facing bricks with a density > 1 000 kg/m^3 used for masonry based on EN 771-1, excluding pavers, clinker bricks and blue braised facing bricks	All processes directly or indirectly linked to the production processes raw material preparation, component mixing, forming and shaping of ware, drying of ware, firing of ware, product finishing and flue gas cleaning are included	no	0,139
Pavers	Clay bricks used for flooring according to EN 1344	All processes directly or indirectly linked to the production processes raw material preparation, component mixing, forming and shaping of ware, drying of ware, firing of ware, product finishing and flue gas cleaning are included	no	0,192
Roof tiles	Clay roofing tiles as defined in EN 1304:2005 excluding blue braised roof tiles and accessories	All processes directly or indirectly linked to the production processes raw material preparation, component mixing, forming and shaping of ware, drying of ware, firing of ware, product finishing and flue gas cleaning are included	no	0,144

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
Spray-dried powder	Spray-dried powder for the production of dry-pressed wall and floor tiles in tonnes of powder produced	All processes directly or indirectly linked to the production of spray-dried powder are included	yes	0,076
Plaster	Plasters consisting of calcined gypsum or calcium sulphate (including for use in building, for use in dressing woven fabrics or surfacing paper, for use in dentistry, for use in land remediation), in tonnes of stucco. Alpha plaster is not covered by this product benchmark	All processes directly or indirectly linked to the production steps milling, drying and calcining are included	no	0,048
Dried secondary gypsum	Dried secondary gypsum (synthetic gypsum produced as a recycled by-product of the power industry or recycled material from construction waste and demolition) expressed as tons of product	All processes directly or indirectly linked to the drying of secondary gypsum are included	no	0,017
Short fibre kraft pulp	Short fibre kraft pulp is a wood pulp produced by the sulphate chemical process using cooking liquor, characterised by fibre lengths of 1-1,5 mm, which is mainly used for products which require specific smoothness and bulk, as tissue and printing paper, expressed as net saleable production in Adt (Air Dried Tonnes)	All processes which are part of the pulp production process (in particular the pulp mill, recovery boiler, pulp drying section and lime kiln and connected energy conversion units (boiler/CHP)) are included. Other activities on site that are not part of this process such as sawmilling activities, woodworking activities, production of chemicals for sale, waste treatment (treating waste onsite instead of offsite (drying, pelletising, incinerating, landfilling), PCC (precipitated calcium carbonate) production, treatment of odorous gases, and district heating are not included	yes	0,12

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
Long fibre kraft pulp	Long fibre kraft pulp is a wood pulp produced by the sulphate chemical process using cooking liquor, characterised by fibre lengths of 3-3,5 mm, which is mainly used for products for which strength is important, as packaging paper, expressed as net saleable production in Adt (Air Dried Tonnes)	All processes which are part of the pulp production process (in particular the pulp mill, recovery boiler, pulp drying section and lime kiln and connected energy conversion units (boiler/CHP)) are included. Other activities on site that are not part of this process such as sawmilling activities, woodworking activities, production of chemicals for sale, waste treatment (treating waste onsite instead of offsite (drying, pelletising, incinerating, landfilling), PCC (precipitated calcium carbonate) production, treatment of odorous gases, and district heating are not included	yes	0,06
Sulphite pulp, thermo-mechanical and mechanical pulp	Sulphite pulp produced by a specific pulp making process, e.g. pulp produced by cooking wood chips in a pressure vessel in the presence of bisulphite liquor expressed as net saleable production in Adt. Sulphite pulp can be either bleached or unbleached. Mechanical pulp grades: TMP (thermomechanical pulp) and groundwood as net saleable production in Adt. Mechanical pulp can be either bleached or unbleached. Not covered by this group are the smaller subgroups of semi-chemical pulp CTMP — chemi-thermomechanical pulp and dissolving pulp	All processes which are part of the pulp production process (in particular the pulp mill, recovery boiler, pulp drying section and lime kiln and connected energy conversion units (boiler/CHP)) are included. Other activities on site that are not part of this process such as sawmilling activities, woodworking activities, production of chemicals for sale, waste treatment (treating waste onsite instead of offsite (drying, pelletising, incinerating, landfilling), PCC (precipitated calcium carbonate) production, treatment of odorous gases, and district heating are not included	yes	0,02
Recovered paper pulp	Pulps of fibres derived from recovered (waste and scrap) paper or paperboard or of other fibrous cellulosic material expressed as net saleable production in Adt	All processes which are part of the production of pulp from recovered paper and connected energy conversion units (boiler/CHP)) are included. Other activities on site that are not part of this process such as sawmilling activities, woodworking activities, production of chemicals for sale, waste treatment (treating waste onsite instead of offsite (drying, pelletising, incinerating, landfilling), PCC (precipitated calcium carbonate) production, treatment of odorous gases, and district heating are not included	yes	0,039

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
Newsprint	Specific paper grade (in rolls or sheets) expressed as net saleable production in Adt used for printing newspapers produced from groundwood and/or mechanical pulp or recycled fibres or any percentage of combinations of these two. Weights usually range from 40 to 52 g/m^2 but can be as high as 65 g/m^2. Newsprint is machine-finished or slightly calendered, white or slightly coloured and is used in reels for letterpress, offset or flexo-printing	All processes which are part of the paper production process (in particular paper or board machine and connected energy conversion units (boiler/CHP) and direct process fuel use) are included. Other activities on site that are not part of this process such as sawmilling activities, woodworking activities, production of chemicals for sale, waste treatment (treating waste onsite instead of offsite (drying, pelletising, incinerating, landfilling), PCC (precipitated calcium carbonate) production, treatment of odorous gases, and district heating are not included	yes	0,298
Uncoated fine paper	Uncoated fine paper, covering both uncoated mechanical and uncoated woodfree expressed as net saleable production in Adt: 1. Uncoated woodfree papers suitable for printing or other graphic purposes made from a variety of mainly virgin fibre furnishes, with variable levels of mineral filler and a range of finishing processes. This grade includes most office papers, such as business forms, copier, computer, stationery and book papers. 2. Uncoated mechanical papers cover the specific paper grades made from mechanical pulp, used for packaging or graphic purposes/magazines	All processes which are part of the paper production process (in particular paper or board machine and connected energy conversion units (boiler/CHP) and direct process fuel use) are included. Other activities on site that are not part of this process such as sawmilling activities, woodworking activities, production of chemicals for sale, waste treatment (treating waste onsite instead of offsite (drying, pelletising, incinerating, landfilling), PCC (precipitated calcium carbonate) production, treatment of odorous gases, and district heating are not included	yes	0,318
Coated fine paper	Coated fine paper covering both coated mechanical and coated woodfree papers expressed as net saleable production in Adt: 1. Coated woodfree papers made of fibres produced mainly by a chemical pulping process which are coated in process for different applications and	All processes which are part of the paper production process (in particular paper or board machine and connected energy conversion units (boiler/CHP) and direct process fuel use) are included. Other activities on site that are not part of this process such as sawmilling activities, woodworking activities, production of chemicals for sale, waste treatment (treating waste onsite instead of offsite (drying, pelletising, incinerating, landfilling), PCC	yes	0,318

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
	are also known as coated freesheet. This group focuses mainly on publication papers. 2. Coated mechanical papers made from mechanical pulp, used for graphic purposes/magazines. The group is also known as coated groundwood	(precipitated calcium carbonate) production, treatment of odorous gases, and district heating are not included		
Tissue	Tissue papers expressed as net saleable production of parent reel cover a wide range of tissue and other hygienic papers for use in households or commercial and industrial premises such as toilet paper and facial tissues, kitchen towels, hand towels and industrial wipes, the manufacture of baby nappies, sanitary towels, etc. TAD — Through Air Dried Tissue is not part of this group	All processes which are part of the paper production process (in particular paper or board machine and connected energy conversion units (boiler/CHP) and direct process fuel use) are included. Other activities on site that are not part of this process such as sawmilling activities, woodworking activities, production of chemicals for sale, waste treatment (treating waste onsite instead of offsite (drying, pelletising, incinerating, landfilling), PCC (precipitated calcium carbonate) production, treatment of odorous gases, and district heating are not included. The conversion of parent reel weight to finished products is not part of this product benchmark	yes	0,334
Testliner and fluting	Testliner and fluting expressed as net saleable production in Adt: 1. Testliner covers types of paperboard that meet specific tests adopted by the packaging industry to qualify for use as the outer facing layer for corrugated board, from which shipping containers are made. Testliner is made primarily from fibres obtained from recycled fibres. 2. Fluting refers to the centre segment of corrugated shipping containers, being faced with linerboard (testliner/kraftliner) on both sides. Fluting covers	All processes which are part of the paper production process (in particular paper or board machine and connected energy conversion units (boiler/CHP) and direct process fuel use) are included. Other activities on site that are not part of this process such as sawmilling activities, woodworking activities, production of chemicals for sale, waste treatment (treating waste onsite instead of offsite (drying, pelletising, incinerating, landfilling), PCC (precipitated calcium carbonate) production, treatment of odorous gases, and district heating are not included	yes	0,248

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
	mainly papers made from recycled fibre but this group also holds paperboard that is made from chemical and semi-chemical pulp			
Uncoated carton board	This benchmark covers a wide range of uncoated products (expressed as net saleable production in Adt) which may be single or multiply. Uncoated carton board is mainly used for packaging applications which the main needed characteristic is strength and stiffness, and for which the commercial aspects as information carrier are of a second order of importance. Carton board is made from virgin and/or recovered fibres, has good folding properties, stiffness and scoring ability. It is mainly used in cartons for consumer products such as frozen food, cosmetics and for liquid containers; also known as solid board, folding box board, boxboard or carrier board or core board	All processes which are part of the paper production process (in particular paper or board machine and connected energy conversion units (boiler/CHP) and direct process fuel use) are included. Other activities on site that are not part of this process such as sawmilling activities, woodworking activities, production of chemicals for sale, waste treatment (treating waste onsite instead of offsite (drying, pelletising, incinerating, landfilling), PCC (precipitated calcium carbonate) production, treatment of odorous gases, and district heating are not included	yes	0,237
Coated carton board	This benchmark covers a wide range of coated products (expressed as net saleable production in Adt) which may be single or multiply. Coated carton board is mainly used for commercial applications that need to bring commercial information printed on the packaging to the shelf in the store in applications such as food, pharma, cosmetics, and other. Carton board is made from virgin and/or recovered fibres, and has good folding properties, stiffness and scoring ability. It is mainly	All processes which are part of the paper production process (in particular paper or board machine and connected energy conversion units (boiler/CHP) and direct process fuel use) are included. Other activities on site that are not part of this process such as sawmilling activities, woodworking activities, production of chemicals for sale, waste treatment (treating waste onsite instead of offsite (drying, pelletising, incinerating, landfilling), PCC (precipitated calcium carbonate) production, treatment of odorous gases, and district heating are not included	yes	0,273

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
	used in cartons for consumer products such as frozen food, cosmetics and for liquid containers; also known as solid board, folding box board, boxboard or carrier board or core board			
Nitric acid	Nitric acid (HNO_3), to be recorded in tons HNO_3 (100 %)	All processes directly or indirectly linked to the production of the benchmarked product as well as the N_2O destruction process are included except the production of ammonia	yes	0,302
Adipic acid	Adipic acid to be recorded in tons of dry purified adipic acid stored in silos or packed in (big)bags	All processes directly or indirectly linked to the production of the benchmarked product as well as the N_2O destruction process are included	yes	2,79
Vinyl chloride monomer (VCM)	Vinyl chloride (chloroethylene)	All processes directly or indirectly linked to the production steps direct chlorination, oxychlorination and EDC cracking to VCM are included	yes	0,204
Phenol/ acetone	Sum of phenol, acetone and the by-product alpha-methyl styrene as total production	All processes directly or indirectly linked to the production of phenol and acetone are included, in particular air compression, hydroperoxidation, cumene recovery from spent air, concentration and cleavage, production fractionation and purification, tar cracking, acetophenone recovery and purification, AMS recovery for export, AMS hydrogenation for ISB recycle, initial waste water purification (first waste water stripper), cooling water generation (e.g. cooling towers), cooling water utilisation (circulation pumps), flare and incinerators (even if physically located OSB) as well as any support fuel consumption	yes	0,266
S-PVC	Polyvinyl chloride; not mixed with any other substances consisting of PVC particles with a mean size between 50 and 200 μm	All processes directly or indirectly linked to the production of S-PVC are included except the production of VCM	yes	0,085
E-PVC	Polyvinyl chloride; not mixed with any other substances consisting of PVC particles with a mean size between 0,1 and 3 μm	All processes directly or indirectly linked to the production of E-PVC are included except the production of VCM	yes	0,238

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
Soda ash	Disodium carbonate as total gross production except dense soda ash obtained as by-product in a caprolactam production network	All processes directly or indirectly linked to the process units brine purification, limestone calcination and milk of lime production, absorption of ammonia, precipitation of $NaHCO_3$, filtration or Separation of $NaHCO_3$ crystals from mother liquor, decomposition of $NaHCO_3$ to Na_2CO_3, recovery of ammonia and densification or production of dense soda ash are included	yes	0,843

If no other reference is given, all product benchmarks refer to 1 ton of product produced expressed as saleable (net) production and to 100 % purity of the substance concerned.

All definitions of processes and emissions covered (system boundaries) include flares where they occur.

The carbon leakage exposure of the benchmarked products is based on Decision 2010/2/EU and is valid for 2013 and 2014. In respect of 2013 and 2014, further sectors might be added to this list by Commission Decision.

2. **Definition of product benchmarks and system boundaries with consideration of exchangeability of fuel and electricity**

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
Refinery products	Mix of refinery products with more than 40 % light products (motor spirit (gasoline) including aviation spirit, spirit type (gasoline type) jet fuel, other light petroleum oils/light preparations, kerosene including kerosene type jet fuel, gas oils) expressed as CO_2 weighted tonne (CWT)	All processes of a refinery matching the definition of one of the CWT process units as well as ancillary non-process facilities operating inside the refinery fence-line such as tankage, blending, effluent treatment, etc. are included. For the determination of indirect emissions, the total electricity consumption within the system boundaries shall be considered	yes	0,0295
EAF carbon steel	Steel containing less than 8 % metallic alloying elements and tramp elements to such levels limiting the use to those applications where no high surface quality and processability is required	All processes directly or indirectly linked to the process units electric arc furnace, secondary metallurgy, casting and cutting, post-combustion unit, dedusting unit, vessels heating stands, casting ingots preheating stands, scrap drying and scrap preheating are included. For the determination of indirect emissions, the total electricity consumption within the system boundaries shall be considered	yes	0,283

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
EAF high alloy steel	Steel containing 8 % or more metallic alloying elements or where high surface quality and processability is required	All processes directly or indirectly linked to the process units electric arc furnace, secondary metallurgy, casting and cutting, post-combustion unit, dedusting unit, vessels heating stands, casting ingots preheating stands, slow cooling pit, scrap drying and scrap preheating are included. The process units FeCr converter and cryogenic storage of industrial gases are not included. For the determination of indirect emissions, the total electricity consumption within the system boundaries shall be considered	yes	0,352
Iron casting	Casted iron expressed as tons of liquid iron ready alloyed, skinned, and ready for casting	All processes directly or indirectly linked to the process steps melting shop, casting shop, core shop and finishing are included. For the determination of indirect emissions, only the electricity consumption of melting processes within the system boundaries shall be considered	yes	0,325
Mineral wool	Mineral wool insulation products for thermal, acoustic and fire applications manufactured using glass, rock or slag	All processes directly or indirectly linked to the production steps melting, fibreising and injection of binders, curing and drying and forming are included. For the determination of indirect emissions, the total electricity consumption within the system boundaries shall be considered	no	0,682
Plasterboard	The benchmark covers boards, sheets, panels, tiles, similar articles of plaster/compositions based on plaster, (not) faced/reinforced with paper/paperboard only, excluding articles agglomerated with plaster, ornamented (in tonnes of stucco). High-density gypsum fibreboards not covered by this product benchmark	All processes directly or indirectly linked to the production steps milling, drying, calcining and board drying are included. For the determination of indirect emissions, only the electricity consumption of heat pumps applied in the drying stage shall be considered	no	0,131

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
Carbon black	Furnace carbon black. Gas- and lamp black products are not covered by this benchmark	All processes directly or indirectly linked to the production of furnace carbon black as well as finishing, packaging and flaring are included. For the determination of indirect emissions, the total electricity consumption within the system boundaries shall be considered	yes	1,954
Ammonia	Ammonia (NH_3), to be recorded in tons produced	All processes directly or indirectly linked to the production of the ammonia and the intermediate product hydrogen are included. For the determination of indirect emissions, the total electricity consumption within the system boundaries shall be considered	yes	1,619
Steam cracking	Mix of high value chemicals (HVC) expressed as total mass of acetylene, ethylene, propylene, butadiene, benzene and hydrogen excluding HVC from supplemental feed (hydrogen, ethylene, other HVC) with an ethylene content in the total product mix of at least 30 mass-percent and a content of HVC, fuel gas, butenes and liquid hydrocarbons of together at least 50 mass-percent of the total product mix	All processes directly or indirectly linked to the production of high value chemicals as purified product or intermediate product with concentrated content of the respective HVC in the lowest tradable form (raw C4, unhydrogenated pygas) are included except C4 extraction (butadiene plant), C4-hydrogenation, hydrotreating of pyrolysis gasoline and aromatics extraction and logistics/storage for daily operation. For the determination of indirect emissions, the total electricity consumption within the system boundaries shall be considered	yes	0,702
Aromatics	Mix of aromatics expressed as CO_2 weighted tonne (CWT)	All processes directly or indirectly linked to the aromatics sub-units pygas hydrotreater, benzene/toluene/xylene (BTX) extraction, TDP, HDA, xylene isomerisation, P-xylene units, cumene production and Cyclo-hexane production are included. For the determination of indirect emissions, the total electricity consumption within the system boundaries shall be considered	yes	0,0295

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
Styrene	Styrene monomer (vinyl benzene, CAS number: 100-42-5)	All processes directly or indirectly linked to the production of styrene as well as the intermediate product ethylbenzene (with the amount used as feed for the styrene production) are included. For the determination of indirect emissions, the total electricity consumption within the system boundaries shall be considered	yes	0,527
Hydrogen	Pure hydrogen and mixtures of hydrogen and carbon monoxide having a hydrogen content ≥ 60 % mole fraction of total contained hydrogen plus carbon monoxide based on the aggregation of all hydrogen- and carbon-monoxide-containing product streams exported from the sub-installation concerned expressed as 100 % hydrogen	All relevant process elements directly or indirectly linked to the production of hydrogen and the separation of hydrogen and carbon monoxide are included. These elements lie between: (a) the point(s) of entry of hydrocarbon feedstock(s) and, if separate, fuel(s); (b) the points of exit of all product streams containing hydrogen and/or carbon monoxide; (c) the point(s) of entry or exit of import or export heat. For the determination of indirect emissions, the total electricity consumption within the system boundaries shall be considered	yes	8,85
Synthesis gas	Mixtures of hydrogen and carbon monoxide having a hydrogen content < 60 % mole fraction of total contained hydrogen plus carbon monoxide based on the aggregation of all hydrogen- and carbon-monoxide-containing product streams exported from the sub-installation concerned referred to 47 volume-percent hydrogen	All relevant process elements directly or indirectly linked to the production of syngas and the separation of hydrogen and carbon monoxide are included. These elements lie between: (a) the point(s) of entry of hydrocarbon feedstock(s) and, if separate, fuel(s); (b) the points of exit of all product streams containing hydrogen1 and/or carbon monoxide1; (c) the point(s) of entry or exit of import or export heat. For the determination of indirect emissions, the total electricity consumption within the system boundaries shall be considered	yes	0,242

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
Ethylene oxide/ ethylene glycols	The ethylene oxide/ethylene glycol benchmark covers the products ethylene oxide (EO, high purity), monoethylene glycol (MEG, standard grade + fibre grade (high purity)), diethylene glycol (DEG), triethylene glycol (TEG). The total amount of products is expressed in terms of EO-equivalents (EOE), which are defined as the amount of EO (in mass) that is embedded in one mass unit of the specific glycol	All processes directly or indirectly linked to the process units EO production, EO purification and glycol section are included. The total electricity consumption (and the related indirect emissions) within the system boundaries is covered by this product benchmark	yes	0,512

If no other reference is given, all product benchmarks refer to 1 ton of product produced expressed as saleable (net) production and to 100 % purity of the substance concerned.

All definitions of processes and emissions covered (system boundaries) include flares where they occur.

The carbon leakage exposure status of the benchmarked products is based on Decision 2010/2/EU and is valid for 2013 and 2014. Further sectors might be added to this list by Commission Decision.

3. **Heat and fuel benchmarks**

Benchmark	Benchmark value (allowances/TJ)
Heat benchmark	62,3
Fuel benchmark	56,1

ANNEX II

SPECIFIC PRODUCT BENCHMARKS

1. **Refineries benchmark: CWT functions**

CWT function	Description	Basis (kt/a)	CWT factor
Atmospheric Crude Distillation	Mild Crude Unit, Standard Crude Unit	F	1,00
Vacuum Distillation	Mild Vacuum Fractionation, Standard Vacuum Column, Vacuum Fractionating Column Vacuum distillation factor also includes average energy and emissions for Heavy Feed Vacuum (HFV) unit. Since this is always in series with the MVU, HFV capacity is not counted separately	F	0,85
Solvent Deasphalting	Conventional Solvent, Supercritical Solvent	F	2,45
Visbreaking	Atmospheric Residuum (w/o a Soaker Drum), Atmospheric Residuum (with a Soaker Drum), Vacuum Bottoms Feed (w/o a Soaker Drum), Vacuum Bottoms Feed (with a Soaker Drum) Visbreaking factor also includes average energy and emissions for Vacuum Flasher Column (VAC VFL) but capacity is not counted separately	F	1,40
Thermal Cracking	Thermal cracking factor also includes average energy and emissions for Vacuum Flasher Column (VAC VFL) but capacity is not counted separately	F	2,70
Delayed Coking	Delayed Coking	F	2,20
Fluid Coking	Fluid Coking	F	7,60
Flexicoking	Flexicoking	F	16,60
Coke Calcining	Vertical-Axis Hearth, Horizontal-Axis Rotary Kiln	P	12,75
Fluid Catalytic Cracking	Fluid Catalytic Cracking, Mild Residuum Catalytic Cracking, Residual Catalytic Cracking	F	5,50
Other Catalytic Cracking	Houdry Catalytic Cracking, Thermofor Catalytic Cracking	F	4,10
Distillate/Gasoil Hydrocracking	Mild Hydrocracking, Severe Hydrocracking, Naphtha Hydrocracking	F	2,85
Residual Hydrocracking	H-Oil, LC-Fining™ and Hycon	F	3,75
Naphtha/Gasoline Hydrotreating	Benzene Saturation, Desulphurisation of C4–C6 Feeds, Conventional Naphtha H/T, Diolefin to Olefin Saturation, Diolefin to Olefin Saturation of Alkylation Feed, FCC Gasoline hydrotreating with minimum octane loss, Olefinic Alkylation of Thio S, S-Zorb™ Process, Selective H/T of Pygas/Naphtha, Pygas/Naphtha Desulphurisation, Selective H/T of Pygas/Naphtha Naphtha hydrotreating factor includes energy and emissions for Reactor for Selective H/T (NHYT/RXST) but capacity is not counted separately	F	1,10

CWT function	Description	Basis (kt/a)	CWT factor
Kerosene/Diesel Hydrotreating	Aromatic Saturation, Conventional H/T, Solvent aromatics hydrogenation, Conventional Distillate H/T, High Severity Distillate H/T, Ultra-High Severity H/T, Middle Distillate Dewaxing, S-Zorb™ Process, Selective Hydrotreating of Distillates	F	0,90
Residual Hydro-treating	Desulphurisation of Atmospheric Residuum Desulphurisation of Vacuum Residuum	F	1,55
VGO Hydrotreating	Hydrodesulphurisation/denitrification, Hydrodesulphurisation	F	0,90
Hydrogen Production	Steam Methane Reforming, Steam Naphtha Reforming, Partial Oxidation Units of Light Feeds Factor for hydrogen production includes energy and emissions for purification (H_2PURE), but capacity is not counted separately	P	300,00
Catalytic Reforming	Continuous Regeneration, Cyclic, Semi-Regenerative, AROMAX	F	4,95
Alkylation	Alkylation with HF Acid, Alkylation with Sulfuric Acid, Polymerisation C3 Olefin Feed, Polymerisation C3/C4 Feed, Dimersol Factor for alkylation/polymerisation includes energy and emissions for acid regeneration (ACID), but capacity is not counted separately	P	7,25
C4 Isomerisation	C4 Isomerisation Factor also includes energy and emissions related to average EU-27 special fractionation (DIB) correlated with C4 isomerisation	R	3,25
C5/C6 Isomerisation	C5/C6 Isomerisation Factor also includes energy and emissions related to average EU-27 special fractionation (DIH) correlated with C5 isomerisation	R	2,85
Oxygenate Production	MBTE Distillation Units, MTBE Extractive Units, ETBE, TAME, Isooctene Production	P	5,60
Propylene Production	Chemical Grade, Polymer grade	F	3,45
Asphalt Manufacture	Asphalt and Bitumen Manufacture Production figure should include Polymer-Modified Asphalt. CWT factor includes blowing	P	2,10
Polymer-Modified Asphalt Blending	Polymer-Modified Asphalt Blending	P	0,55
Sulphur Recovery	Sulphur Recovery Factor for sulfur recovery includes energy and emissions for tail gas recovery (TRU) and H2S Springer Unit (U32), but capacity is not counted separately	P	18,60
Aromatic Solvent Extraction	ASE: Extraction Distillation, ASE: Liquid/Liquid Extraction, ASE: Liq/Liq w/Extr. Distillation CWT factor cover all feeds including Pygas after hydrotreatment. Pygas hydrotreating should be accounted under naphtha hydrotreatment	F	5,25
Hydrodealkylation	Hydrodealkylation	F	2,45

CWT function	Description	Basis (kt/a)	CWT factor
TDP/TDA	Toluene Disproportionation/Dealkylation	F	1,85
Cyclohexane production	Cyclohexane production	P	3,00
Xylene Isomerisation	Xylene Isomerisation	F	1,85
Paraxylene production	Paraxylene Adsorption, Paraxylene Crystallisation Factor also includes energy and emissions for Xylene Splitter and Orthoxylene Rerun Column	P	6,40
Metaxylene production	Metaxylene production	P	11,10
Phtalic anhydride production	Phtalic anhydride production	P	14,40
Maleic anhydride production	Maleic anhydride production	P	20,80
Ethylbenzene production	Ethylbenzene production Factor also includes energy and emissions for Ethylbenzene distillation	P	1,55
Cumene production	Cumene production	P	5,00
Phenol production	Phenol production	P	1,15
Lube solvent extraction	Lube solvent extraction: Solvent is Furfural, Solvent is NMP, Solvent is Phenol, Solvent is SO_2	F	2,10
Lube solvent dewaxing	Lube solvent dewaxing: Solvent is Chlorocarbon, Solvent is MEK/Toluene, Solvent is MEK/MIBK, Solvent is propane	F	4,55
Catalytic Wax Isomerisation	Catalytic Wax Isomerisation and Dewaxing, Selective Wax Cracking	F	1,60
Lube Hydrocracker	Lube Hydrocracker w/Multi-Fraction Distillation, Lube Hydrocracker w/Vacuum Stripper	F	2,50
Wax Deoiling	Wax Deoiling: Solvent is Chlorocarbon, Solvent is MEK/Toluene, Solvent is MEK/MIBK, Solvent is Propane	P	12,00
Lube/Wax Hydrotreating	Lube H/F w/Vacuum Stripper, Lube H/T w/Multi-Fraction Distillation, Lube H/T w/Vacuum Stripper, Wax H/F w/Vacuum Stripper, Wax H/T w/Multi-Fraction Distillation, Wax H/T w/Vacuum Stripper	F	1,15
Solvent Hydrotreating	Solvent Hydrotreating	F	1,25
Solvent Fractionation	Solvent Fractionation	F	0,90
Mol sieve for C10 + paraffins	Mol sieve for C10 + paraffins	P	1,85

CWT function	Description	Basis (kt/a)	CWT factor
Partial Oxidation of Residual Feeds (POX) for Fuel	POX Syngas for Fuel	SG	8,20
Partial Oxidation of Residual Feeds (POX) for Hydrogen or Methanol	POX Syngas for Hydrogen or Methanol, POX Syngas for Methanol Factor includes energy and emissions for CO Shift and H_2 Purification (U71) but capacity is not counted separately	SG	44,00
Methanol from syngas	Methanol	P	– 36,20
Air Separation	Air Separation	P (MNm^3 O_2)	8,80
Fractionation of purchased NGL	Fractionation of purchased NGL	F	1,00
Flue gas treatment	DeSOx and deNOx	F (MNm^3)	0,10
Treatment and Compression of Fuel Gas for Sales	Treatment and Compression of Fuel Gas for Sales	kW	0,15
Seawater Desalination	Seawater Desalination	P	1,15

Basis for CWT factors: Net fresh feed (F), Reactor feed (R, includes recycle), Product feed (P), Synthesis gas production for POX units (SG).

2. **Aromatics benchmark: CWT functions**

CWT function	Description	Basis (kt/a)	CWT factor
Naphtha/gasoline hydrotreater	Benzene Saturation, Desulphurisation of C4–C6 Feeds, Conventional Naphtha H/T, Diolefin to Olefin Saturation, Diolefin to Olefin Saturation of Alkylation Feed, FCC Gasoline hydrotreating with minimum octane loss, Olefinic Alkylation of Thio S, S-Zorb™ Process, Selective H/T of Pygas/Naphtha, Pygas/Naphtha Desulphurisation, Selective H/T of Pygas/Naphtha Naphtha hydrotreating factor includes energy and emissions for Reactor for Selective H/T (NHYT/RXST) but capacity is not counted separately	F	1,10
Aromatic solvent extraction	ASE: Extraction Distillation, ASE: Liquid/Liquid Extraction, ASE: Liq/Liq w/Extr. Distillation CWT factor cover all feeds including Pygas after hydrotreatment. Pygas hydrotreating should be accounted under naphtha hydrotreatment	F	5,25
TDP/TDA	Toluene Disproportionation/Dealkylation	F	1,85
Hydrodealkylation	Hydrodealkylation	F	2,45

CWT function	Description	Basis (kt/a)	CWT factor
Xylene isomerisation	Xylene Isomerisation	F	1,85
Paraxylene production	Paraxylene Adsorption, Paraxylene Crystallisation Factor also includes energy and emissions for Xylene Splitter and Orthoxylene Rerun Column	P	6,40
Cyclohexane production	Cyclohexane production	P	3,00
Cumene production	Cumene production	P	5,00

Basis for CWT factors: Net fresh feed (F), Product feed (P).

ANNEX III

HISTORICAL ACTIVITY LEVEL FOR SPECIFIC PRODUCT BENCHMARKS AS REFERRED TO IN ARTICLE 9(7)

1. Member States shall determine the product-related historical activity level for the baseline period for products to which the refinery benchmark as referred to in Annex I applies on the basis of the different CWT functions, their definitions, the basis for throughput as well as the CWT factors as listed in Annex II according to the following formula:

$$HAL_{CWT} = MEDIAN\left(1{,}0183 \cdot \sum_{i=1}^{n} (TP_{i,k} \times CWT_i) + 298 + 0{,}315 \cdot TP_{AD,k}\right)$$

with:

HAL_{CWT}: historical activity level expressed as CWT

$TP_{i,k}$: throughput of the CWT function i in year k of the baseline period

CWT_i: CWT factor of the CWT function i

$TP_{AD,k}$: throughput of the CWT function 'Atmospheric Crude Distillation' in year k of the baseline period

2. Member States shall determine the product-related historical activity level for the baseline period for products to which the lime product benchmark as referred to in Annex I applies according to the following formula:

$$HAL_{lime,standard} = MEDIAN\left(\frac{785 \cdot m_{CaO,k} + 1\,092 \cdot m_{MgO,k}}{751{,}7} \cdot HAL_{lime,uncorrected,k}\right)$$

with:

$HAL_{lime,standard}$: historical activity level for lime production expressed in tons of standard pure lime

$m_{CaO,k}$: content of free CaO in the produced lime in year k of the baseline period expressed as mass-%

In case no data on the content of free CaO is available, a conservative estimate not lower than 85 % shall be applied

$m_{MgO,k}$: content of free MgO in the produced lime in year k of the baseline period expressed as mass-%

In case no data on the content of free MgO is available, a conservative estimate not lower than 0,5 % shall be applied

$HAL_{lime,uncorrected,k}$: uncorrected historical activity level for lime production in year k of the baseline period expressed in tons of lime

3. Member States shall determine the product-related historical activity level for the baseline period for products to which the dolime product benchmark as referred to in Annex I applies according to the following formula:

$$HAL_{dolime,standard} = MEDIAN\left(\frac{785 \cdot m_{CaO,k} + 1\,092 \cdot m_{MgO,k}}{865{,}6} \cdot HAL_{dolime,uncorrected,k}\right)$$

with:

$HAL_{dolime,standard}$: historical activity level for dolime production expressed in tons of standard pure dolime

$m_{CaO,k}$: content of free CaO in the produced dolime in year k of the baseline period expressed as mass-%

In case no data on the content of free CaO is available, a conservative estimate not lower than 52 % shall be applied

$m_{MgO,k}$: content of free MgO in the produced dolime in year k of the baseline period expressed as mass-%

In case no data on the content of free MgO is available, a conservative estimate not lower than 33 % shall be applied

$HAL_{dolime,uncorrected,k}$: uncorrected historical activity level for dolime production in year k of the baseline period expressed in tons of lime

4. Member States shall determine the product-related historical activity level for the baseline period for products to which the steam cracking product benchmark as referred to in Annex I applies according to the following formula:

$$HAL_{HVC,net} = MEDIAN\left(HAL_{HVC,total,k} - HSF_{H,k} - HSF_{E,k} - HSF_{O,k}\right)$$

with:

$HAL_{HVC,net}$: historical activity level for high value chemicals net of high value chemicals produced from supplemental feed expressed in tons of HVC

$HAL_{HVC,total,k}$: historical activity level for total high value chemicals production in year k of the baseline period expressed in tons of HVC

$HSF_{H,k}$: historical supplemental feed of hydrogen in year k of the baseline period expressed in tons of hydrogen

$HSF_{E,k}$: historical supplemental feed of ethylene in year k of the baseline period expressed in tons of ethylene

$HSF_{O,k}$: historical supplemental feed of other high value chemicals than hydrogen and ethylene in year k of the baseline period expressed in tons of HVC

5. Member States shall determine the product-related historical activity level for the baseline period for products to which the aromatics product benchmark as referred to in Annex I applies on the basis of the different CWT functions, their definitions, the basis for throughput as well as the CWT factors as listed in Annex II according to the following formula:

$$HAL_{CWT} = MEDIAN\left(\sum_{i=1}^{n}\left(TP_{i,k} \times CWT_i\right)\right)$$

with:

HAL_{CWT}: historical activity level expressed as CWT

$TP_{i,k}$: throughput of the CWT function i in year k of the baseline period

CWT_i: CWT factor of the CWT function i

6. Member States shall determine the product-related historical activity level for the baseline period for products to which the hydrogen product benchmark as referred to in Annex I applies according to the following formula:

$$HAL_{H2} = MEDIAN\left(HAL_{H2+CO,k} \cdot \left(1 - \frac{1 - VF_{H2,k}}{0{,}4027}\right) \cdot 0{,}00008987\,\frac{t}{Nm^3}\right)$$

with:

HAL_{H2}: historical activity level for hydrogen production referred to 100 % hydrogen

$VF_{H2,k}$: historical production volume fraction of pure hydrogen in year k of the baseline period

$HAL_{H2+CO,k}$: historical activity level for hydrogen production referred to historical hydrogen content expressed as norm cubic meters per year referring to 0 °C and 101,325 kPa in year k of the baseline period

7. Member States shall determine the product-related historical activity level for the baseline period for products to which the synthesis gas (syngas) product benchmark as referred to in Annex I applies according to the following formula:

$$HAL_{syngas} = MEDIAN\left(HAL_{H2+CO,k} \cdot \left(1 - \frac{0,47 - VF_{H2,k}}{0,0863}\right) \cdot 0,0007047 \frac{t}{Nm^3}\right)$$

with:

HAL_{syngas}: historical activity level for synthesis gas production referred to 47 % hydrogen

$VF_{H2,k}$: historical production volume fraction of pure hydrogen in year k of the baseline period

$HAL_{H2+CO,k}$: historical activity level for synthesis gas production referred to historical hydrogen content expressed as norm cubic meters per year referring to 0 °C and 101,325 kPa in year k of the baseline period

8. Member States shall determine the product-related historical activity level for the baseline period for products to which the ethylene oxide/ethylene glycols product benchmark as referred to in Annex I applies according to the following formula:

$$HAL_{EO/EG} = MEDIAN\left(\sum_{i=1}^{n}\left(HAL_{i,k} \times CF_{EOE,i}\right)\right)$$

with:

$HAL_{EO/EG}$: historical activity level for ethylene oxide/ethylene glycols production expressed in tons of ethylene oxide equivalents

$HAL_{i,k}$: historical activity level for the production of the ethylene oxide or glycol i in year k of the baseline period expressed in tons

$CF_{EOE,i}$: conversion factor for the ethylene oxide or glycol i relative to ethylene oxide

Following conversion factors shall be applied:

Ethylene oxide: 1,000

Monoethylene glycol: 0,710

Diethylene glycol: 0,830

Triethylene glycol: 0,880

ANNEX IV

PARAMETERS FOR BASELINE DATA COLLECTION FOR INCUMBENT INSTALLATIONS

For the purposes of the baseline data collection referred to in Article 7(1), Member States shall require the operator to submit at least the following data at installation and sub-installation level for all calendar years of the baseline period chosen in accordance with Article 9(1) (2005-2008 or 2009-2010). In accordance with Article 7(2), Member States may request additional data if necessary:

Parameter	Remarks
Initial installed capacity	Only for each product benchmark sub-installation, expressed in the unit defined for the product concerned in Annex I
The added or reduced capacity as well as the installed capacity of the sub-installation after having had a significant capacity change in case of a significant capacity change between 1 January 2009 and 30 June 2011	Capacities shall be expressed: (1) for the product benchmark sub-installation in the unit defined for the product concerned in Annex I; (2) for the heat benchmark sub-installation as terajoule of measurable heat consumed for the production of products or the production of mechanical energy other than the production of electricity, heating or cooling within the installation's boundaries per year; (3) for the fuel benchmark sub-installation as terajoule of fuel input per year; (4) for the production of process emissions as tonnes of carbon dioxide equivalent emitted per year
Name of product(s)	
NACE code of activity	
PRODCOM codes of product(s)	
Identification as electricity generator	
Historical activity levels	According to type of sub-installation; including for product benchmark sub-installations all annual production volumes on the basis of which the median has been determined
Throughput of all relevant CWT functions	For refinery and aromatics product benchmarks only
Data used for the calculation of the historical activity levels	At least for the lime, dolime, steam cracking, hydrogen and synthesis gas product benchmarks
Total greenhouse gas emissions	Direct emissions only; only if not all emissions in the installation stem from benchmarked products
Greenhouse gas emissions from fuels	Direct emissions only; only if not all emissions in the installation stem from benchmarked products
Greenhouse gas emissions from processes	Only if not all emissions in the installation stem from benchmarked products
Total energy input from fuels within the installation	Only if not all emissions in the installation stem from benchmarked products
Energy input from fuels within the installation not used for production of measurable heat	Only if not all emissions in the installation stem from benchmarked products
Energy input from fuels within the installation used for production of measurable heat	Only if not all emissions in the installation stem from benchmarked products

Parameter	Remarks
Measurable heat consumed	Only if not all emissions in the installation stem from benchmarked products
Measurable heat imported	
Greenhouse gas emissions related to heat production exported to private households	
Measurable heat exported	Only to consumers not covered by the Union scheme, clearly indicating whether or not the consumer is a private household
Electricity consumed in accordance with the relevant system boundary definition (Annex I)	Only for sub-installations belonging to a benchmark where the exchangeability of heat and electricity is relevant
Hydrogen used as fuel for the production of vinyl chloride monomer	Only for sub-installations belonging to the vinyl chloride monomer benchmark

ANNEX V

Parameters for data collection for new entrants

Parameter	Remarks
Name of product(s)	
NACE code of activity	
PRODCOM codes of product(s)	
Initial installed capacity before the significant extension	Only for sub-installations which claim a significant extension of capacity
Added capacity (in case of significant extension)	Only for sub-installations which claim a significant extension of capacity
Installed capacity after the significant extension	Only for sub-installations which claim a significant extension of capacity
Initial installed capacity	Only for new entrants carrying out one or more of the activities indicated in Annex I to Directive 2003/87/EC, which have obtained a greenhouse gas emissions permit for the first time after 30 June 2011, or carrying out an activity which is included in the Community scheme pursuant to Article 24(1) or (2) for the first time; expressed: (1) for the product benchmark sub-installation in the unit defined for the product concerned in Annex I; (2) for the heat benchmark sub-installation as terajoule of measurable heat consumed for the production of products or the production of mechanical energy other than for the production of electricity, heating or cooling within the installation's boundaries per year; (3) for the fuel benchmark sub-installation as terajoule of fuel input per year; (4) for the production of process emissions as tonnes of carbon dioxide equivalent emitted per year
Relevant Capacity Utilisation Factor (RCUF)	For sub-installations other than product benchmark sub-installations
Projected measurable heat imported	
Projected electricity consumed in accordance with the relevant system boundary definition (Annex I)	Only for sub-installations belonging to a benchmark where the exchangeability of heat and electricity is relevant
Projected hydrogen used as fuel for the production of vinyl chloride monomer	Only for sub-installations belonging to the vinyl chloride monomer benchmark
Start of normal operation	Expressed in a date
Date of start-up	
Greenhouse gas emissions	Prior to the start of normal operation expressed in t CO_2eq

ANNEX VI

FACTOR ENSURING THE TRANSITIONAL SYSTEM LEADING TO A DECREASE OF FREE ALLOCATION PURSUANT TO ARTICLE 10a(11) OF DIRECTIVE 2003/87/EC

Year	Value of the factor
2013	0,8000
2014	0,7286
2015	0,6571
2016	0,5857
2017	0,5143
2018	0,4429
2019	0,3714
2020	0,3000

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►B DIRECTIVE 2003/87/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 October 2003

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

(Text with EEA relevance)

(OJ L 275, 25.10.2003, p. 32)

Amended by:

		Official Journal		
		No	page	date
►M1	Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004	L 338	18	13.11.2004
►M2	Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008	L 8	3	13.1.2009
►M3	Regulation (EC) No 219/2009 of the European Parliament and of the Council of 11 March 2009	L 87	109	31.3.2009
►M4	Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009	L 140	63	5.6.2009

▼B

DIRECTIVE 2003/87/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 October 2003

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ([1]),

Having regard to the opinion of the European Economic and Social Committee ([2]),

Having regard to the opinion of the Committee of the Regions ([3]),

Acting in accordance with the procedure laid down in Article 251 of the Treaty ([4]),

Whereas:

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

(2) The Sixth Community Environment Action Programme established by Decision No 1600/2002/EC of the European Parliament and of the Council ([5]) identifies climate change as a priority for action and provides for the establishment of a Community-wide emissions trading scheme by 2005. That Programme recognises that the Community is committed to achieving an 8 % reduction in emissions of greenhouse gases by 2008 to 2012 compared to 1990 levels, and that, in the longer-term, global emissions of greenhouse gases will need to be reduced by approximately 70 % compared to 1990 levels.

(3) The ultimate objective of the United Nations Framework Convention on Climate Change, which was approved by Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change ([6]), is to achieve stabilisation of greenhouse gas concentrations in the atmosphere at a level which prevents dangerous anthropogenic interference with the climate system.

([1]) OJ C 75 E, 26.3.2002, p. 33.
([2]) OJ C 221, 17.9.2002, p. 27.
([3]) OJ C 192, 12.8.2002, p. 59.
([4]) Opinion of the European Parliament of 10 October 2002 (not yet published in the Official Journal), Council Common Position of 18 March 2003 (OJ C 125 E, 27.5.2003, p. 72), Decision of the European Parliament of 2 July 2003 (not yet published in the Official Journal) and Council Decision of 22 July 2003.
([5]) OJ L 242, 10.9.2002, p. 1.
([6]) OJ L 33, 7.2.1994, p. 11.

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(4) Once it enters into force, the Kyoto Protocol, which was approved by Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder ([1]), will commit the Community and its Member States to reducing their aggregate anthropogenic emissions of greenhouse gases listed in Annex A to the Protocol by 8 % compared to 1990 levels in the period 2008 to 2012.

(5) The Community and its Member States have agreed to fulfil their commitments to reduce anthropogenic greenhouse gas emissions under the Kyoto Protocol jointly, in accordance with Decision 2002/358/EC. This Directive aims to contribute to fulfilling the commitments of the European Community and its Member States more effectively, through an efficient European market in greenhouse gas emission allowances, with the least possible diminution of economic development and employment.

(6) Council Decision 93/389/EEC of 24 June 1993 for a monitoring mechanism of Community CO_2 and other greenhouse gas emissions ([2]), established a mechanism for monitoring greenhouse gas emissions and evaluating progress towards meeting commitments in respect of these emissions. This mechanism will assist Member States in determining the total quantity of allowances to allocate.

(7) Community provisions relating to allocation of allowances by the Member States are necessary to contribute to preserving the integrity of the internal market and to avoid distortions of competition.

(8) Member States should have regard when allocating allowances to the potential for industrial process activities to reduce emissions.

(9) Member States may provide that they only issue allowances valid for a five-year period beginning in 2008 to persons in respect of allowances cancelled, corresponding to emission reductions made by those persons on their national territory during a three-year period beginning in 2005.

(10) Starting with the said five-year period, transfers of allowances to another Member State will involve corresponding adjustments of assigned amount units under the Kyoto Protocol.

(11) Member States should ensure that the operators of certain specified activities hold a greenhouse gas emissions permit and that they monitor and report their emissions of greenhouse gases specified in relation to those activities.

(12) Member States should lay down rules on penalties applicable to infringements of this Directive and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.

(13) In order to ensure transparency, the public should have access to information relating to the allocation of allowances and to the results of monitoring of emissions, subject only to restrictions provided for in Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information ([3]).

(14) Member States should submit a report on the implementation of this Directive drawn up on the basis of Council Directive

([1]) OJ L 130, 15.5.2002, p. 1.
([2]) OJ L 167, 9.7.1993, p. 31. Decision as amended by Decision 1999/296/EC (OJ L 117, 5.5.1999, p. 35).
([3]) OJ L 41, 14.2.2003, p. 26.

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91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment ([1]).

(15) The inclusion of additional installations in the Community scheme should be in accordance with the provisions laid down in this Directive, and the coverage of the Community scheme may thereby be extended to emissions of greenhouse gases other than carbon dioxide, *inter alia* from aluminium and chemicals activities.

(16) This Directive should not prevent any Member State from maintaining or establishing national trading schemes regulating emissions of greenhouse gases from activities other than those listed in Annex I or included in the Community scheme, or from installations temporarily excluded from the Community scheme.

(17) Member States may participate in international emissions trading as Parties to the Kyoto Protocol with any other Party included in Annex B thereto.

(18) Linking the Community scheme to greenhouse gas emission trading schemes in third countries will increase the cost-effectiveness of achieving the Community emission reductions target as laid down in Decision 2002/358/EC on the joint fulfilment of commitments.

(19) Project-based mechanisms including Joint Implementation (JI) and the Clean Development Mechanism (CDM) are important to achieve the goals of both reducing global greenhouse gas emissions and increasing the cost-effective functioning of the Community scheme. In accordance with the relevant provisions of the Kyoto Protocol and Marrakech Accords, the use of the mechanisms should be supplemental to domestic action and domestic action will thus constitute a significant element of the effort made.

(20) This Directive will encourage the use of more energy-efficient technologies, including combined heat and power technology, producing less emissions per unit of output, while the future directive of the European Parliament and of the Council on the promotion of cogeneration based on useful heat demand in the internal energy market will specifically promote combined heat and power technology.

(21) Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control ([2]) establishes a general framework for pollution prevention and control, through which greenhouse gas emissions permits may be issued. Directive 96/61/EC should be amended to ensure that emission limit values are not set for direct emissions of greenhouse gases from an installation subject to this Directive and that Member States may choose not to impose requirements relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide on the site, without prejudice to any other requirements pursuant to Directive 96/61/EC.

(22) This Directive is compatible with the United Nations Framework Convention on Climate Change and the Kyoto Protocol. It should be reviewed in the light of developments in that context and to take into account experience in its implementation and progress achieved in monitoring of emissions of greenhouse gases.

(23) Emission allowance trading should form part of a comprehensive and coherent package of policies and measures implemented at Member State and Community level. Without prejudice to the application of Articles 87 and 88 of the Treaty, where activities

([1]) OJ L 377, 31.12.1991, p. 48.
([2]) OJ L 257, 10.10.1996, p. 26.

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are covered by the Community scheme, Member States may consider the implications of regulatory, fiscal or other policies that pursue the same objectives. The review of the Directive should consider the extent to which these objectives have been attained.

(24) The instrument of taxation can be a national policy to limit emissions from installations temporarily excluded.

(25) Policies and measures should be implemented at Member State and Community level across all sectors of the European Union economy, and not only within the industry and energy sectors, in order to generate substantial emissions reductions. The Commission should, in particular, consider policies and measures at Community level in order that the transport sector makes a substantial contribution to the Community and its Member States meeting their climate change obligations under the Kyoto Protocol.

(26) Notwithstanding the multifaceted potential of market-based mechanisms, the European Union strategy for climate change mitigation should be built on a balance between the Community scheme and other types of Community, domestic and international action.

(27) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(28) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ([1]).

(29) As the criteria (1), (5) and (7) of Annex III cannot be amended through comitology, amendments in respect of periods after 2012 should only be made through codecision.

(30) Since the objective of the proposed action, the establishment of a Community scheme, cannot be sufficiently achieved by the Member States acting individually, and can therefore by reason of the scale and effects of the proposed action be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

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(23) Transitional free allocation to installations should be provided for through harmonised Community-wide rules (exante benchmarks) in order to minimise distortions of competition with the Community.

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CHAPTER I

GENERAL PROVISIONS

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Article 1

Subject matter

This Directive establishes a scheme for greenhouse gas emission allowance trading within the Community (hereinafter referred to as

([1]) OJ L 184, 17.7.1999, p. 23.

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the ‘Community scheme’) in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner.

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This Directive also provides for the reductions of greenhouse gas emissions to be increased so as to contribute to the levels of reductions that are considered scientifically necessary to avoid dangerous climate change.

This Directive also lays down provisions for assessing and implementing a stricter Community reduction commitment exceeding 20 %, to be applied upon the approval by the Community of an international agreement on climate change leading to greenhouse gas emission reductions exceeding those required in Article 9, as reflected in the 30 % commitment endorsed by the European Council of March 2007.

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Article 2

Scope

1. This Directive shall apply to emissions from the activities listed in Annex I and greenhouse gases listed in Annex II.

2. This Directive shall apply without prejudice to any requirements pursuant to Directive 96/61/EC.

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3. The application of this Directive to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

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Article 3

Definitions

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

(a) ‘allowance’ means an allowance to emit one tonne of carbon dioxide equivalent during a specified period, which shall be valid only for the purposes of meeting the requirements of this Directive and shall be transferable in accordance with the provisions of this Directive;

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(b) ‘emissions’ means the release of greenhouse gases into the atmosphere from sources in an installation or the release from an aircraft performing an aviation activity listed in Annex I of the gases specified in respect of that activity;

▼M4

(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;

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(d) ‘greenhouse gas emissions permit’ means the permit issued in accordance with Articles 5 and 6;

(e) ‘installation’ means a stationary technical unit where one or more activities listed in Annex I are carried out and any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution;

(f) ‘operator’ means any person who operates or controls an installation or, where this is provided for in national legislation, to whom

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decisive economic power over the technical functioning of the installation has been delegated;

(g) ‘person’ means any natural or legal person;

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(h) ‘new entrant’ means:

— any installation carrying out one or more of the activities indicated in Annex I, which has obtained a greenhouse gas emissions permit for the first time after 30 June 2011,

— any installation carrying out an activity which is included in the Community scheme pursuant to Article 24(1) or (2) for the first time, or

— any installation carrying out one or more of the activities indicated in Annex I or an activity which is included in the Community scheme pursuant to Article 24(1) or (2), which has had a significant extension after 30 June 2011, only in so far as this extension is concerned;

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(i) ‘the public’ means one or more persons and, in accordance with national legislation or practice, associations, organisations or groups of persons;

(j) ‘tonne of carbon dioxide equivalent’ means one metric tonne of carbon dioxide (CO_2) or an amount of any other greenhouse gas listed in Annex II with an equivalent global-warming potential;

▼M1

(k) ‘Annex I Party’ means a Party listed in Annex I to the United Nations Framework Convention on Climate Change (UNFCCC) that has ratified the Kyoto Protocol as specified in Article 1(7) of the Kyoto Protocol;

(l) ‘project activity’ means a project activity approved by one or more Annex I Parties in accordance with Article 6 or Article 12 of the Kyoto Protocol and the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol;

(m) ‘emission reduction unit’ or ‘ERU’ means a unit issued pursuant to Article 6 of the Kyoto Protocol and the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol;

(n) ‘certified emission reduction’ or ‘CER’ means a unit issued pursuant to Article 12 of the Kyoto Protocol and the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol;

▼M2

(o) ‘aircraft operator’ means the person who operates an aircraft at the time it performs an aviation activity listed in Annex I or, where that person is not known or is not identified by the owner of the aircraft, the owner of the aircraft;

(p) ‘commercial air transport operator’ means an operator that, for remuneration, provides scheduled or non-scheduled air transport services to the public for the carriage of passengers, freight or mail;

(q) ‘administering Member State’ means the Member State responsible for administering the Community scheme in respect of an aircraft operator in accordance with Article 18a;

(r) ‘attributed aviation emissions’ means emissions from all flights falling within the aviation activities listed in Annex I which depart from an aerodrome situated in the territory of a Member State and those which arrive in such an aerodrome from a third country;

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(s) ‘historical aviation emissions’ means the mean average of the annual emissions in the calendar years 2004, 2005 and 2006 from aircraft performing an aviation activity listed in Annex I;

▼M4

(t) ‘combustion’ means any oxidation of fuels, regardless of the way in which the heat, electrical or mechanical energy produced by this process is used, and any other directly associated activities, including waste gas scrubbing;

(u) ‘electricity generator’ means an installation that, on or after 1 January 2005, has produced electricity for sale to third parties, and in which no activity listed in Annex I is carried out other than the ‘combustion of fuels’.

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CHAPTER II

AVIATION

Article 3a

Scope

The provisions of this Chapter shall apply to the allocation and issue of allowances in respect of aviation activities listed in Annex I.

Article 3b

Aviation activities

By 2 August 2009, the Commission shall, in accordance with the regulatory procedure referred to in Article 23(2), develop guidelines on the detailed interpretation of the aviation activities listed in Annex I.

Article 3c

Total quantity of allowances for aviation

1. For the period from 1 January 2012 to 31 December 2012, the total quantity of allowances to be allocated to aircraft operators shall be equivalent to 97 % of the historical aviation emissions.

2. For the period referred to in ►M4 Article 13(1) ◄ beginning on 1 January 2013, and, in the absence of any amendments following the review referred to in Article 30(4), for each subsequent period, the total quantity of allowances to be allocated to aircraft operators shall be equivalent to 95 % of the historical aviation emissions multiplied by the number of years in the period.

This percentage may be reviewed as part of the general review of this Directive.

3. The Commission shall review the total quantity of allowances to be allocated to aircraft operators in accordance with Article 30(4).

4. By 2 August 2009, the Commission shall decide on the historical aviation emissions, based on best available data, including estimates based on actual traffic information. That decision shall be considered within the Committee referred to in Article 23(1).

Article 3d

Method of allocation of allowances for aviation through auctioning

1. In the period referred to in Article 3c(1), 15 % of allowances shall be auctioned.

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2. From 1 January 2013, 15 % of allowances shall be auctioned. This percentage may be increased as part of the general review of this Directive.

3. A Regulation shall be adopted containing detailed provisions for the auctioning by Member States of allowances not required to be issued free of charge in accordance with paragraphs 1 and 2 of this Article or Article 3f(8). The number of allowances to be auctioned in each period by each Member State shall be proportionate to its share of the total attributed aviation emissions for all Member States for the reference year reported pursuant to Article 14(3) and verified pursuant to Article 15. For the period referred to in Article 3c(1), the reference year shall be 2010 and for each subsequent period referred to in Article 3c the reference year shall be the calendar year ending 24 months before the start of the period to which the auction relates.

That Regulation, 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).

4. It shall be for Member States to determine the use to be made of revenues generated from the auctioning of allowances. Those revenues should be used to tackle climate change in the EU and third countries, *inter alia*, to reduce greenhouse gas emissions, to adapt to the impacts of climate change in the EU and third countries, especially developing countries, to fund research and development for mitigation and adaptation, including in particular in the fields of aeronautics and air transport, to reduce emissions through low-emission transport and to cover the cost of administering the Community scheme. The proceeds of auctioning should also be used to fund contributions to the Global Energy Efficiency and Renewable Energy Fund, and measures to avoid deforestation.

Member States shall inform the Commission of actions taken pursuant to this paragraph.

5. Information provided to the Commission pursuant to this Directive does not free Member States from the notification obligation laid down in Article 88(3) of the Treaty.

Article 3e

Allocation and issue of allowances to aircraft operators

1. For each period referred to in Article 3c, each aircraft operator may apply for an allocation of allowances that are to be allocated free of charge. An application may be made by submitting to the competent authority in the administering Member State verified tonne-kilometre data for the aviation activities listed in Annex I performed by that aircraft operator for the monitoring year. For the purposes of this Article, the monitoring year shall be the calendar year ending 24 months before the start of the period to which it relates in accordance with Annexes IV and V or, in relation to the period referred to in Article 3c(1), 2010. Any application shall be made at least 21 months before the start of the period to which it relates or, in relation to the period referred to in Article 3c(1), by 31 March 2011.

2. At least 18 months before the start of the period to which the application relates or, in relation to the period referred to in Article 3c (1), by 30 June 2011, Member States shall submit applications received under paragraph 1 to the Commission.

3. At least 15 months before the start of each period referred to in Article 3c(2) or, in relation to the period referred to in Article 3c(1), by 30 September 2011, the Commission shall calculate and adopt a decision setting out:

(a) the total quantity of allowances to be allocated for that period in accordance with Article 3c;

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(b) the number of allowances to be auctioned in that period in accordance with Article 3d;

(c) the number of allowances in the special reserve for aircraft operators in that period in accordance with Article 3f(1);

(d) the number of allowances to be allocated free of charge in that period by subtracting the number of allowances referred to in points (b) and (c) from the total quantity of allowances decided upon under point (a); and

(e) the benchmark to be used to allocate allowances free of charge to aircraft operators whose applications were submitted to the Commission in accordance with paragraph 2.

The benchmark referred to in point (e), expressed as allowances per tonne-kilometre, shall be calculated by dividing the number of allowances referred to in point (d) by the sum of the tonne-kilometre data included in applications submitted to the Commission in accordance with paragraph 2.

4. Within three months from the date on which the Commission adopts a decision under paragraph 3, each administering Member State shall calculate and publish:

(a) the total allocation of allowances for the period to each aircraft operator whose application it submitted to the Commission in accordance with paragraph 2, calculated by multiplying the tonne-kilometre data included in the application by the benchmark referred to in paragraph 3(e); and

(b) the allocation of allowances to each aircraft operator for each year, which shall be determined by dividing its total allocation of allowances for the period calculated under point (a) by the number of years in the period for which that aircraft operator is performing an aviation activity listed in Annex I.

5. By 28 February 2012 and by 28 February of each subsequent year, the competent authority of the administering Member State shall issue to each aircraft operator the number of allowances allocated to that aircraft operator for that year under this Article or Article 3f.

Article 3f

Special reserve for certain aircraft operators

1. In each period referred to in Article 3c(2), 3 % of the total quantity of allowances to be allocated shall be set aside in a special reserve for aircraft operators:

(a) who start performing an aviation activity falling within Annex I after the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3c(2); or

(b) whose tonne-kilometre data increases by an average of more than 18 % annually between the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3c(2) and the second calendar year of that period;

and whose activity under point (a), or additional activity under point (b), is not in whole or in part a continuation of an aviation activity previously performed by another aircraft operator.

2. An aircraft operator who is eligible under paragraph 1 may apply for a free allocation of allowances from the special reserve by making an application to the competent authority of its administering Member State. Any application shall be made by 30 June in the third year of the period referred to in Article 3c(2) to which it relates.

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An allocation to an aircraft operator under paragraph 1(b) shall not exceed 1 000 000 allowances.

3. An application under paragraph 2 shall:

(a) include verified tonne-kilometre data in accordance with Annexes IV and V for the aviation activities listed in Annex I performed by the aircraft operator in the second calendar year of the period referred to in Article 3c(2) to which the application relates;

(b) provide evidence that the criteria for eligibility under paragraph 1 are fulfilled; and

(c) in the case of aircraft operators falling within paragraph 1(b), state:

(i) the percentage increase in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3c(2) and the second calendar year of that period;

(ii) the absolute growth in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3c(2) and the second calendar year of that period; and

(iii) the absolute growth in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3c(2) and the second calendar year of that period which exceeds the percentage specified in paragraph 1(b).

4. No later than six months from the deadline for making an application under paragraph 2, Member States shall submit applications received under that paragraph to the Commission.

5. No later than 12 months from the deadline for making an application under paragraph 2, the Commission shall decide on the benchmark to be used to allocate allowances free of charge to aircraft operators whose applications were submitted to the Commission in accordance with paragraph 4.

Subject to paragraph 6, the benchmark shall be calculated by dividing the number of the allowances in the special reserve by the sum of:

(a) the tonne-kilometre data for aircraft operators falling within paragraph 1(a) included in applications submitted to the Commission in accordance with paragraphs 3(a) and 4; and

(b) the absolute growth in tonne-kilometres exceeding the percentage specified in paragraph 1(b) for aircraft operators falling within paragraph 1(b) included in applications submitted to the Commission in accordance with paragraphs 3(c)(iii) and 4.

6. The benchmark referred to in paragraph 5 shall not result in an annual allocation per tonne-kilometre greater than the annual allocation per tonne-kilometre to aircraft operators under Article 3e(4).

7. Within three months from the date on which the Commission adopts a decision under paragraph 5, each administering Member State shall calculate and publish:

(a) the allocation of allowances from the special reserve to each aircraft operator whose application it submitted to the Commission in accordance with paragraph 4. This allocation shall be calculated by multiplying the benchmark referred to in paragraph 5 by:

(i) in the case of an aircraft operator falling within paragraph 1(a), the tonne-kilometre data included in the application submitted to the Commission under paragraphs 3(a) and 4;

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(ii) in the case of an aircraft operator falling within paragraph 1(b), the absolute growth in tonne-kilometres exceeding the percentage specified in paragraph 1(b) included in the application submitted to the Commission under paragraphs 3(c)(iii) and 4; and

(b) the allocation of allowances to each aircraft operator for each year, which shall be determined by dividing its allocation of allowances under point (a) by the number of full calendar years remaining in the period referred to in Article 3c(2) to which the allocation relates.

8. Any unallocated allowances in the special reserve shall be auctioned by Member States.

9. The Commission may establish detailed rules on the operation of the special reserve under this Article, including the assessment of compliance with eligibility criteria under paragraph 1. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(3).

Article 3g

Monitoring and reporting plans

The administering Member State shall ensure that each aircraft operator submits to the competent authority in that Member State a monitoring plan setting out measures to monitor and report emissions and tonne-kilometre data for the purpose of an application under Article 3e and that such plans are approved by the competent authority in accordance with ►M4 the regulation referred to in Article 14 ◄.

CHAPTER III

STATIONARY INSTALLATIONS

Article 3h

Scope

The provisions of this Chapter shall apply to greenhouse gas emissions permits and the allocation and issue of allowances in respect of activities listed in Annex I other than aviation activities.

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Article 4

Greenhouse gas emissions permits

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

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Article 5

Applications for greenhouse gas emissions permits

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

(a) the installation and its activities including the technology used;

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(b) the raw and auxiliary materials, the use of which is likely to lead to emissions of gases listed in Annex I;

(c) the sources of emissions of gases listed in Annex I from the installation; and

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(d) the measures planned to monitor and report emissions in accordance with the regulation referred to in Article 14.

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

Article 6

Conditions for and contents of the greenhouse gas emissions permit

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

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

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

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2. Greenhouse gas emissions permits shall contain the following:

(a) the name and address of the operator;

(b) a description of the activities and emissions from the installation;

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

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(d) reporting requirements; and

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

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Article 7

Changes relating to installations

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

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Article 8

Coordination with Directive 96/61/EC

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

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Article 9

Community-wide quantity of allowances

The Community-wide quantity of allowances issued each year starting in 2013 shall decrease in a linear manner beginning from the mid-point of the period from 2008 to 2012. The quantity shall decrease by a linear factor of 1,74 % compared to the average annual total quantity of allowances issued by Member States in accordance with the Commission Decisions on their national allocation plans for the period from 2008 to 2012.

The Commission shall, by 30 June 2010, publish the absolute Community-wide quantity of allowances for 2013, based on the total quantities of allowances issued or to be issued by the Member States in accordance with the Commission Decisions on their national allocation plans for the period from 2008 to 2012.

The Commission shall review the linear factor and submit a proposal, where appropriate, to the European Parliament and to the Council as from 2020, with a view to the adoption of a decision by 2025.

Article 9a

Adjustment of the Community-wide quantity of allowances

1. In respect of installations that were included in the Community scheme during the period from 2008 to 2012 pursuant to Article 24(1), the quantity of allowances to be issued from 1 January 2013 shall be adjusted to reflect the average annual quantity of allowances issued in respect of those installations during the period of their inclusion, adjusted by the linear factor referred to in Article 9.

2. In respect of installations carrying out activities listed in Annex I, which are only included in the Community scheme from 2013 onwards, Member States shall ensure that the operators of such installations submit to the relevant competent authority duly substantiated and independently verified emissions data in order for them to be taken into account for the adjustment of the Community-wide quantity of allowances to be issued.

Any such data shall be submitted, by 30 April 2010, to the relevant competent authority in accordance with the provisions adopted pursuant to Article 14 (1).

If the data submitted are duly substantiated, the competent authority shall notify the Commission thereof by 30 June 2010 and the quantity of allowances to be issued, adjusted by the linear factor referred to in Article 9, shall be adjusted accordingly. In the case of installations emitting greenhouse gases other than CO_2, the competent authority may notify a lower amount of emissions according to the emission reduction potential of those installations.

3. The Commission shall publish the adjusted quantities referred to in paragraphs 1 and 2 by 30 September 2010.

4. In respect of installations which are excluded from the Community scheme in accordance with Article 27, the Community-wide quantity of

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allowances to be issued from 1 January 2013 shall be adjusted downwards to reflect the average annual verified emissions of those installations in the period from 2008 to 2010, adjusted by the linear factor referred to in Article 9.

Article 10

Auctioning of allowances

1. From 2013 onwards, Member States shall auction all allowances which are not allocated free of charge in accordance with Article 10a and 10c. By 31 December 2010, the Commission shall determine and publish the estimated amount of allowances to be auctioned.

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

(a) 88 % of the total quantity of allowances to be auctioned being distributed amongst Member States in shares that are identical to the share of verified emissions under the Community scheme for 2005 or the average of the period from 2005 to 2007, whichever one is the highest, of the Member State concerned;

(b) 10 % of the total quantity of allowances to be auctioned being distributed amongst certain Member States for the purpose of solidarity and growth within the Community, thereby increasing the amount of allowances that those Member States auction under point (a) by the percentages specified in Annex IIa; and

(c) 2 % of the total quantity of allowances to be auctioned being 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. The distribution of this percentage amongst the Member States concerned is set out in Annex IIb.

For the purposes of point (a), in respect of Member States which did not participate in the Community scheme in 2005, their share shall be calculated using their verified emissions under the Community scheme in 2007.

If necessary, the percentages referred to in points (b) and (c) shall be adapted in a proportional manner to ensure that the distribution is 10 % and 2 % respectively.

3. Member States shall determine the use of revenues generated from the auctioning of allowances. At least 50 % of the revenues generated from the auctioning of allowances referred to in paragraph 2, including all revenues from the auctioning referred to in paragraph 2, points (b) and (c), or the equivalent in financial value of these revenues, should be used for one or more of the following:

(a) to reduce greenhouse gas emissions, including by contributing 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 adapt to the impacts of climate change and to fund research and development as well as demonstration projects for reducing emissions and for adaptation to climate change, including participation in initiatives within the framework of the European Strategic Energy Technology Plan and the European Technology Platforms;

(b) to develop renewable energies to meet the commitment of the Community to using 20 % renewable energies by 2020, as well as to develop other technologies contributing to the transition to a safe and sustainable low-carbon economy and to help meet the commitment of the Community to increase energy efficiency by 20 % by 2020;

(c) measures to avoid deforestation and increase afforestation and reforestation in developing countries that have ratified the international

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agreement on climate change, to transfer technologies and to facilitate adaptation to the adverse effects of climate change in these countries;

(d) forestry sequestration in the Community;

(e) the environmentally safe capture and geological storage of CO_2, in particular from solid fossil fuel power stations and a range of industrial sectors and subsectors, including in third countries;

(f) to encourage a shift to low-emission and public forms of transport;

(g) to finance research and development in energy efficiency and clean technologies in the sectors covered by this Directive;

(h) measures intended to increase energy efficiency and insulation or to provide financial support in order to address social aspects in lower and middle income households;

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

Member States shall be deemed to have fulfilled the provisions of this paragraph if they have in place and implement fiscal or financial support policies, including in particular in developing countries, or domestic regulatory policies, which leverage financial support, established for the purposes set out in the first subparagraph and which have a value equivalent to at least 50 % of the revenues generated from the auctioning of allowances referred to in paragraph 2, including all revenues from the auctioning referred to in paragraph 2, points (b) and (c).

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

4. By 30 June 2010, the Commission shall adopt a regulation on timing, administration and other aspects of auctioning to ensure that it is conducted in an open, transparent, harmonised and non-discriminatory manner. To this end, the process should be predictable, in particular as regards the timing and sequencing of auctions and the estimated volumes of allowances to be made available.

Auctions shall be designed to ensure that:

(a) operators, and in particular any SMEs covered by the Community scheme, have full, fair and equitable access;

(b) all participants have access to the same information at the same time and that participants do not undermine the operation of the auction;

(c) the organisation and participation in auctions is cost-efficient and undue administrative costs are avoided; and

(d) access to allowances is granted for small emitters.

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

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

5. The Commission shall monitor the functioning of the European carbon market. Each year, it shall submit a report to the European Parliament and to the Council on the functioning of the carbon market including the implementation of the auctions, liquidity and the volumes traded. If necessary, Member States shall ensure that any

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relevant information is submitted to the Commission at least two months before the Commission adopts the report.

Article 10a

Transitional Community-wide rules for harmonised free allocation

1. By 31 December 2010, the Commission shall adopt Community-wide and fully-harmonised implementing measures for the allocation of the allowances referred to in paragraphs 4, 5, 7 and 12, including any necessary provisions for a harmonised application of paragraph 19.

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

The measures referred to in the first subparagraph shall, to the extent feasible, determine Community-wide ex-ante benchmarks so as to ensure that allocation takes place in a manner that provides incentives for reductions in greenhouse gas emissions and energy efficient techniques, by taking account of the most efficient techniques, substitutes, alternative production processes, high efficiency cogeneration, efficient energy recovery of waste gases, use of biomass and capture and storage of CO_2, where such facilities are available, and shall not provide incentives to increase emissions. No free allocation shall be made in respect of any electricity production, except for cases falling within Article 10c and electricity produced from waste gases.

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

In defining the principles for setting ex-ante benchmarks in individual sectors and subsectors, the Commission shall consult the relevant stakeholders, including the sectors and subsectors concerned.

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

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

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

3. Subject to paragraphs 4 and 8, and notwithstanding Article 10c, no free allocation shall be given to electricity generators, to installations for the capture of CO_2, to pipelines for transport of CO_2 or to CO_2 storage sites.

4. Free allocation shall be given to district heating as well as to high efficiency cogeneration, as defined by Directive 2004/8/EC, for economically justifiable demand, in respect of the production of heating or cooling. In each year subsequent to 2013, the total allocation to such installations in respect of the production of that heat shall be adjusted by the linear factor referred to in Article 9.

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5. The maximum annual amount of allowances that is the basis for calculating allocations to installations which are not covered by paragraph 3 and are not new entrants shall not exceed the sum of:

(a) the annual Community-wide total quantity, as determined pursuant to Article 9, multiplied by the share of emissions from installations not covered by paragraph 3 in the total average verified emissions, in the period from 2005 to 2007, from installations covered by the Community scheme in the period from 2008 to 2012; and

(b) the total average annual verified emissions from installations in the period from 2005 to 2007 which are only included in the Community scheme from 2013 onwards and are not covered by paragraph 3, adjusted by the linear factor, as referred to in Article 9.

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

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

Those measures shall be based on ex-ante benchmarks of the indirect emissions of CO_2 per unit of production. The ex-ante benchmarks shall be calculated for a given sector or subsector as the product of the electricity consumption per unit of production corresponding to the most efficient available technologies and of the CO_2 emissions of the relevant European electricity production mix.

7. Five percent of the Community-wide quantity of allowances determined in accordance with Articles 9 and 9a over the period from 2013 to 2020 shall be set aside for new entrants, as the maximum that may be allocated to new entrants in accordance with the rules adopted pursuant to paragraph 1 of this Article. Allowances in this Community-wide reserve that are neither allocated to new entrants nor used pursuant to paragraph 8, 9 or 10 of this Article over the period from 2013 to 2020 shall be auctioned by the Member States, taking into account the level to which installations in Member States have benefited from this reserve, in accordance with Article 10(2) and, for detailed arrangements and timing, Article 10(4), and the relevant implementing provisions.

Allocations shall be adjusted by the linear factor referred to in Article 9.

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

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

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

8. Up to 300 million allowances in the new entrants’ reserve shall be available until 31 December 2015 to help stimulate the construction and operation of up to 12 commercial demonstration projects that aim at the environmentally safe capture and geological storage (CCS) of CO_2 as well as demonstration projects of innovative renewable energy technologies, in the territory of the Union.

The allowances shall be made available for support for demonstration projects that provide for the development, in geographically balanced locations, of a wide range of CCS and innovative renewable energy technologies that are not yet commercially viable. Their award shall be dependent upon the verified avoidance of CO_2 emissions.

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Projects shall be selected on the basis of objective and transparent criteria that include requirements for knowledge-sharing. Those criteria and the measures shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(3), and shall be made available to the public.

Allowances shall be set aside for the projects that meet the criteria referred to in the third subparagraph. Support for these projects shall be given via Member States and shall be complementary to substantial co-financing by the operator of the installation. They could also be co-financed by the Member State concerned, as well as by other instruments. No project shall receive support via the mechanism under this paragraph that exceeds 15 % of the total number of allowances available for this purpose. These allowances shall be taken into account under paragraph 7.

9. Lithuania, which, pursuant to Article 1 of Protocol No 4 on the Ignalina nuclear power plant in Lithuania, annexed to the 2003 Act of Accession, has committed to the closure of unit 2 of the Ignalina Nuclear Power Plant by 31 December 2009, may, if the total verified emissions of Lithuania in the period from 2013 to 2015 within the Community scheme exceed the sum of the free allowances issued to installations in Lithuania for electricity production emissions in that period and three-eighths of the allowances to be auctioned by Lithuania for the period from 2013 to 2020, claim allowances from the new entrants reserve for auctioning in accordance with the regulation referred to in Article 10(4). The maximum amount of such allowances shall be equivalent to the excess emissions in that period to the extent that this excess is due to increased emissions from electricity generation, minus any quantity by which allocations in that Member State in the period from 2008 to 2012 exceeded verified emissions within the Community scheme in Lithuania during that period. Any such allowances shall be taken into account under paragraph 7.

10. Any Member State with an electricity network which is interconnected with Lithuania and which, in 2007, imported more than 15 % of its domestic electricity consumption from Lithuania for its own consumption, and where emissions have increased due to investment in new electricity generation, may apply paragraph 9 mutatis mutandis under the conditions set out in that paragraph.

11. Subject to Article 10b, the amount of allowances allocated free of charge under paragraphs 4 to 7 of this Article in 2013 shall be 80 % of the quantity determined in accordance with the measures referred to in paragraph 1. Thereafter the free allocation shall decrease each year by equal amounts resulting in 30 % free allocation in 2020, with a view to reaching no free allocation in 2027.

12. Subject to Article 10b, in 2013 and in each subsequent year up to 2020, installations in sectors or subsectors which are exposed to a significant risk of carbon leakage shall be allocated, pursuant to paragraph 1, allowances free of charge at 100 % of the quantity determined in accordance with the measures referred to in paragraph 1.

13. By 31 December 2009 and every five years thereafter, after discussion in the European Council, the Commission shall determine a list of the sectors or subsectors referred to in paragraph 12 on the basis of the criteria referred to in paragraphs 14 to 17.

Every year the Commission may, at its own initiative or at the request of a Member State, add a sector or subsector to the list referred to in the first subparagraph if it can be demonstrated, in an analytical report, that this sector or subsector satisfies the criteria in paragraphs 14 to 17, following a change that has a substantial impact on the sector's or subsector's activities.

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

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

14. In order to determine the sectors or subsectors referred to in paragraph 12, the Commission shall assess, at Community level, the extent to which it is possible for the sector or subsector concerned, at the relevant level of disaggregation, to pass on the direct cost of the required allowances and the indirect costs from higher electricity prices resulting from the implementation of this Directive into product prices without significant loss of market share to less carbon efficient installations outside the Community. These assessments shall be based on an average carbon price according to the Commission's impact assessment accompanying the package of implementation measures for the EU's objectives on climate change and renewable energy for 2020 and, if available, trade, production and value added data from the three most recent years for each sector or subsector.

15. A sector or subsector shall be deemed to be exposed to a significant risk of carbon leakage if:

(a) the sum of direct and indirect additional costs induced by the implementation of this Directive would lead to a substantial increase of production costs, calculated as a proportion of the gross value added, of at least 5 %; and

(b) the intensity of trade with third countries, defined as the ratio between the total value of exports to third countries plus the value of imports from third countries and the total market size for the Community (annual turnover plus total imports from third countries), is above 10 %.

16. Notwithstanding paragraph 15, a sector or subsector is also deemed to be exposed to a significant risk of carbon leakage if:

(a) the sum of direct and indirect additional costs induced by the implementation of this Directive would lead to a particularly high increase of production costs, calculated as a proportion of the gross value added, of at least 30 %; or

(b) the intensity of trade with third countries, defined as the ratio between the total value of exports to third countries plus the value of imports from third countries and the total market size for the Community (annual turnover plus total imports from third countries), is above 30 %.

17. The list referred to in paragraph 13 may be supplemented after completion of a qualitative assessment, taking into account, where the relevant data are available, the following criteria:

(a) the extent to which it is possible for individual installations in the sector or subsector concerned to reduce emission levels or electricity consumption, including, as appropriate, the increase in production costs that the related investment may entail, for instance on the basis of the most efficient techniques;

(b) current and projected market characteristics, including when trade exposure or direct and indirect cost increase rates are close to one of the thresholds mentioned in paragraph 16;

(c) profit margins as a potential indicator of long-run investment or relocation decisions.

18. The list referred to in paragraph 13 shall be determined after taking into account, where the relevant data are available, the following:

(a) the extent to which third countries, representing a decisive share of global production of products in sectors or subsectors deemed to be

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at risk of carbon leakage, firmly commit to reducing greenhouse gas emissions in the relevant sectors or subsectors to an extent comparable to that of the Community and within the same time-frame; and

(b) the extent to which the carbon efficiency of installations located in these countries is comparable to that of the Community.

19. No free allocation shall be given to an installation that has ceased its operations, unless the operator demonstrates to the competent authority that this installation will resume production within a specified and reasonable time. Installations for which the greenhouse gas emissions permit has expired or has been withdrawn and installations for which the operation or resumption of operation is technically impossible shall be considered to have ceased operations.

20. The Commission shall, as part of the measures adopted under paragraph 1, include measures for defining installations that partially cease to operate or significantly reduce their capacity, and measures for adapting, as appropriate, the level of free allocations given to them accordingly.

Article 10b

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

1. By 30 June 2010, the Commission shall, in the light of the outcome of the international negotiations and the extent to which these lead to global greenhouse gas emission reductions, and after consulting with all relevant social partners, submit to the European Parliament and to the Council an analytical report assessing the situation with regard to energy-intensive sectors or subsectors that have been determined to be exposed to significant risks of carbon leakage. This shall be accompanied by any appropriate proposals, which may include:

(a) adjustment of the proportion of allowances received free of charge by those sectors or subsectors under Article 10a;

(b) inclusion in the Community scheme of importers of products which are produced by the sectors or subsectors determined in accordance with Article 10a;

(c) assessment of the impact of carbon leakage on Member States' energy security, in particular where the electricity connections with the rest of the Union are insufficient and where there are electricity connections with third countries, and appropriate measures in this regard.

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

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

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Article 10c

Option for transitional free allocation for the modernisation of electricity generation

1. By derogation from Article 10a(1) to (5), Member States may give a transitional free allocation to installations for electricity production in operation by 31 December 2008 or to installations for electricity production for which the investment process was physically initiated by the same date, provided that one of the following conditions is met:

(a) in 2007, the national electricity network was not directly or indirectly connected to the network interconnected system operated by the Union for the Coordination of Transmission of Electricity (UCTE);

(b) in 2007, the national electricity network was only directly or indirectly connected to the network operated by UCTE through a single line with a capacity of less than 400 MW; or

(c) in 2006, more than 30 % of electricity was produced from a single fossil fuel, and the GDP per capita at market price did not exceed 50 % of the average GDP per capita at market price of the Community.

The Member State concerned shall submit to the Commission a national plan that provides for investments in retrofitting and upgrading of the infrastructure and clean technologies. The national plan shall also provide for the diversification of their energy mix and sources of supply for an amount equivalent, to the extent possible, to the market value of the free allocation with respect to the intended investments, while taking into account the need to limit as far as possible directly linked price increases. The Member State concerned shall submit to the Commission, every year, a report on investments made in upgrading infrastructure and clean technologies. Investment undertaken from 25 June 2009 may be counted for this purpose.

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

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

3. Allocations to operators shall be based on the allocation under the verified emissions in 2005-2007 or an ex-ante efficiency benchmark based on the weighted average of emission levels of most greenhouse gas efficient electricity production covered by the Community scheme for installations using different fuels. The weighting may reflect the shares of the different fuels in electricity production in the Member State concerned. The Commission shall, in accordance with the regulatory procedure referred to in Article 23(2), provide guidance to ensure that the allocation methodology avoids undue distortions of competition and minimises negative impacts on the incentives to reduce emissions.

4. Any Member State applying this Article shall require benefiting electricity generators and network operators to report every 12 months on the implementation of their investments referred to in the national

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plan. Member States shall report on this to the Commission and shall make such reports public.

5. Any Member State that intends to allocate allowances on the basis of this Article shall, by 30 September 2011, submit to the Commission an application containing the proposed allocation methodology and individual allocations. An application shall contain:

(a) evidence that the Member State meets at least one of the conditions set out in paragraph 1;

(b) a list of the installations covered by the application and the amount of allowances to be allocated to each installation in accordance with paragraph 3 and the Commission guidance;

(c) the national plan referred to in the second subparagraph of paragraph 1;

(d) monitoring and enforcement provisions with respect to the intended investments pursuant to the national plan;

(e) information showing that the allocations do not create undue distortions of competition.

6. The Commission shall assess the application taking into account the elements set out in paragraph 5 and may reject the application, or any aspect thereof, within six months of receiving the relevant information.

7. Two years before the end of the period during which a Member State may give transitional free allocation to installations for electricity production in operation by 31 December 2008, the Commission shall assess the progress made in the implementation of the national plan. If the Commission considers, on request of the Member State concerned, that there is a need for a possible extension of that period, it may submit to the European Parliament and to the Council appropriate proposals, including the conditions that would have to be met in the case of an extension of that period.

Article 11

National implementation measures

1. Each Member State shall publish and submit to the Commission, by 30 September 2011, the list of installations covered by this Directive in its territory and any free allocation to each installation in its territory calculated in accordance with the rules referred to in Article 10a(1) and Article 10c.

2. By 28 February of each year, the competent authorities shall issue the quantity of allowances that are to be allocated for that year, calculated in accordance with Articles 10, 10a and 10c.

3. Member States may not issue allowances free of charge under paragraph 2 to installations whose inscription in the list referred to in paragraph 1 has been rejected by the Commission.

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CHAPTER IV

PROVISIONS APPLYING TO AVIATION AND STATIONARY INSTALLATIONS

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Article 11a

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

1. Without prejudice to the application of Article 28(3) and (4), paragraphs 2 to 7 of this Article shall apply.

2. To the extent that the levels of CER and ERU use, allowed to operators or aircraft operators by Member States for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph 8, 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 eligible for use in the Community scheme during the period from 2008 to 2012.

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

3. To the extent that the levels of CER and ERU use, allowed to operators or aircraft operators by Member States for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph 8, competent authorities shall allow operators to exchange CERs and ERUs from projects that were registered before 2013 issued in respect of emission reductions from 2013 onwards for allowances valid from 2013 onwards.

The first subparagraph shall apply to CERs and ERUs for all project types which were eligible for use in the Community scheme during the period from 2008 to 2012.

4. To the extent that the levels of CER and ERU use, allowed to operators or aircraft operators by Member States for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph 8, 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 LDCs.

The first subparagraph shall apply to CERs for all project types which were eligible for use in the Community scheme during the period from 2008 to 2012, until those countries have ratified a relevant agreement with the Community or until 2020, whichever is the earlier.

5. To the extent that the levels of CER and ERU use, allowed to operators or aircraft operators by Member States for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph 8 and in the event that the negotiations on an international agreement on climate change are not concluded by 31 December 2009, credits from projects or other emission reducing activities may be used in the Community scheme in accordance with agreements concluded with third countries, specifying levels of use. In accordance with such agreements, operators shall be able to use credits from project activities in those third countries to comply with their obligations under the Community scheme.

6. Any agreements referred to in paragraph 5 shall provide for the use of credits in the Community scheme from project types which were eligible for use in the Community scheme during the period from 2008 to 2012, including renewable energy or energy efficiency technologies which promote technological transfer and sustainable development. Any such agreement may also provide for the use of credits from projects

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where the baseline used is below the level of free allocation under the measures referred to in Article 10a or below the levels required by Community legislation.

7. Once an international agreement on climate change has been reached, only credits from projects from third countries which have ratified that agreement shall be accepted in the Community scheme from 1 January 2013.

8. All existing operators shall be allowed to use credits during the period from 2008 to 2020 up to either the amount allowed to them during the period from 2008 to 2012, or to an amount corresponding to a percentage, which shall not be set below 11 %, of their allocation during the period from 2008 to 2012, whichever is the highest.

Operators shall be able to use credits beyond the 11 % provided for in the first subparagraph, up to an amount which results in their combined free allocation in the period from 2008 to 2012 and overall project credits entitlement equal to a certain percentage of their verified emissions in the period from 2005 to 2007.

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

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

Those measures shall ensure that the overall use of credits allowed does not exceed 50 % of the Community-wide reductions below the 2005 levels of the existing sectors under the Community scheme over the period from 2008 to 2020 and 50 % of the Community-wide reductions below the 2005 levels of new sectors and aviation over the period from the date of their inclusion in the Community scheme to 2020.

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

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

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

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(3). The Commission shall consider submitting to the Committee a draft of the measures to be taken where a Member State so requests.

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Article 11b

Project activities

1. Member States shall take all necessary measures to ensure that baselines for project activities, as defined by subsequent decisions adopted under the UNFCCC or the Kyoto Protocol, undertaken in countries having signed a Treaty of Accession with the Union fully comply with the *acquis communautaire*, including the temporary derogations set out in that Treaty of Accession.

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The Community and its Member States shall only authorise project activities where all project participants have headquarters either in a country that has concluded the international agreement relating to such projects or in a country or sub-federal or regional entity which is linked to the Community scheme pursuant to Article 25.

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2. Except as provided for in paragraphs 3 and 4, Member States hosting project activities shall ensure that no ERUs or CERs are issued for reductions or limitations of greenhouse gas emissions from ►M2 activities ◄ falling within the scope of this Directive.

3. Until 31 December 2012, for JI and CDM project activities which reduce or limit directly the emissions of an installation falling within the scope of this Directive, ERUs and CERs may be issued only if an equal number of allowances is cancelled by the operator of that installation.

4. Until 31 December 2012, for JI and CDM project activities which reduce or limit indirectly the emission level of installations falling within the scope of this Directive, ERUs and CERs may be issued only if an equal number of allowances is cancelled from the national registry of the Member State of the ERUs' or CERs' origin.

5. A Member State that authorises private or public entities to participate in project activities shall remain responsible for the fulfilment of its obligations under the UNFCCC and the Kyoto Protocol and shall ensure that such participation is consistent with the relevant guidelines, modalities and procedures adopted pursuant to the UNFCCC or the Kyoto Protocol.

6. In the case of hydroelectric power production project activities with a generating capacity exceeding 20 MW, Member States shall, when approving such project activities, ensure that relevant international criteria and guidelines, including those contained in the World Commission on Dams November 2000 Report 'Dams and Development — A New Framework for Decision-Making', will be respected during the development of such project activities.

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7. Provisions for the implementation of paragraphs 3 and 4, particularly in respect of the avoidance of double counting, shall be adopted by the Commission in accordance with the regulatory procedure referred to in Article 23(2). The Commission shall adopt provisions for the implementation of paragraph 5 of this Article where the host party meets all eligibility requirements for JI project activities. 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).

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Article 12

Transfer, surrender and cancellation of allowances

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

(a) persons within the Community;

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

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1a. The Commission shall, by 31 December 2010, examine whether the market for emissions allowances is sufficiently protected from insider dealing or market manipulation and, if appropriate, shall bring forward proposals to ensure such protection. The relevant provisions of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) ([1]) may be used with any appropriate adjustments needed to apply them to trade in commodities.

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2. Member States shall ensure that allowances issued by a competent authority of another Member State are recognised for the purpose ►M2 of meeting an aircraft operator's obligations under paragraph 2a or ◄ of meeting an operator's obligations under paragraph 3.

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2a. Administering Member States shall ensure that, by 30 April each year, each aircraft operator surrenders a number of allowances equal to the total emissions during the preceding calendar year from aviation activities listed in Annex I for which it is the aircraft operator, as verified in accordance with Article 15. Member States shall ensure that allowances surrendered in accordance with this paragraph are subsequently cancelled.

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

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3a. An obligation to surrender allowances shall not arise in respect of emissions verified as captured and transported for permanent storage to a facility for which a permit is in force in accordance with Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide ([2]).

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

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

Article 13

Validity of allowances

1. Allowances issued from 1 January 2013 onwards shall be valid for emissions during periods of eight years beginning on 1 January 2013.

2. Four months after the beginning of each period referred to in paragraph 1, allowances which are no longer valid and have not been surrendered and cancelled in accordance with Article 12 shall be cancelled by the competent authority.

([1]) OJ L 96, 12.4.2003, p. 16.
([2]) OJ L 140, 5.6.2009, p. 114.

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

Article 14

Monitoring and reporting of emissions

1. By 31 December 2011, the Commission shall adopt a regulation for the monitoring and reporting of emissions and, where relevant, activity data, from the activities listed in Annex I, for the monitoring and reporting of tonne-kilometre data for the purpose of an application under Articles 3e or 3f, which shall be based on the principles for monitoring and reporting set out in Annex IV and shall specify the global warming potential of each greenhouse gas in the requirements for monitoring and reporting emissions for that gas.

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

2. The regulation referred to in paragraph 1 shall take into account the most accurate and up-to-date scientific evidence available, in particular from the IPCC, and may also specify requirements for operators to report on emissions associated with the production of goods produced by energy intensive industries which may be subject to international competition. That regulation may also specify requirements for this information to be verified independently.

Those requirements may include reporting on levels of emissions from electricity generation covered by the Community scheme associated with the production of such goods.

3. Member States shall ensure that each operator of an installation or an aircraft operator monitors and reports the emissions from that installation during each calendar year, or, from 1 January 2010, the aircraft which it operates, to the competent authority after the end of that year in accordance with the regulation referred to in paragraph 1.

4. The regulation referred to in paragraph 1 may include requirements on the use of automated systems and data exchange formats to harmonise communication on the monitoring plan, the annual emission report and the verification activities between the operator, the verifier and competent authorities.

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Article 15

►M4 Verification and accreditation ◄

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

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

The Commission may adopt detailed provisions for the verification of reports submitted by aircraft operators pursuant to Article 14(3) and applications under Articles 3e and 3f, including the verification procedures to be used by verifiers, in accordance with the regulatory procedure referred to in Article 23(2).

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By 31 December 2011, the Commission shall adopt a regulation for the verification of emission reports based on the principles set out in Annex V and for the accreditation and supervision of verifiers. It shall specify conditions for the accreditation and withdrawal of accreditation, for mutual recognition and peer evaluation of accreditation bodies, as appropriate.

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

Article 15a

Disclosure of information and professional secrecy

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

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

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Article 16

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that such rules are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission ►M2 ———— ◄ and shall notify it without delay of any subsequent amendment affecting them.

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2. Member States shall ensure publication of the names of operators and aircraft operators who are in breach of requirements to surrender sufficient allowances under this Directive.

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

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4. The excess emissions penalty relating to allowances issued from 1 January 2013 onwards shall increase in accordance with the European index of consumer prices.

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5. In the event that an aircraft operator fails to comply with the requirements of this Directive and where other enforcement measures have failed to ensure compliance, its administering Member State may request the Commission to decide on the imposition of an operating ban on the aircraft operator concerned.

6. Any request by an administering Member State under paragraph 5 shall include:

(a) evidence that the aircraft operator has not complied with its obligations under this Directive;

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(b) details of the enforcement action which has been taken by that Member State;

(c) a justification for the imposition of an operating ban at Community level; and

(d) a recommendation for the scope of an operating ban at Community level and any conditions that should be applied.

7. When requests such as those referred to in paragraph 5 are addressed to the Commission, the Commission shall inform the other Member States through their representatives on the Committee referred to in Article 23(1) in accordance with the Committee's Rules of Procedure.

8. The adoption of a decision following a request pursuant to paragraph 5 shall be preceded, when appropriate and practicable, by consultations with the authorities responsible for regulatory oversight of the aircraft operator concerned. Whenever possible, consultations shall be held jointly by the Commission and the Member States.

9. When the Commission is considering whether to adopt a decision following a request pursuant to paragraph 5, it shall disclose to the aircraft operator concerned the essential facts and considerations which form the basis for such decision. The aircraft operator concerned shall be given an opportunity to submit written comments to the Commission within 10 working days from the date of disclosure.

10. At the request of a Member State, the Commission may, in accordance with the regulatory procedure referred to in Article 23(2), adopt a decision to impose an operating ban on the aircraft operator concerned.

11. Each Member State shall enforce, within its territory, any decisions adopted under paragraph 10. It shall inform the Commission of any measures taken to implement such decisions.

12. Where appropriate, detailed rules shall be established in respect of the procedures referred to in this Article. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(3).

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Article 17

Access to information

Decisions relating to the allocation of allowances, information on project activities in which a Member State participates or authorises private or public entities to participate, and the reports of emissions required under the greenhouse gas emissions permit and held by the competent authority, shall be made available to the public in accordance with Directive 2003/4/EC.

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Article 18

Competent authority

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

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Member States shall in particular ensure coordination between their designated focal point for approving project activities pursuant to

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Article 6 (1)(a) of the Kyoto Protocol and their designated national authority for the implementation of Article 12 of the Kyoto Protocol respectively designated in accordance with subsequent decisions adopted under the UNFCCC or the Kyoto Protocol.

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Article 18a

Administering Member State

1. The administering Member State in respect of an aircraft operator shall be:

(a) in the case of an aircraft operator with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers ([1]), the Member State which granted the operating licence in respect of that aircraft operator; and

(b) in all other cases, the Member State with the greatest estimated attributed aviation emissions from flights performed by that aircraft operator in the base year.

2. Where in the first two years of any period referred to in Article 3c, none of the attributed aviation emissions from flights performed by an aircraft operator falling within paragraph 1(b) of this Article are attributed to its administering Member State, the aircraft operator shall be transferred to another administering Member State in respect of the next period. The new administering Member State shall be the Member State with the greatest estimated attributed aviation emissions from flights performed by that aircraft operator during the first two years of the previous period.

3. Based on the best available information, the Commission shall:

(a) before 1 February 2009, publish a list of aircraft operators which performed an aviation activity listed in Annex I on or after 1 January 2006 specifying the administering Member State for each aircraft operator in accordance with paragraph 1; and

(b) before 1 February of each subsequent year, update the list to include aircraft operators which have subsequently performed an aviation activity listed in Annex I.

4. The Commission may, in accordance with the regulatory procedure referred to in Article 23(2), develop guidelines relating to the administration of aircraft operators under this Directive by administering Member States.

5. For the purposes of paragraph 1, ‘base year’ means, in relation to an aircraft operator which started operating in the Community after 1 January 2006, the first calendar year of operation, and in all other cases, the calendar year starting on 1 January 2006.

Article 18b

Assistance from Eurocontrol

For the purposes of carrying out its obligations under Articles 3c(4) and 18a, the Commission may request the assistance of Eurocontrol or another relevant organisation and may conclude to that effect any appropriate agreements with those organisations.

([1]) OJ L 240, 24.8.1992, p. 1.

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Article 19

Registries

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1. Allowances issued from 1 January 2012 onwards shall be held in the Community registry for the execution of processes pertaining to the maintenance of the holding accounts opened in the Member State and the allocation, surrender and cancellation of allowances under the Commission Regulation referred to in paragraph 3.

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

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2. Any person may hold allowances. The registry shall be accessible to the public and shall contain separate accounts to record the allowances held by each person to whom and from whom allowances are issued or transferred.

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3. In order to implement this Directive, the Commission shall adopt a Regulation for a standardised and secured system of registries in the form of standardised electronic databases containing common data elements to track the issue, holding, transfer and cancellation of allowances, to provide for public access and confidentiality as appropriate and to ensure that there are no transfers which are incompatible with the obligations resulting from the Kyoto Protocol. That Regulation shall also include provisions concerning the use and identification of CERs and ERUs in the Community scheme and the monitoring of the level of such use. 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).

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4. The Regulation referred to in paragraph 3 shall contain appropriate modalities for the Community registry to undertake transactions and other operations to implement arrangements referred to in Article 25(1b). That Regulation shall also include processes for the change and incident management for the Community registry with regard to issues in paragraph 1 of this Article. It shall contain appropriate modalities for the Community registry to ensure that initiatives of the Member States pertaining to efficiency improvement, administrative cost management and quality control measures are possible.

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Article 20

Central Administrator

1. The Commission shall designate a Central Administrator to maintain an independent transaction log recording the issue, transfer and cancellation of allowances.

2. The Central Administrator shall conduct an automated check on each transaction in registries through the independent transaction log to ensure there are no irregularities in the issue, transfer and cancellation of allowances.

3. If irregularities are identified through the automated check, the Central Administrator shall inform the Member State or Member States concerned who shall not register the transactions in question or any further transactions relating to the allowances concerned until the irregularities have been resolved.

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Article 21

Reporting by Member States

1. Each year the Member States shall submit to the Commission a report on the application of this Directive. ►M4 That report shall pay particular attention to the arrangements for the allocation of allowances, the operation of registries, the application of the implementing measures on monitoring and reporting, verification and accreditation and issues relating to compliance with this Directive and on the fiscal treatment of allowances, if any. ◄ The first report shall be sent to the Commission by 30 June 2005. The report shall be drawn up on the basis of a questionnaire or outline drafted by the Commission in accordance with the procedure laid down in Article 6 of Directive 91/692/EEC. The questionnaire or outline shall be sent to Member States at least six months before the deadline for the submission of the first report.

2. On the basis of the reports referred to in paragraph 1, the Commission shall publish a report on the application of this Directive within three months of receiving the reports from the Member States.

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3. The Commission shall organise an exchange of information between the competent authorities of the Member States concerning developments relating to issues of allocation, the use of ERUs and CERs in the Community scheme, the operation of registries, monitoring, reporting, verification, accreditation, information technology, and compliance with this Directive.

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Article 21a

Support of capacity-building activities

In accordance with the UNFCCC, the Kyoto Protocol and any subsequent decision adopted for their implementation, the Commission and the Member States shall endeavour to support capacity-building activities in developing countries and countries with economies in transition in order to help them take full advantage of JI and the CDM in a manner that supports their sustainable development strategies and to facilitate the engagement of entities in JI and CDM project development and implementation.

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Article 22

Amendments to the Annexes

The Annexes to this Directive, with the exception of Annexes I, IIa and IIb, may be amended in the light of the reports provided for in Article 21 and of the experience of the application of this Directive. Annexes IV and V may be amended in order to improve the monitoring, reporting and verification of emissions.

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

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Article 23

Committee

1. The Commission shall be assisted by the committee instituted by Article 8 of Decision 93/389/EEC.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

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3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

Article 24

Procedures for unilateral inclusion of additional activities and gases

1. From 2008, Member States may apply emission allowance trading in accordance with this Directive to activities and to greenhouse gases which are not listed in Annex I, taking into account all relevant criteria, in particular the effects on the internal market, potential distortions of competition, the environmental integrity of the Community scheme and the reliability of the planned monitoring and reporting system, provided that inclusion of such activities and greenhouse gases is approved by the Commission

(a) in accordance with the regulatory procedure referred to in Article 23(2), if the inclusion refers to installations which are not covered by Annex I; or

(b) in accordance with the regulatory procedure with scrutiny referred to in Article 23(3), if the inclusion refers to activities and greenhouse gases which are not listed in Annex I. Those measures are designed to amend non-essential elements of this Directive by supplementing it.

2. When the inclusion of additional activities and gases is approved, the Commission may at the same time authorise the issue of additional allowances and may authorise other Member States to include such additional activities and gases.

3. On the initiative of the Commission or at the request of a Member State, a regulation may be adopted on the monitoring of, and reporting on, emissions concerning activities, installations and greenhouse gases which are not listed as a combination in Annex I, if that monitoring and reporting can be carried out with sufficient accuracy.

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

Article 24a

Harmonised rules for projects that reduce emissions

1. In addition to the inclusions provided for in Article 24, implementing measures for issuing allowances or credits in respect of projects administered by Member States that reduce greenhouse gas emissions not covered by the Community scheme may be adopted.

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

Any such measures shall not result in the double-counting of emission reductions nor impede the undertaking of other policy measures to reduce emissions not covered by the Community scheme. Measures shall only be adopted where inclusion is not possible in accordance with Article 24, and the next review of the Community scheme shall consider harmonising the coverage of those emissions across the Community.

▼M4

2. Implementing measures that set out the details for crediting in respect of Community-level projects referred to in paragraph 1 may be adopted.

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

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

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

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Article 25

Links with other greenhouse gas emissions trading schemes

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

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1a. Agreements may be made to provide for the recognition of allowances between the Community scheme and compatible mandatory greenhouse gas emissions trading systems with absolute emissions caps established in any other country or in sub-federal or regional entities.

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

▼M3

2. Where an agreement referred to in paragraph 1 has been concluded, the Commission shall adopt any necessary provisions relating to the mutual recognition of allowances under that agreement. 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).

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Article 25a

Third country measures to reduce the climate change impact of aviation

1. Where a third country adopts measures for reducing the climate change impact of flights departing from that country which land in the Community, the Commission, after consulting with that third country, and with Member States within the Committee referred to in Article 23(1), shall consider options available in order to provide for optimal interaction between the Community scheme and that country's measures.

Where necessary, the Commission may adopt amendments to provide for flights arriving from the third country concerned to be excluded from the aviation activities listed in Annex I or to provide for any other amendments to the aviation activities listed in Annex I which are required by an agreement pursuant to the fourth subparagraph. Those measures, designed to amend non-essential elements of this

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Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(3).

The Commission may propose to the European Parliament and the Council any other amendments to this Directive.

The Commission may also, where appropriate, make recommendations to the Council in accordance with Article 300(1) of the Treaty to open negotiations with a view to concluding an agreement with the third country concerned.

2. The Community and its Member States shall continue to seek an agreement on global measures to reduce greenhouse gas emissions from aviation. In the light of any such agreement, the Commission shall consider whether amendments to this Directive as it applies to aircraft operators are necessary.

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Article 26

Amendment of Directive 96/61/EC

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

‘Where emissions of a greenhouse gas from an installation are specified in Annex I to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (*) in relation to an activity carried out in that installation, the permit shall not include an emission limit value for direct emissions of that gas unless it is necessary to ensure that no significant local pollution is caused.

For activities listed in Annex I to Directive 2003/87/EC, Member States may choose not to impose requirements relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide on the site.

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

The three preceding subparagraphs shall not apply to installations temporarily excluded from the scheme for greenhouse gas emission allowance trading within the Community in accordance with Article 27 of Directive 2003/87/EC.

(*) OJ L 275, 25.10.2003, p. 32.’

▼M4

Article 27

Exclusion of small installations subject to equivalent measures

1. Following consultation with the operator, Member States may exclude from the Community scheme installations which have reported to the competent authority emissions of less than 25 000 tonnes of carbon dioxide equivalent and, where they carry out combustion activities, have a rated thermal input below 35 MW, excluding emissions from biomass, in each of the three years preceding the notification under point (a), and which are subject to measures that will achieve an equivalent contribution to emission reductions, if the Member State concerned complies with the following conditions:

(a) it notifies the Commission of each such installation, specifying the equivalent measures applying to that installation that will achieve an equivalent contribution to emission reductions that are in place, before the list of installations pursuant to Article 11(1) has to be

▼M4

submitted and at the latest when this list is submitted to the Commission;

(b) it confirms that monitoring arrangements are in place to assess whether any installation emits 25 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year. Member States may allow simplified monitoring, reporting and verification measures for installations with average annual verified emissions between 2008 and 2010 which are below 5 000 tonnes a year, in accordance with Article 14;

(c) it confirms that if any installation emits 25 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year or the measures applying to that installation that will achieve an equivalent contribution to emission reductions are no longer in place, the installation will be reintroduced into the Community scheme;

(d) it publishes the information referred to in points (a), (b) and (c) for public comment.

Hospitals may also be excluded if they undertake equivalent measures.

2. If, following a period of three months from the date of notification for public comment, the Commission does not object within a further period of six months, the exclusion shall be deemed approved.

Following the surrender of allowances in respect of the period during which the installation is in the Community scheme, the installation shall be excluded and the Member State shall no longer issue free allowances to the installation pursuant to Article 10a.

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

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

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

Article 28

Adjustments applicable upon the approval by the Community of an international agreement on climate change

1. Within three months of the signature by the Community of an international agreement on climate change leading, by 2020, to mandatory reductions of greenhouse gas emissions exceeding 20 % compared to 1990 levels, as reflected in the 30 % reduction commitment as endorsed by the European Council of March 2007, the Commission shall submit a report assessing, in particular, the following elements:

(a) the nature of the measures agreed upon in the framework of the international negotiations as well as the commitments made by other developed countries to comparable emission reductions to those of the Community and the commitments made by economically more advanced developing countries to contributing adequately according to their responsibilities and respective capabilities;

(b) the implications of the international agreement on climate change, and consequently, options required at Community level, in order to

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move to the more ambitious 30 % reduction target in a balanced, transparent and equitable way, taking into account work under the Kyoto Protocol's first commitment period;

(c) the Community manufacturing industries' competitiveness in the context of carbon leakage risks;

(d) the impact of the international agreement on climate change on other Community economic sectors;

(e) the impact on the Community agriculture sector, including carbon leakage risks;

(f) the appropriate modalities for including emissions and removals related to land use, land use change and forestry in the Community;

(g) afforestation, reforestation, avoided deforestation and forest degradation in third countries in the event of the establishment of any internationally recognised system in this context;

(h) the need for additional Community policies and measures in view of the greenhouse gas reduction commitments of the Community' and of Member States.

2. On the basis of the report referred to in paragraph 1, the Commission shall, as appropriate, submit a legislative proposal to the European Parliament and to the Council amending this Directive pursuant to paragraph 1, with a view to the amending Directive entering into force upon the approval by the Community of the international agreement on climate change and in view of the emission reduction commitment to be implemented under that agreement.

The proposal shall be based upon the principles of transparency, economic efficiency and cost-effectiveness, as well as fairness and solidarity in the distribution of efforts between Member States.

3. The proposal shall allow, as appropriate, operators to use, in addition to the credits provided for in this Directive, CERs, ERUs or other approved credits from third countries which have ratified the international agreement on climate change.

4. The proposal shall also include, as appropriate, any other measures needed to help reach the mandatory reductions in accordance with paragraph 1 in a transparent, balanced and equitable way and, in particular, shall include implementing measures to provide for the use of additional types of project credits by operators in the Community scheme to those referred to in paragraphs 2 to 5 of Article 11a or the use by such operators of other mechanisms created under the international agreement on climate change, as appropriate.

5. The proposal shall include the appropriate transitional and suspensive measures pending the entry into force of the international agreement on climate change.

Article 29

Report to ensure the better functioning of the carbon market

If, on the basis of the regular reports on the carbon market referred to in Article 10(5), the Commission has evidence that the carbon market is not functioning properly, it shall submit a report to the European Parliament and to the Council. The report may be accompanied, if

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appropriate, by proposals aiming at increasing transparency of the carbon market and addressing measures to improve its functioning.

Article 29a

Measures in the event of excessive price fluctuations

1. If, for more than six consecutive months, the allowance price is more than three times the average price of allowances during the two preceding years on the European carbon market, the Commission shall immediately convene a meeting of the Committee established by Article 9 of Decision No 280/2004/EC.

2. If the price evolution referred to in paragraph 1 does not correspond to changing market fundamentals, one of the following measures may be adopted, taking into account the degree of price evolution:

(a) a measure which allows Member States to bring forward the auctioning of a part of the quantity to be auctioned;

(b) a measure which allows Member States to auction up to 25 % of the remaining allowances in the new entrants reserve.

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

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

4. The arrangements for the application of these provisions shall be laid down in the regulation referred to in Article 10(4).

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Article 30

Review and further development

1. On the basis of progress achieved in the monitoring of emissions of greenhouse gases, the Commission may make a proposal to the European Parliament and the Council by 31 December 2004 to amend Annex I to include other activities and emissions of other greenhouse gases listed in Annex II.

2. On the basis of experience of the application of this Directive and of progress achieved in the monitoring of emissions of greenhouse gases and in the light of developments in the international context, the Commission shall draw up a report on the application of this Directive, considering:

(a) how and whether Annex I should be amended to include other relevant sectors, *inter alia* the chemicals, aluminium and transport sectors, activities and emissions of other greenhouse gases listed in Annex II, with a view to further improving the economic efficiency of the scheme;

(b) the relationship of Community emission allowance trading with the international emissions trading that will start in 2008;

(c) further harmonisation of the method of allocation (including auctioning for the time after 2012) and of the criteria for national allocation plans referred to in Annex III;

▼M1

(d) the use of credits from project activities, including the need for harmonisation of the allowed use of ERUs and CERs in the Community scheme;

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(e) the relationship of emissions trading with other policies and measures implemented at Member State and Community level, including taxation, that pursue the same objectives;

(f) whether it is appropriate for there to be a single Community registry;

(g) the level of excess emissions penalties, taking into account, *inter alia*, inflation;

(h) the functioning of the allowance market, covering in particular any possible market disturbances;

(i) how to adapt the Community scheme to an enlarged European Union;

(j) pooling;

(k) the practicality of developing Community-wide benchmarks as a basis for allocation, taking into account the best available techniques and cost-benefit analysis;

▼M1

(l) the impact of project mechanisms on host countries, particularly on their development objectives, whether JI and CDM hydroelectric power production project activities with a generating capacity exceeding 500 MW and having negative environmental or social impacts have been approved, and the future use of CERs or ERUs resulting from any such hydroelectric power production project activities in the Community scheme;

(m) the support for capacity-building efforts in developing countries and countries with economies in transition;

(n) the modalities and procedures for Member States' approval of domestic project activities and for the issuing of allowances in respect of emission reductions or limitations resulting from such activities from 2008;

(o) technical provisions relating to the temporary nature of credits and the limit of 1 % for eligibility for land use, land-use change and forestry project activities as established in Decision 17/CP.7, and provisions relating to the outcome of the evaluation of potential risks associated with the use of genetically modified organisms and potentially invasive alien species by afforestation and reforestation project activities, to allow operators to use CERs and ERUs resulting from land use, land-use change and forestry project activities in the Community scheme from 2008, in accordance with the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol.

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

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3. In advance of each period referred to in Article 11(2), each Member State shall publish in its national allocation plan its intended use of ERUs and CERs and the percentage of the allocation to each installation up to which operators are allowed to use ERUs and CERs in the Community scheme for that period. The total use of ERUs and CERs shall be consistent with the relevant supplementarity obligations under the Kyoto Protocol and the UNFCCC and the decisions adopted thereunder.

▼M1

Member States shall, in accordance with Article 3 of 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 ([1]), report to the Commission every two years on the extent to which domestic action actually constitutes a significant element of the efforts undertaken at national level, as well as the extent to which use of the project mechanisms is actually supplemental to domestic action, and the ratio between them, in accordance with the relevant provisions of the Kyoto Protocol and the decisions adopted thereunder. The Commission shall report on this in accordance with Article 5 of the said Decision. In the light of this report, the Commission shall, if appropriate, make legislative or other proposals to complement provisions adopted by Member States to ensure that use of the mechanisms is supplemental to domestic action within the Community.

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4. By 1 December 2014 the Commission shall, on the basis of monitoring and experience of the application of this Directive, review the functioning of this Directive in relation to aviation activities in Annex I and may make proposals to the European Parliament and the Council pursuant to Article 251 of the Treaty as appropriate. The Commission shall give consideration in particular to:

(a) the implications and impacts of this Directive as regards the overall functioning of the Community scheme;

(b) the functioning of the aviation allowance market, covering in particular any possible market disturbances;

(c) the environmental effectiveness of the Community scheme and the extent by which the total quantity of allowances to be allocated to aircraft operators under Article 3c should be reduced in line with overall EU emissions reduction targets;

(d) the impact of the Community scheme on the aviation sector, including issues of competitiveness, taking into account in particular the effect of climate change policies implemented for aviation outside the EU;

(e) continuing with the special reserve for aircraft operators, taking into account the likely convergence of growth rates across the industry;

(f) the impact of the Community scheme on the structural dependency on aviation transport of islands, landlocked regions, peripheral regions and the outermost regions of the Community;

(g) whether a gateway system should be included to facilitate the trading of allowances between aircraft operators and operators of installations whilst ensuring that no transactions would result in a net transfer of allowances from aircraft operators to operators of installations;

(h) the implications of the exclusion thresholds as specified in Annex I in terms of certified maximum take-off mass and number of flights per year performed by an aircraft operator;

(i) the impact of the exemption from the Community scheme of certain flights performed in the framework of public service obligations imposed in accordance with Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes ([2]);

(j) developments, including the potential for future developments, in the efficiency of aviation and in particular the progress towards meeting the Advisory Council for Aeronautics Research in Europe

([1]) OJ L 49, 19.2.2004, p. 1.
([2]) OJ L 240, 24.8.1992, p. 8.

▼M2

(ACARE) goal to develop and demonstrate technologies able to reduce fuel consumption by 50 % by 2020 and whether further measures to increase efficiency are necessary;

(k) developments in scientific understanding on the climate change impacts of contrails and cirrus clouds caused by aviation with a view to proposing effective mitigation measures.

The Commission shall then report to the European Parliament and the Council.

CHAPTER V

FINAL PROVISIONS

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Article 31

Implementation

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

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

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

Article 32

Entry into force

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

Article 33

Addressees

This Directive is addressed to the Member States.

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ANNEX I

CATEGORIES OF ACTIVITIES TO WHICH THIS DIRECTIVE APPLIES

1. Installations or parts of installations used for research, development and testing of new products and processes and installations exclusively using biomass are not covered by this Directive.

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

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

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

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

6. From 1 January 2012 all flights which arrive at or depart from an aerodrome situated in the territory of a Member State to which the Treaty applies shall be included.

Activities	Greenhouse gases
Combustion of fuels in installations with a total rated thermal input exceeding 20 MW (except in installations for the incineration of hazardous or municipal waste)	Carbon dioxide
Refining of mineral oil	Carbon dioxide
Production of coke	Carbon dioxide
Metal ore (including sulphide ore) roasting or sintering, including pelletisation	Carbon dioxide
Production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2,5 tonnes per hour	Carbon dioxide
Production or processing of ferrous metals (including ferro-alloys) where combustion units with a total rated thermal input exceeding 20 MW are operated. Processing includes, inter alia, rolling mills, re-heaters, annealing furnaces, smitheries, foundries, coating and pickling	Carbon dioxide
Production of primary aluminium	Carbon dioxide and perfluorocarbons
Production of secondary aluminium where combustion units with a total rated thermal input exceeding 20 MW are operated	Carbon dioxide

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Activities	Greenhouse gases
Production or processing of non-ferrous metals, including production of alloys, refining, foundry casting, etc., where combustion units with a total rated thermal input (including fuels used as reducing agents) exceeding 20 MW are operated	Carbon dioxide
Production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Production of lime or calcination of dolomite or magnesite in rotary kilns or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day	Carbon dioxide
Manufacture of mineral wool insulation material using glass, rock or slag with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Drying or calcination of gypsum or production of plaster boards and other gypsum products, where combustion units with a total rated thermal input exceeding 20 MW are operated	Carbon dioxide
Production of pulp from timber or other fibrous materials	Carbon dioxide
Production of paper or cardboard with a production capacity exceeding 20 tonnes per day	Carbon dioxide
Production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues, where combustion units with a total rated thermal input exceeding 20 MW are operated	Carbon dioxide
Production of nitric acid	Carbon dioxide and nitrous oxide
Production of adipic acid	Carbon dioxide and nitrous oxide
Production of glyoxal and glyoxylic acid	Carbon dioxide and nitrous oxide
Production of ammonia	Carbon dioxide
Production of bulk organic chemicals by cracking, reforming, partial or full oxidation or by similar processes, with a production capacity exceeding 100 tonnes per day	Carbon dioxide

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Activities	Greenhouse gases
Production of hydrogen (H_2) and synthesis gas by reforming or partial oxidation with a production capacity exceeding 25 tonnes per day	Carbon dioxide
Production of soda ash (Na_2CO_3) and sodium bicarbonate ($NaHCO_3$)	Carbon dioxide
Capture of greenhouse gases from installations covered by this Directive for the purpose of transport and geological storage in a storage site permitted under Directive 2009/31/EC	Carbon dioxide
Transport of greenhouse gases by pipelines for geological storage in a storage site permitted under Directive 2009/31/EC	Carbon dioxide
Geological storage of greenhouse gases in a storage site permitted under Directive 2009/31/EC	Carbon dioxide
Aviation Flights which depart from or arrive in an aerodrome situated in the territory of a MemberState to which the Treaty applies. This activity shall not include: (a) flights performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government Ministers, of a country other than a Member State, where this is substantiated by an appropriate status indicator in the flight plan; (b) military flights performed by military aircraft and customs and police flights; (c) flights related to search and rescue, fire-fighting flights, humanitarian flights and emergency medical service flights authorised by the appropriate competent authority; (d) any flights performed exclusively under visual flight rules as defined in Annex 2 to the Chicago Convention; (e) flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made; (f) training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew where this is substantiated by an appropriate remark in the flight plan provided that the flight does not serve for the transport of passengers and/or cargo or for the positioning or ferrying of the aircraft; (g) flights performed exclusively for the purpose of scientific research or for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based;	Carbon dioxide

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Activities	Greenhouse gases
(h) flights performed by aircraft with a certified maximum take-off mass of less than 5 700 kg;	
(i) flights performed in the framework of public service obligations imposed in accordance with Regulation (EEC) No 2408/92 on routes within outermost regions, as specified in Article 299(2) of the Treaty, or on routes where the capacity offered does not exceed 30 000 seats per year; and	
(j) flights which, but for this point, would fall within this activity, performed by a commercial air transport operator operating either: — fewer than 243 flights per period for three consecutive four-month periods, or — flights with total annual emissions lower than 10 000 tonnes per year. Flights performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government Ministers, of a MemberState may not be excluded under this point.	

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ANNEX II

GREENHOUSE GASES REFERRED TO IN ARTICLES 3 AND 30

Carbon dioxide (CO_2)

Methane (CH_4)

Nitrous Oxide (N_2O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur Hexafluoride (SF_6)

▼M4

ANNEX IIa

Increases in the percentage of allowances to be auctioned by Member States pursuant to Article 10(2)(a), for the purpose of Community solidarity and growth in order to reduce emissions and adapt to the effects of climate change

	Member State share
Belgium	10 %
Bulgaria	53 %
Czech Republic	31 %
Estonia	42 %
Greece	17 %
Spain	13 %
Italy	2 %
Cyprus	20 %
Latvia	56 %
Lithuania	46 %
Luxembourg	10 %
Hungary	28 %
Malta	23 %
Poland	39 %
Portugal	16 %
Romania	53 %
Slovenia	20 %
Slovakia	41 %
Sweden	10 %

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ANNEX IIb

DISTRIBUTION OF ALLOWANCES TO BE AUCTIONED BY MEMBER STATES PURSUANT TO ARTICLE 10(2)(c) REFLECTING EARLY EFFORTS OF SOME MEMBER STATES TO ACHIEVE 20 % REDUCTION OF GREENHOUSE GAS EMISSIONS

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

▼B

ANNEX IV

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

▼M2

PART A — Monitoring and reporting of emissions from stationary installations

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Monitoring of carbon dioxide emissions

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

Calculation

Calculations of emissions shall be performed using the formula:

Activity data × Emission factor × Oxidation factor

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

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

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

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

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

Measurement

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

Monitoring of emissions of other greenhouse gases

▼M3

Standardised or accepted methods shall be used, developed by the Commission in collaboration with all relevant stakeholders. Those measures, designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(3).

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Reporting of emissions

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

A. Data identifying the installation, including:

— Name of the installation;

— Its address, including postcode and country;

— Type and number of Annex I activities carried out in the installation;

— Address, telephone, fax and email details for a contact person; and

— Name of the owner of the installation, and of any parent company.

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

— Activity data;

— Emission factors;

— Oxidation factors;

— Total emissions; and

— Uncertainty.

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

— Total emissions;

— Information on the reliability of measurement methods; and

— Uncertainty.

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

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

▼M2

PART B — Monitoring and reporting of emissions from aviation activities

Monitoring of carbon dioxide emissions

Emissions shall be monitored by calculation. Emissions shall be calculated using the formula:

Fuel consumption × emission factor

Fuel consumption shall include fuel consumed by the auxiliary power unit. Actual fuel consumption for each flight shall be used wherever possible and shall be calculated using the formula:

Amount of fuel contained in aircraft tanks once fuel uplift for the flight is complete – amount of fuel contained in aircraft tanks once fuel uplift for subsequent flight is complete + fuel uplift for that subsequent flight.

If actual fuel consumption data are not available, a standardised tiered method shall be used to estimate fuel consumption data based on best available information.

Default IPCC emission factors, taken from the 2006 IPCC Inventory Guidelines or subsequent updates of these Guidelines, shall be used unless activity-specific emission factors identified by independent accredited laboratories using accepted analytical methods are more accurate. The emission factor for biomass shall be zero.

A separate calculation shall be made for each flight and for each fuel.

Reporting of emissions

Each aircraft operator shall include the following information in its report under Article 14(3):

A. Data identifying the aircraft operator, including:

— name of the aircraft operator,

— its administering Member State,

— its address, including postcode and country and, where different, its contact address in the administering Member State,

— the aircraft registration numbers and types of aircraft used in the period covered by the report to perform the aviation activities listed in Annex I for which it is the aircraft operator,

— the number and issuing authority of the air operator certificate and operating licence under which the aviation activities listed in Annex I for which it is the aircraft operator were performed,

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— address, telephone, fax and e-mail details for a contact person, and

— name of the aircraft owner.

B. For each type of fuel for which emissions are calculated:

— fuel consumption,

— emission factor,

— total aggregated emissions from all flights performed during the period covered by the report which fall within the aviation activities listed in Annex I for which it is the aircraft operator,

— aggregated emissions from:

— all flights performed during the period covered by the report which fall within the aviation activities listed in Annex I for which it is the aircraft operator and which departed from an aerodrome situated in the territory of a Member State and arrived at an aerodrome situated in the territory of the same Member State,

— all other flights performed during the period covered by the report which fall within the aviation activities listed in Annex I for which it is the aircraft operator,

— aggregated emissions from all flights performed during the period covered by the report which fall within the aviation activities listed in Annex I for which it is the aircraft operator and which:

— departed from each Member State, and

— arrived in each Member State from a third country,

— uncertainty.

Monitoring of tonne-kilometre data for the purpose of Articles 3e and 3f

For the purpose of applying for an allocation of allowances in accordance with Article 3e(1) or Article 3f(2), the amount of aviation activity shall be calculated in tonne-kilometres using the following formula:

tonne-kilometres = distance × payload

where:

‘distance’ means the great circle distance between the aerodrome of departure and the aerodrome of arrival plus an additional fixed factor of 95 km; and

‘payload’ means the total mass of freight, mail and passengers carried.

For the purposes of calculating the payload:

— the number of passengers shall be the number of persons on-board excluding crew members,

— an aircraft operator may choose to apply either the actual or standard mass for passengers and checked baggage contained in its mass and balance documentation for the relevant flights or a default value of 100 kg for each passenger and his checked baggage.

Reporting of tonne-kilometre data for the purpose of Articles 3e and 3f

Each aircraft operator shall include the following information in its application under Article 3e(1) or Article 3f(2):

A. Data identifying the aircraft operator, including:

— name of the aircraft operator,

— its administering Member State,

— its address, including postcode and country and, where different, its contact address in the administering Member State,

— the aircraft registration numbers and types of aircraft used during the year covered by the application to perform the aviation activities listed in Annex I for which it is the aircraft operator,

— the number and issuing authority of the air operator certificate and operating licence under which the aviation activities listed in Annex I for which it is the aircraft operator were performed,

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— address, telephone, fax and e-mail details for a contact person, and

— name of the aircraft owner.

B. Tonne-kilometre data:

— number of flights by aerodrome pair,

— number of passenger-kilometres by aerodrome pair,

— number of tonne-kilometres by aerodrome pair,

— chosen method for calculation of mass for passengers and checked baggage,

— total number of tonne-kilometres for all flights performed during the year to which the report relates falling within the aviation activities listed in Annex I for which it is the aircraft operator.

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ANNEX V

CRITERIA FOR VERIFICATION REFERRED TO IN ARTICLE 15

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PART A — Verification of emissions from stationary installations

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General Principles

1. Emissions from each activity listed in Annex I shall be subject to verification.

2. The verification process shall include consideration of the report pursuant to Article 14(3) and of monitoring during the preceding year. It shall address the reliability, credibility and accuracy of monitoring systems and the reported data and information relating to emissions, in particular:

   (a) the reported activity data and related measurements and calculations;

   (b) the choice and the employment of emission factors;

   (c) the calculations leading to the determination of the overall emissions; and

   (d) if measurement is used, the appropriateness of the choice and the employment of measuring methods.

3. Reported emissions may only be validated if reliable and credible data and information allow the emissions to be determined with a high degree of certainty. A high degree of certainty requires the operator to show that:

   (a) the reported data is free of inconsistencies;

   (b) the collection of the data has been carried out in accordance with the applicable scientific standards; and

   (c) the relevant records of the installation are complete and consistent.

4. The verifier shall be given access to all sites and information in relation to the subject of the verification.

5. The verifier shall take into account whether the installation is registered under the Community eco-management and audit scheme (EMAS).

Methodology

Strategic analysis

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

Process analysis

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

Risk analysis

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

9. On the basis of this analysis the verifier shall explicitly identify those sources with a high risk of error and other aspects of the monitoring and reporting procedure which are likely to contribute to errors in the determination of the overall emissions. This especially involves the choice of the emission factors and the calculations necessary to determine the level of the emissions from individual sources. Particular attention shall be given to those sources with a high risk of error and the abovementioned aspects of the monitoring procedure.

10. The verifier shall take into consideration any effective risk control methods applied by the operator with a view to minimising the degree of uncertainty.

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Report

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

Minimum competency requirements for the verifier

12. The verifier shall be independent of the operator, carry out his activities in a sound and objective professional manner, and understand:

(a) the provisions of this Directive, as well as relevant standards and guidance adopted by the Commission pursuant to Article 14(1);

(b) the legislative, regulatory, and administrative requirements relevant to the activities being verified; and

(c) the generation of all information related to each source of emissions in the installation, in particular, relating to the collection, measurement, calculation and reporting of data.

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PART B — Verification of emissions from aviation activities

13. The general principles and methodology set out in this Annex shall apply to the verification of reports of emissions from flights falling within an aviation activity listed in Annex I.

For this purpose:

(a) in paragraph 3, the reference to operator shall be read as if it were a reference to an aircraft operator, and in point (c) of that paragraph the reference to installation shall be read as if it were a reference to the aircraft used to perform the aviation activities covered by the report;

(b) in paragraph 5, the reference to installation shall be read as if it were a reference to the aircraft operator;

(c) in paragraph 6 the reference to activities carried out in the installation shall be read as a reference to aviation activities covered by the report carried out by the aircraft operator;

(d) in paragraph 7 the reference to the site of the installation shall be read as if it were a reference to the sites used by the aircraft operator to perform the aviation activities covered by the report;

(e) in paragraphs 8 and 9 the references to sources of emissions in the installation shall be read as if they were a reference to the aircraft for which the aircraft operator is responsible; and

(f) in paragraphs 10 and 12 the references to operator shall be read as if they were a reference to an aircraft operator.

Additional provisions for the verification of aviation emission reports

14. The verifier shall in particular ascertain that:

(a) all flights falling within an aviation activity listed in Annex I have been taken into account. In this task the verifier shall be assisted by timetable data and other data on the aircraft operator's traffic including data from Eurocontrol requested by that operator;

(b) there is overall consistency between aggregated fuel consumption data and data on fuel purchased or otherwise supplied to the aircraft performing the aviation activity.

Additional provisions for the verification of tonne-kilometre data submitted for the purposes of Articles 3e and 3f

15. The general principles and methodology for verifying emissions reports under Article 14(3) as set out in this Annex shall, where applicable, also apply correspondingly to the verification of aviation tonne-kilometre data.

16. The verifier shall in particular ascertain that only flights actually performed and falling within an aviation activity listed in Annex I for which the aircraft operator is responsible have been taken into account in that operator's application under Articles 3e(1) and 3f(2). In this task the

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verifier shall be assisted by data on the aircraft operator's traffic including data from Eurocontrol requested by that operator. In addition, the verifier shall ascertain that the payload reported by the aircraft operator corresponds to records on payloads kept by that operator for safety purposes.

COMMISSION DECISION

of 5 September 2013

concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council

(notified under document C(2013) 5666)

(Text with EEA relevance)

(2013/448/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty of the Functioning of the European Union,

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC [1], and in particular Articles 10a and 11 thereof,

Whereas:

(1) Auctioning is the rule for the allocation of emission allowances from 2013 onwards to operators of installations within the scope of the emissions trading scheme of the Union (EU ETS). However, eligible operators will continue to receive free allowances between 2013 and 2020. The amount of allowances that each such operator receives is determined on the basis of Union-wide harmonised rules set out in Directive 2003/87/EC and Commission Decision 2011/278/EU [2].

(2) Member States were required to submit to the Commission by 30 September 2011 their National Implementation Measures (NIMs) comprising, among other mandatory information, a list of installations covered by Directive 2003/87/EC on their territory and the preliminary amount of free allowances to be allocated between 2013 and 2020 calculated on the basis of the Union-wide harmonised rules.

(3) Article 18 of the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community [3] provides for transitional measures applying in respect of Croatia and set out in Annex V to this Act. Pursuant to point 10 of that Annex V, Croatia is required to ensure that operators comply with Directive 2003/87/EC for the whole year 2013. Likewise, operators of eligible installations receive free allocation for the whole year 2013 to allow them full compliance with the EU ETS and its principle of annual monitoring, reporting and verification of emissions and surrender of emission allowances. Accordingly, Croatia submitted the NIMs to the Commission in accordance with Article 11(1) of Directive 2003/87/EC and Article 15(1) of Decision 2011/278/EU.

(4) To ensure data quality and comparability, the Commission provided an electronic template for the submission of the NIMs. All Member States submitted in this or in a similar format a list of installations, a table containing all relevant data per installation and a methodology report setting out the data collection process conducted by Member States' authorities.

(5) Given the wide range of information and data submitted, the Commission first analysed the completeness of all the NIMs. Where the Commission noted that submissions were incomplete, it requested additional information from the Member States concerned. In reply to those requests, the relevant authorities submitted additional relevant information in order to complete the submitted NIMs.

(6) The NIMs, including the preliminary total annual amounts of emission allowances to be allocated for free between 2013 and 2020, have then been evaluated against the criteria contained in Directive 2003/87/EC, notably Article 10a thereof, and in Decision 2011/278/EU, taking into account the Commission's guidance documents to Member States endorsed by the Climate Change Committee on 14 April 2011. Where applicable, account has been taken of the guidance on interpretation of Annex I to Directive 2003/87/EC.

[1] OJ L 275, 25.10.2003, p. 32.

[2] Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 130, 17.5.2011, p. 1).

[3] OJ L 112, 24.4.2012, p. 21.

(7) The Commission carried out an in-depth compliance assessment of the NIMs for each individual Member State. As part of that comprehensive assessment, the Commission analysed the consistency of the data itself and the consistency of the data with the harmonised allocation rules. First, the Commission examined the eligibility of installations for free allocation, the division of installations into subinstallations and their boundaries. The Commission then analysed the application of the correct benchmark values to the relevant subinstallations. Considering that for product-benchmark subinstallations Decision 2011/278/EU lays down, in principle, for each product one benchmark, the Commission paid particular attention to the application of the benchmark value to the final product produced in accordance with the product definition and the system boundaries set out in Annex I to Decision 2011/278/EU. Furthermore, given the significant impact on allocations, the Commission analysed in detail the calculation of the historical activity levels of installations, cases of significant capacity changes during the baseline period as well as cases of installations starting operation during the baseline period, the calculation of the preliminary number of emission allowances to be allocated free of charge taking into account the exchangeability of fuel and electricity, the carbon leakage status as well as heat exports to private households. Further statistical analyses and plausibility checks using indicators such as, for example, proposed allocation per historical activity level compared to benchmark values or historical activity level compared to production capacity helped in identifying additional potential irregularities in the application of the harmonised allocation rules.

(8) On the basis of the results of that assessment, the Commission carried out a detailed assessment of installations where potential irregularities in the application of the harmonised allocation rules were identified, seeking further clarification from the competent authorities of the Member State concerned.

(9) In the light of the results of that compliance assessment, the Commission considers the NIMs of Belgium, Bulgaria, Denmark, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden and the United Kingdom to be compatible with Directive 2003/87/EC and Decision 2011/278/EU. The installations included in the NIMs by these Member States have been found eligible for free allocation and no inconsistencies with regard to the preliminary total annual amounts of emission allowances allocated free of charge proposed by each of these Member States could be detected.

(10) But, in the light of the results of the assessment, the Commission finds that certain aspects of the NIMs submitted by the Czech Republic and Germany are incompatible with the criteria contained in Directive 2003/87/EC and in Decision 2011/278/EU, taking into account the Commission's guidance documents to Member States endorsed by the Climate Change Committee on 14 April 2011.

(11) The Commission notes that Germany has proposed that seven installations receive an increase in the level of free allocation of emission allowances because it considers this would avoid undue hardship. In accordance with Article 10a of Directive 2003/87/EC and Decision 2011/278/EU, the preliminary amounts of free allocation to be submitted as part of the NIMs are calculated on the basis of harmonised Union-wide rules. Decision 2011/278/EU does not provide for the adjustment which Germany would wish to make on the basis of Article 9(5) of the German Greenhouse Gas Emissions Trading Act — TEHG of 28 July 2011. Whereas until 2012, free allocation of emission allowances was organised nationally, for the period as of 2013 the legislator intentionally established fully-harmonised rules for free allocation to installations, so that all installations are treated in the same manner. Any unilateral change to the preliminary amounts of free allocation calculated by Member States on the basis of Decision 2011/278/EU would undermine this harmonised approach. Germany has not substantiated that the allocation for the installations in question calculated on the basis of Decision 2011/278/EU was manifestly inappropriate having regard to the objective of full harmonisation of allocations to be achieved. Assigning more free allowances to some installations would distort or threaten to distort competition and has cross-border effects given Union-wide trade in all sectors covered by Directive 2003/87/EC. In the light of the principle of equal treatment of installations under the EU ETS and of Member States, the Commission finds that it is therefore appropriate to object to the preliminary amounts of free allocation to certain installations contained in the German NIMs and listed in point A of Annex I.

(12) The Commission finds that the NIMs proposed by Germany also contravene Decision 2011/278/EU because the application of the product benchmark for hot metal in the cases listed in point B of Annex I to this Decision is inconsistent with the relevant rules. In this regard, the Commission observes that in the German NIMs, in cases of basic oxygen furnace (BOF) steelmaking processes and where hot metal from the blast furnace is

not refined to steel within the same installation, but exported for further processing, no free allocation of emission allowances is provided to the operator of the installation with the blast furnace for the production of the hot metal. Instead, the free allocation is provided to the installation where the steel refining takes place.

(13) The Commission notes that for the purposes of allocating emission allowances, product benchmarks have been laid down in Decision 2011/278/EU taking into account the product definitions and the complexity of the production processes that allow for verification of production data and a uniform application of the product benchmarks across the Union. For the application of the product benchmarks, installations are divided into sub-installations, a product benchmark sub-installation being defined as inputs, outputs and corresponding emissions relating to the production of a product for which a benchmark has been set in Annex I to Decision 2011/278/EU. Benchmarks are thus established for products and not for processes. Accordingly, a benchmark has been developed for hot metal, with the product defined as liquid iron saturated with carbon for further processing. The fact that the system boundaries for the hot metal benchmark set out in Annex I to Decision 2011/278/EU comprise the BOF cannot permit Member States to disregard that allocations should take place for the production of a given product. This consideration is corroborated by the fact that the benchmark values should cover all production-related direct emissions. However, it is the production of hot metal in the blast furnace that mainly causes emissions while the process of refining the hot metal to steel in the BOF converter is relatively low in emissions. Accordingly, the benchmark value would be much lower, if it also covered installations importing hot metal and refining it in the BOF converter to steel. Moreover, in the light of the overall scheme for allocation set up by Decision 2011/278/EU, in particular with regard to the rules on significant capacity changes, the allocation proposed by Germany cannot be regarded as consistent. The Commission therefore finds that due to the lack of a corresponding sub-installation that would allow for the determination of the allocation in accordance with Article 10 of Decision 2011/278/EU, installations importing hot metal for further processing cannot be regarded eligible for receiving free allocation on the basis of the hot metal benchmark for the amount of hot metal imported. The Commission therefore objects to the preliminary total annual amounts of free allocation proposed for the installations listed in point B of Annex I to this Decision.

(14) With regard to the application of the benchmark for hot metal in the NIMs as proposed by the Czech Republic, the Commission notes that the allocation to the installation listed under point C with the identifier CZ-existing-CZ-73-CZ-0134-11/M does not correspond to the value of the hot metal benchmark multiplied by the relevant product-related historical activity level as submitted in the NIMs and is therefore not in line with Article 10(2)(a) of Decision 2011/278/EU. The Commission therefore objects to the allocation to this installation unless this error is corrected. Furthermore, the Commission notes that the allocation to the installation listed under point C with the identifier CZ-existing-CZ-52-CZ-0102-05 takes account of processes that are covered by the system boundaries of the hot metal benchmark. The installation, however, does not produce, but imports hot metal. Due to the lack of production of hot metal in the installation with the identifier CZ-existing-CZ-52-CZ-0102-05, and thus a lack of a corresponding product benchmark sub-installation that would allow for the determination of the allocation in accordance with Article 10 of Decision 2011/278/EU, the proposed allocation is not consistent with the allocation rules and may give rise to double counting. The Commission therefore objects to the allocation to the installations listed in point C of Annex I to this Decision.

(15) The Commission notes that the installations referred to in point D of Annex I to this Decision receive an allocation on the basis of a process emissions sub-installation for the production of zinc in the blast furnace and related processes. In this regard, the Commission notes that the emissions covered by the process emissions sub-installation are already covered by the product benchmark sub-installation for hot metal on the basis of which one of the installations also receives an allocation and are thus double counted. The product benchmark sub-installation for hot metal clearly covers inputs, outputs and corresponding emissions relating to the production of hot metal in the blast furnace and all related processes as set out in Annex I to Decision 2011/278/EU, including slag treatment. The NIMs proposed by Germany therefore contravene Article 10(8) of Decision 2011/278/EU and the obligation to avoid double-counting of emissions because certain emissions are accounted for twice in the allocation to these installations. The Commission therefore objects to the allocation to these installations on the basis of a process emissions sub-installation for the production of zinc in the blast furnace and related processes.

(16) The Commission also notes that the list of installations set out in the German NIMs is incomplete and therefore

contravenes Article 11(1) of Directive 2003/87/EC. The list does not include installations producing polymers, in particular S-PVC and E-PVC, and vinyl chloride monomer (VCM) with the quantities of allowances intended to be allocated to each of these installations situated within the territory of Germany, to which that Directive applies and which are referred to in Section 5.1 of the Commission's guidance on the interpretation of Annex I to Directive 2003/87/EC, endorsed by the Climate Change Committee on 18 March 2010. In this regard, the Commission is aware of the opinion brought forward by Germany that the production of polymers, in particular S-PVC and E-PVC, and VCM is not covered by Annex I to Directive 2003/87/EC. The Commission considers that polymers, including S-PVC and E-PVC, and VCM, satisfy the definition of the relevant activity (production of bulk organic chemicals) in Annex I to Directive 2003/87/EC. Accordingly, in close cooperation with Member States and the industry sectors concerned corresponding product benchmarks for S-PVC, E-PVC and VCM were derived as set out in Annex I to Decision 2011/278/EU.

(17) The Commission notes that the fact that the German list of installations is incomplete has undue effects on the allocation on the basis of the heat benchmark subinstallation for installations listed in point E of Annex I to this Decision exporting heat to installations producing bulk organic chemicals. Whereas only heat exports to an installation or other entity not covered by Directive 2003/87/EC give rise to free allocation on the basis of the heat benchmark subinstallation, in the German NIMs, heat exports to installations carrying out activities within the scope of Annex I to Directive 2003/87/EC are taken into account for the allocation to installations listed in point E of Annex I to this Decision. Consequently, the proposed allocations to the installations listed in point E of Annex I are not consistent with the allocation rules. The Commission therefore objects to the allocation to the installations listed in point E of Annex I to this Decision.

(18) In accordance with Articles 9 and 9a of Directive 2003/87/EC, the Commission published by Decision 2010/634/EU [1] the absolute Union-wide quantity of allowances for the period from 2013 to 2020. In this regard, the quantity taken into account pursuant to Article 9 of Directive 2003/87/EC is based on the total quantities of allowances issued by the Member States in accordance with the Commission decisions on their National Allocation Plans for the period from 2008 to 2012. However, after the end of the trading period from 2008 to 2012, additional information and more accurate data has become available to the Commission in particular with regard to the quantity of allowances issued to new entrants from the Member States' New Entrant Reserves and on the use of allowances in Member States' set-asides for Joint Implementation projects established pursuant to Article 3 of Commission Decision 2006/780/EC [2]. Furthermore, with regard to the adjustment of the Union-wide quantity of allowances pursuant to Article 9a of Directive 2003/87/EC, and in particular paragraphs 1 and 4 thereof, account should be taken of the latest scientific data with regard to the global warming potential of greenhouse gases, Commission Decisions C(2011) 3798 and C(2012) 497 to accept the unilateral inclusion of additional greenhouse gases and activities by Italy and the United Kingdom pursuant to Article 24 of Directive 2003/87/EC as well as the exclusion of installations with low emissions from the EU ETS by Germany, Spain, France, Italy, the Netherlands, Slovenia and the United Kingdom, pursuant to Article 27 of Directive 2003/87/EC.

(19) In addition, the absolute Union-wide quantity of allowances should take account of the accession of Croatia to the European Union as well as the extension of the EU ETS to the EEA-EFTA States. Pursuant to point 8 of Annex III to the Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community, the quantity taken into account pursuant to Article 9 of Directive 2003/87/EC is increased as a result of Croatia's accession by the quantity of allowances that Croatia shall auction pursuant to Article 10(1) of Directive 2003/87/EC. The incorporation into the European Economic Area (EEA) Agreement of Directive 2009/29/EC of the European Parliament and of the Council [3] and Decision 2011/278/EU as amended by Commission Decision 2011/745/EU [4] by Decision of the EEA Joint Committee No 152/2012 [5] implies an increase of the total quantity of allowances in the EU ETS as a whole under Articles 9 and 9a of Directive 2003/87/EC. It is therefore necessary to take account of the relevant figures provided by the EEA-EFTA States in Part A of the Appendix to that Directive in the EEA Agreement.

[1] Commission Decision 2010/634/EU of 22 October 2010 adjusting the Union-wide quantity of allowances to be issued under the Union Scheme for 2013 and repealing Decision 2010/384/EU (OJ L 279, 23.10.2010, p. 34).

[2] Commission Decision 2006/780/EC of 13 November 2006 on avoiding double counting of greenhouse gas emission reductions under the Community emissions trading scheme for project activities under the Kyoto Protocol pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ L 316, 16.11.2006, p. 12).

[3] 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 greenhouse gas emission allowance trading scheme of the Community (OJ L 140, 5.6.2009, p. 63).

[4] Commission Decision 2011/745/EU of 11 November 2011 amending Decisions 2010/2/EU and 2011/278/EU as regards the sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage (OJ L 299, 17.11.2011, p. 9).

[5] Decision of the EEA Joint Committee No 152/2012 of 26 July 2012 amending Annex XX (Environment) to the EEA Agreement (OJ L 309, 8.11.2012, p. 38).

(20) Decision 2010/634/EU should therefore be amended accordingly.

(21) In 2014 and each subsequent year, the total quantity of allowances determined for 2013 on the basis of Articles 9 and 9a of Directive 2003/87/EC decreases by a linear factor of 1,74 % from 2010, amounting to 38 264 246 allowances.

(22) Article 10a(5) of Directive 2003/87/EC limits the maximum annual quantity of allowances that is the basis for calculating allocations free of charge to installations not covered by Article 10a(3) of Directive 2003/87/EC. This limit is composed of two elements referred to in points (a) and (b) of Article 10a(5) of Directive 2003/87/EC, each of which has been determined by the Commission on the basis of the quantities determined pursuant to Articles 9 and 9a of Directive 2003/87/EC, data publicly available in the Union registry and information provided by Member States, in particular with regard to the share of emissions from electricity generators and other installations not eligible for free allocation referred to in Article 10a(3) of Directive 2003/87/EC as well as verified emissions in the period from 2005 to 2007 from installations only included in the EU ETS from 2013 onwards, where available, taking into account the latest scientific data with regard to the global warming potential of greenhouse gases.

(23) The limit set by Article 10a(5) of Directive 2003/87/EC may not be exceeded, and this is ensured by the application of an annual cross-sectoral correction factor which, if necessary, reduces the number of free allowances in all installations eligible for free allocation in a uniform manner. Member States have to take this factor into account when deciding on the basis of preliminary allocations and this Decision on the final annual amounts of allocation to installations. Article 15(3) of Decision 2011/278/EU requires the Commission to determine the cross-sectoral correction factor, which is done through comparing the sum of the preliminary total annual amounts of free allocation submitted by Member States to the limit set by Article 10a(5) in the manner set out in Article 15(3) of Decision 2011/278/EU.

(24) Following the incorporation into the EEA Agreement of Directive 2009/29/EC by Decision of the EEA Joint Committee No 152/2012, the limit set by Article 10a(5) of Directive 2003/87/EC, the harmonised allocation rules and the cross-sectoral correction factor are to be applied within the EEA-EFTA countries. It is therefore necessary to take into account the preliminary annual amounts of emission allowances allocated free of charge over the period 2013 to 2020 fixed by the decisions of the EFTA Surveillance Authority of 10 July 2013 concerning the NIMs of Iceland, Liechtenstein and Norway.

(25) The limit set by Article 10a(5) of Directive 2003/87/EC is 809 315 756 allowances in 2013. In order to derive this limit, the Commission first collected from Member States and the EEA-EFTA countries information on whether installations qualify as an electricity generator or other installation covered by Article 10a(3) of Directive 2003/87/EC. The Commission then determined the share of emissions in the period from 2005 to 2007 from the installations not covered by that provision, but included in the EU ETS in the period from 2008 to 2012. The Commission then applied this share of 34,78289436 % to the quantity determined on the basis of Article 9 of Directive 2003/87/EC (1 976 784 044 allowances). To the result of this calculation, the Commission then added 121 733 050 allowances, based on the average annual verified emissions in the period from 2005 to 2007 of relevant installations taking into account the revised scope of the EU ETS as of 2013. In this respect, the Commission used information provided by Member States and the EEA-EFTA countries for the adjustment of the cap. Where annual verified emissions for the period 2005-2007 were not available, the Commission extrapolated, to the extent possible, the relevant emission figures from verified emissions in later years by applying the factor of 1,74 % in reverse direction. The Commission consulted and obtained confirmation from Member States' authorities on information and data used in this respect. The limit set by Article 10a(5) of Directive 2003/87/EC compared to the sum of the preliminary annual amounts of free allocation without application of the factors referred to in Annex VI to Decision 2011/278/EU gives the annual cross-sectoral correction factor as set out in Annex II to this Decision.

(26) Given the improved overview of the number of allowances that will be allocated free of charge that results from this Decision, the Commission is able to better estimate the amount of allowances to be auctioned in accordance with Article 10(1) of Directive 2003/87/EC. Taking into account the limit set by Article 10a(5) of Directive 2003/87/EC, the allocation in respect of heat production pursuant to Article 10a(4) set out in the table below and the size of the new entrants' reserve, the Commission estimates that the amount of allowances to be auctioned in the period from 2013 to 2020 is 8 176 193 157.

(27) The following table sets out the annual allocation in respect of heat production pursuant to Article 10a(4) of Directive 2003/87/EC:

Year	Free allocation under Article 10a(4) of Directive 2003/87/EC
2013	104 326 872
2014	93 819 860
2015	84 216 053
2016	75 513 746
2017	67 735 206
2018	60 673 411
2019	54 076 655
2020	47 798 754

(28) Member States should, on the basis of the NIMs, the cross-sectoral correction factor and the linear factor, proceed to the determination of the final annual amount of emission allowances allocated free of charge for each year over the period from 2013 to 2020. The final annual amount of free emission allowances should be determined by Member States in accordance with this Decision, Directive 2003/87/EC, Decision 2011/278/EU and with other relevant provisions of Union law. Likewise, the EEA EFTA States should proceed to the determination of the final annual amount of allowances allocated free of charge for each year from 2013 to 2020 in accordance with Article 10(9) of Decision 2011/278/EU to installations on their territory on the basis of their NIMs, the cross-sectoral correction factor and the linear factor.

(29) The Commission considers that the allocation of allowances free of charge to installations covered by the EU ETS on the basis of Union-wide harmonised rules does not confer a selective economic advantage to undertakings with the potential to distort competition and affect intra-Union trade. Member States are obliged under Union law to allocate allowances for free and cannot choose to auction the relevant quantities instead. Member States' decisions with regard to the allocation of allowances free of charge cannot therefore be considered as involving State aid in the sense of Articles 107 and 108 TFEU,

HAS ADOPTED THIS DECISION:

CHAPTER I

NATIONAL IMPLEMENTING MEASURES

Article 1

1. The inscription of the installations listed in Annex I to this Decision on the lists of installations covered by Directive 2003/87/EC submitted to the Commission pursuant to Article 11(1) of Directive 2003/87/EC and the corresponding preliminary total annual amounts of emission allowances allocated free of charge to these installations is rejected.

2. No objections are raised should a Member State amend the preliminary total annual amounts of emission allowances submitted for the installations in its territory included in the lists referred to in paragraph 1 and listed in point A of Annex I to this Decision before determining the final total annual amount for each year from 2013 to 2020 in accordance with Article 10(9) of Decision 2011/278/EU to the extent that the amendment consists of excluding any increase in allocation that is not provided for in that Decision.

No objections are raised should a Member State amend the preliminary total annual amounts of emission allowances allocated for free to installations in its territory included in the lists referred to in paragraph 1 and listed in point B of Annex I to this Decision before determining the final total annual amount for each year from 2013 to 2020 in accordance with Article 10(9) of Decision 2011/278/EU to the extent that the amendment consists of excluding any allocation on the basis of the hot metal benchmark to installations importing hot metal as defined in Annex I to Decision 2011/278/EU for further processing. Where this leads to an increase of the preliminary total annual amount of emission allowances in an installation producing and exporting hot metal to an installation listed in point B of Annex I to this Decision, no objections are raised should the Member State concerned amend the preliminary total annual amount of this installation producing and exporting hot metal accordingly.

No objections are raised should a Member State amend the preliminary total annual amounts of emission allowances allocated free of charge to installations in its territory included in the lists referred to in paragraph 1 and listed in point C of Annex I to this Decision before determining the final total annual amount for each year from 2013 to 2020 in accordance with Article 10(9) of Decision 2011/278/EU to the extent that the amendment consists of bringing the allocation in line with Article 10(2)(a) of Decision 2011/278/EU and excluding any allocation for processes that are covered by the system boundaries of the product benchmark for hot metal as defined in Annex I to Decision 2011/278/EU to an installation not producing, but importing hot metal that would otherwise lead to double counting.

No objections are raised should a Member State amend the preliminary total annual amounts of emission allowances allocated free of charge to installations in its territory included in the lists referred to in paragraph 1 and listed in point D of Annex I to this Decision before determining the final total annual amount for each year from 2013 to 2020 in accordance with Article 10(9) of Decision 2011/278/EU to the extent that the amendment consists of excluding any allocation on the

basis of a process emissions sub-installation for the production of zinc in the blast furnace and related processes. Where this leads to an increase of the preliminary allocation under the fuel or heat benchmark sub-installation in an installation with a blast furnace and listed in point D of Annex I to this Decision, no objections are raised should the Member State concerned amend the preliminary total annual amount of this installation accordingly.

No objections are raised should a Member State amend the preliminary total annual amounts of emission allowances allocated free of charge to installations in its territory included in the lists referred to in paragraph 1 and listed in point E of Annex I to this Decision before determining the final total annual amount for each year from 2013 to 2020 in accordance with Article 10(9) of Decision 2011/278/EU to the extent that the amendment consists of excluding any allocation for heat exported to installations producing polymers, such as S-PVC and E-PVC, and VCM.

3. Any amendment referred to in paragraph 2 shall be notified to the Commission as soon as possible, and a Member State may not proceed to the determination of the final total annual amount for each year from 2013 to 2020 in accordance with Article 10(9) of Decision 2011/278/EU until acceptable amendments have been made.

Article 2

Without prejudice to Article 1, no objections are raised with regard to the lists of installations covered by Directive 2003/87/EC submitted by Member States pursuant to Article 11(1) of Directive 2003/87/EC and the corresponding preliminary total annual amounts of emission allowances allocated for free to these installations.

CHAPTER II

TOTAL QUANTITY OF ALLOWANCES

Article 3

Article 1 of Decision 2010/634/EU is replaced by the following:

"*Article 1*

On the basis of Articles 9 and 9a of Directive 2003/87/EC, the total quantity of allowances to be issued from 2013 onwards and annually decreased in a linear manner pursuant to Article 9 of Directive 2003/87/EC, is 2 084 301 856 allowances."

CHAPTER III

CROSS-SECTORAL CORRECTION FACTOR

Article 4

The uniform cross-sectoral correction factor referred to in Article 10a(5) of Directive 2003/87/EC and determined in accordance with Article 15(3) of Decision 2011/278/EU is set out in Annex II to this Decision.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 5 September 2013.

For the Commission

Connie HEDEGAARD

Member of the Commission

ANNEX I

POINT A

Installation Identifier as submitted in the NIMs
DE000000000000010
DE000000000000563
DE000000000000978
DE000000000001320
DE000000000001425
DE-new-14220-0045
DE-new-14310-1474

POINT B

Installation Identifier as submitted in the NIMs
DE000000000000044
DE000000000000053
DE000000000000056
DE000000000000059
DE000000000000069

POINT C

Installation identifier as submitted in the NIMs
CZ-existing-CZ-73-CZ-0134-11/M
CZ-existing-CZ-52-CZ-0102-05

POINT D

Installation Identifier as submitted in the NIMs
DE-new-14220-0045
DE000000000001320

POINT E

Installation Identifier as submitted in the NIMs
DE000000000000005
DE000000000000762

DE000000000001050
DE000000000001537
DE000000000002198

ANNEX II

Year	Cross-sectoral correction factor
2013	94,272151 %
2014	92,634731 %
2015	90,978052 %
2016	89,304105 %
2017	87,612124 %
2018	85,903685 %
2019	84,173950 %
2020	82,438204 %

Gesetz über den Handel mit Berechtigungen zur Emission von Treibhausgasen (Treibhausgas-Emissionshandelsgesetz - TEHG)

TEHG

Ausfertigungsdatum: 21.07.2011

Vollzitat:

"Treibhausgas-Emissionshandelsgesetz vom 21. Juli 2011 (BGBl. I S. 1475), das zuletzt durch Artikel 4 Absatz 27 des Gesetzes vom 18. Juli 2016 (BGBl. I S. 1666) geändert worden ist"

Stand: Zuletzt geändert durch Art. 4 Abs. 27 G v. 18.7.2016 I 1666
Mittelbare Änderung durch Art. 2 u. Art. 5 Abs. 9 G v. 18.7.2016 I 1666 ist berücksichtigt

*) Dieses Gesetz dient der Umsetzung der Richtlinie 2003/87/EG des Europäischen Parlaments und des Rates vom 13. Oktober 2003 über ein System für den Handel mit Treibhausgasemissionszertifikaten in der Gemeinschaft und zur Änderung der Richtlinie 96/61/EG des Rates (ABl. L 275 vom 25.10.2003, S. 32), die zuletzt durch die Richtlinie 2009/29/EG (ABl. L 140 vom 5.6.2009, S. 63) geändert worden ist, und der Richtlinie 2006/123/EG des Europäischen Parlaments und des Rates vom 12. Dezember 2006 über Dienstleistungen im Binnenmarkt (ABl. L 376 vom 27.12.2006, S. 36).

Fußnote

```
(+++ Textnachweis ab: 28.7.2011 +++)
(+++ Zur Anwendung vgl. §§ 33, 34, 35 +++)
(+++ Amtlicher Hinweis des Normgebers auf EG-Recht:
     Umsetzung der
       EGRL  87/2003           (CELEX Nr: 32003L0087)
       EGRL 123/2006           (CELEX Nr: 32006L0123) +++)
```

Das G wurde als Art. 1 des G v. 21.7.2011 vom Bundestag beschlossen. Es ist gem. Art. 15 Abs. 2 Satz 1 dieses G am 28.7.2011 in Kraft getreten.

Inhaltsübersicht

Abschnitt 1
Allgemeine Vorschriften

§ 1 Zweck des Gesetzes

Zweck dieses Gesetzes ist es, für die in Anhang 1 Teil 2 genannten Tätigkeiten, durch die in besonderem Maße Treibhausgase emittiert werden, die Grundlagen für den Handel mit Berechtigungen zur Emission von Treibhausgasen in einem gemeinschaftsweiten Emissionshandelssystem zu schaffen, um damit durch eine kosteneffiziente Verringerung von Treibhausgasen zum weltweiten Klimaschutz beizutragen.

§ 2 Anwendungsbereich

(1) Dieses Gesetz gilt für die Emission der in Anhang 1 Teil 2 genannten Treibhausgase durch die dort genannten Tätigkeiten. Für die in Anhang 1 Teil 2 genannten Anlagen gilt dieses Gesetz auch dann, wenn sie Teile oder Nebeneinrichtungen einer Anlage sind, die nicht in Anhang 1 Teil 2 aufgeführt ist.

(2) Der Anwendungsbereich dieses Gesetzes erstreckt sich bei den in Anhang 1 Teil 2 Nummer 2 bis 31 genannten Anlagen auf alle

1. Anlagenteile und Verfahrensschritte, die zum Betrieb notwendig sind, und
2. Nebeneinrichtungen, die mit den Anlagenteilen und Verfahrensschritten nach Nummer 1 in einem räumlichen und betriebstechnischen Zusammenhang stehen und die für das Entstehen von den in Anhang 1 Teil 2 genannten Treibhausgasen von Bedeutung sein können.

Satz 1 gilt für Verbrennungseinheiten nach Anhang 1 Teil 2 Nummer 1 entsprechend.

(3) Die in Anhang 1 bestimmten Voraussetzungen liegen auch vor, wenn mehrere Anlagen derselben Art in einem engen räumlichen und betrieblichen Zusammenhang stehen und zusammen die nach Anhang 1 maßgeblichen Leistungsgrenzen oder Anlagengrößen erreichen oder überschreiten werden. Ein enger räumlicher und betrieblicher Zusammenhang ist gegeben, wenn die Anlagen

1. auf demselben Betriebsgelände liegen,
2. mit gemeinsamen Betriebseinrichtungen verbunden sind und
3. einem vergleichbaren technischen Zweck dienen.

(4) Bedürfen Anlagen nach Anhang 1 Teil 2 Nummer 2 bis 30 einer Genehmigung nach § 4 Absatz 1 Satz 3 des Bundes-Immissionsschutzgesetzes, so sind hinsichtlich der Abgrenzung der Anlagen nach den Absätzen 2 und 3 die Festlegungen in der immissionsschutzrechtlichen Genehmigung für die Anlage maßgeblich. Satz 1 gilt für Verbrennungseinheiten nach Anhang 1 Teil 2 Nummer 1 entsprechend. In den Fällen des Absatzes 1 Satz 2 gilt Satz 1 hinsichtlich der Festlegungen in der immissionsschutzrechtlichen Genehmigung zu den Anlagenteilen oder Nebeneinrichtungen entsprechend.

(5) Dieses Gesetz gilt nicht für:

1. Anlagen oder Anlagenteile, soweit sie der Forschung oder der Entwicklung oder Erprobung neuer Einsatzstoffe, Brennstoffe, Erzeugnisse oder Verfahren im Labor- oder Technikumsmaßstab dienen; hierunter fallen auch solche Anlagen im Labor- oder Technikumsmaßstab, in denen neue Erzeugnisse in der für die Erprobung ihrer Eigenschaften durch Dritte erforderlichen Menge vor der Markteinführung hergestellt werden, soweit die neuen Erzeugnisse noch weiter erforscht oder entwickelt werden,
2. Anlagen, die nach § 4 Absatz 1 Satz 3 des Bundes-Immissionsschutzgesetzes genehmigungsbedürftig sind und bei denen nach ihrer immissionsschutzrechtlichen Genehmigung außer für Zwecke der Zünd- und Stützfeuerung als Brennstoff nur Klärgas, Deponiegas, Biogas oder Biomasse im Sinne des Artikels 2 Absatz 2 Satz 2 Buchstabe a und e der Richtlinie 2009/28/EG des Europäischen Parlaments und des Rates vom 23. April 2009 zur Förderung der Nutzung von Energie aus erneuerbaren Quellen und zur Änderung und anschließenden Aufhebung der Richtlinien 2001/77/EG und 2003/30/EG (ABl. L 140 vom 5.6.2009, S. 16) in der jeweils geltenden Fassung eingesetzt werden darf und
3. Anlagen oder Verbrennungseinheiten nach Anhang 1 Teil 2 Nummer 1 bis 6 zur Verbrennung von gefährlichen Abfällen oder Siedlungsabfällen, die nach Nummer 8.1 oder Nummer 8.2 des Anhangs zur Verordnung über genehmigungsbedürftige Anlagen genehmigungsbedürftig sind.

(6) Bei Luftverkehrstätigkeiten erstreckt sich der Anwendungsbereich dieses Gesetzes auf alle Emissionen eines Luftfahrzeugs, die durch den Verbrauch von Treibstoffen entstehen. Zum Treibstoffverbrauch eines Luftfahrzeugs zählt auch der Treibstoffverbrauch von Hilfsmotoren. Dieses Gesetz gilt nur für Luftverkehrstätigkeiten, die von Luftfahrzeugbetreibern durchgeführt werden,

1. die eine gültige deutsche Betriebsgenehmigung im Sinne des Artikels 3 der Verordnung (EG) Nr. 1008/2008 des Europäischen Parlaments und des Rates vom 24. September 2008 über gemeinsame Vorschriften für die Durchführung von Luftverkehrsdiensten in der Gemeinschaft (ABl. L 293 vom 31.10.2008, S. 3) in der jeweils geltenden Fassung besitzen oder
2. die der Bundesrepublik Deutschland als zuständigem Verwaltungsmitgliedstaat zugewiesen sind nach der Verordnung (EG) Nr. 748/2009 der Kommission vom 5. August 2009 über die Liste der Luftfahrzeugbetreiber, die am oder nach dem 1. Januar 2006 einer Luftverkehrstätigkeit im Sinne von Anhang I der Richtlinie 2003/87/EG nachgekommen sind, mit Angabe des für die einzelnen Luftfahrzeugbetreiber zuständigen Verwaltungsmitgliedstaats (ABl. L 219 vom 22.8.2009, S. 1), die durch die Verordnung (EU) Nr. 82/2010 (ABl. L 25 vom 29.1.2010, S. 12) geändert worden ist, in der jeweils geltenden Fassung, und keine

gültige Betriebsgenehmigung eines anderen Vertragsstaats des Abkommens über den Europäischen Wirtschaftsraum besitzen.

Alle Luftverkehrstätigkeiten, die der Luftfahrzeugbetreiber ab Beginn des Kalenderjahres durchführt, in dem die Voraussetzungen nach Satz 3 erstmals erfüllt sind, fallen in den Anwendungsbereich dieses Gesetzes.

(7) Dieses Gesetz gilt auch für Aufgaben im Zusammenhang mit der Bewilligung von Beihilfen zur Kompensation indirekter CO_2-Kosten, soweit solche Beihilfen nach einer Förderrichtlinie nach Artikel 10a Absatz 6 der Richtlinie 2003/87/EG vorgesehen sind.

§ 3 Begriffsbestimmungen

Für dieses Gesetz gelten die folgenden Begriffsbestimmungen:

1. Anlage
   eine Betriebsstätte oder sonstige ortsfeste Einrichtung;
2. Anlagenbetreiber
   eine natürliche oder juristische Person oder Personengesellschaft, die die unmittelbare Entscheidungsgewalt über eine Anlage innehat, in der eine Tätigkeit nach Anhang 1 Teil 2 Nummer 1 bis 32 durchgeführt wird, und die dabei die wirtschaftlichen Risiken trägt; wer im Sinne des Bundes-Immissionsschutzgesetzes eine genehmigungsbedürftige Anlage betreibt, in der eine Tätigkeit nach Anhang 1 Teil 2 Nummer 1 bis 30 durchgeführt wird, ist Anlagenbetreiber nach Halbsatz 1;
3. Berechtigung
   die Befugnis zur Emission von einer Tonne Kohlendioxidäquivalent in einem bestimmten Zeitraum; eine Tonne Kohlendioxidäquivalent ist eine Tonne Kohlendioxid oder die Menge eines anderen Treibhausgases, die in ihrem Potenzial zur Erwärmung der Atmosphäre einer Tonne Kohlendioxid entspricht;
4. Betreiber
   ein Anlagenbetreiber oder Luftfahrzeugbetreiber;
5. Emission
   die Freisetzung von Treibhausgasen durch eine Tätigkeit nach Anhang 1 Teil 2; die Weiterleitung von Treibhausgasen steht nach Maßgabe der Monitoring-Verordnung der Freisetzung gleich;
6. Emissionsreduktionseinheit
   eine Einheit im Sinne des § 2 Nummer 20 des Projekt-Mechanismen-Gesetzes;
7. Luftfahrzeugbetreiber
   eine natürliche oder juristische Person oder Personengesellschaft, die die unmittelbare Entscheidungsgewalt über ein Luftfahrzeug zu dem Zeitpunkt innehat, zu dem mit diesem eine Luftverkehrstätigkeit durchgeführt wird, und die dabei die wirtschaftlichen Risiken der Luftverkehrstätigkeit trägt, oder, wenn die Identität dieser Person nicht bekannt ist oder vom Luftfahrzeugeigentümer nicht angegeben wird, der Eigentümer des Luftfahrzeugs;
8. Luftverkehrsberechtigung
   eine Berechtigung, die ausschließlich Luftfahrzeugbetreibern die Befugnis zur Emission von einer Tonne Kohlendioxidäquivalent in einem bestimmten Zeitraum verleiht;
9. Luftverkehrstätigkeit
   eine Tätigkeit nach Anhang 1 Teil 2 Nummer 33;
10. Monitoring-Verordnung
    die Verordnung der Europäischen Kommission nach Artikel 14 Absatz 1 der Richtlinie 2003/87/EG des Europäischen Parlaments und des Rates vom 13. Oktober 2003 über ein System für den Handel mit Treibhausgasemissionszertifikaten in der Gemeinschaft und zur Änderung der Richtlinie 96/61/EG des Rates (ABl. L 275 vom 25.10.2003, S. 32), die zuletzt durch die Richtlinie 2009/29/EG (ABl. L 140 vom 5.6.2009, S. 63) geändert worden ist, in der jeweils geltenden Fassung;
11. Produktionsleistung
    die tatsächlich und rechtlich maximal mögliche Produktionsmenge pro Jahr;
12. Tätigkeit
    eine in Anhang 1 Teil 2 genannte Tätigkeit;
13. Transportleistung
    das Produkt aus Flugstrecke und Nutzlast;
14. Treibhausgase

Kohlendioxid (CO_2), Methan (CH_4), Distickstoffoxid (N_2O), teilfluorierte Kohlenwasserstoffe (HFKW), perfluorierte Kohlenwasserstoffe (PFC) und Schwefelhexafluorid (SF_6);

15. Überwachungsplan
eine Darstellung der Methode, die ein Betreiber anwendet, um seine Emissionen zu ermitteln und darüber Bericht zu erstatten;

16. zertifizierte Emissionsreduktion
eine Einheit im Sinne des § 2 Nummer 21 des Projekt-Mechanismen-Gesetzes.

Abschnitt 2
Genehmigung und Überwachung von Emissionen

§ 4 Emissionsgenehmigung

(1) Der Anlagenbetreiber bedarf zur Freisetzung von Treibhausgasen durch eine Tätigkeit nach Anhang 1 Teil 2 Nummer 1 bis 32 einer Genehmigung. Die Genehmigung ist auf Antrag des Anlagenbetreibers von der zuständigen Behörde zu erteilen, wenn die zuständige Behörde auf der Grundlage der vorgelegten Antragsunterlagen die Angaben nach Absatz 3 feststellen kann.

(2) Der Antragsteller hat dem Genehmigungsantrag insbesondere folgende Angaben beizufügen:

1. Name und Anschrift des Anlagenbetreibers,
2. eine Beschreibung der Tätigkeit, des Standorts und der Art und des Umfangs der dort durchgeführten Verrichtungen und der verwendeten Technologien,
3. in den Fällen des § 2 Absatz 1 Satz 2 eine Beschreibung der räumlichen Abgrenzung der Anlagenteile, Verfahrensschritte und Nebeneinrichtungen nach § 2 Absatz 2,
4. die Quellen von Emissionen und
5. den Zeitpunkt, zu dem die Anlage in Betrieb genommen worden ist oder werden soll.

(3) Die Genehmigung enthält folgende Angaben:

1. Name und Anschrift des Anlagenbetreibers,
2. eine Beschreibung der Tätigkeit und des Standorts, an dem die Tätigkeit durchgeführt wird,
3. in den Fällen des § 2 Absatz 1 Satz 2 eine Beschreibung der räumlichen Abgrenzung der einbezogenen Anlagenteile, Verfahrensschritte und Nebeneinrichtungen nach § 2 Absatz 2 und
4. eine Auflistung der einbezogenen Quellen von Emissionen.

(4) Bei Anlagen, die vor dem 1. Januar 2013 nach den Vorschriften des Bundes-Immissionsschutzgesetzes genehmigt worden sind, ist die immissionsschutzrechtliche Genehmigung die Genehmigung nach Absatz 1. Der Anlagenbetreiber kann aber auch im Fall des Satzes 1 eine gesonderte Genehmigung nach Absatz 1 beantragen. In diesem Fall ist Satz 1 nur bis zur Erteilung der gesonderten Genehmigung anwendbar.

(5) Der Anlagenbetreiber ist verpflichtet, der zuständigen Behörde eine geplante Änderung der Tätigkeit in Bezug auf die Angaben nach Absatz 3 mindestens einen Monat vor ihrer Verwirklichung vollständig und richtig anzuzeigen, soweit diese Änderung Auswirkungen auf die Emissionen haben kann. Die zuständige Behörde ändert die Genehmigung entsprechend. Die zuständige Behörde überprüft unabhängig von Satz 2 mindestens alle fünf Jahre die Angaben nach Absatz 3 und ändert die Genehmigung im Bedarfsfall entsprechend. Für die genannten Änderungen der Genehmigung gilt Absatz 4 Satz 3 entsprechend.

(6) In den Verfahren zur Erteilung oder Änderung der Emissionsgenehmigung nach den Absätzen 1 und 5 ist der nach § 19 Absatz 1 Nummer 3 zuständigen Behörde Gelegenheit zur Stellungnahme in angemessener Frist zu geben.

Fußnote

(+++ § 4: Zur Anwendung vgl. § 34 Abs. 2 +++)

§ 5 Ermittlung von Emissionen und Emissionsbericht

(1) Der Betreiber hat die durch seine Tätigkeit in einem Kalenderjahr verursachten Emissionen nach Maßgabe des Anhangs 2 Teil 2 zu ermitteln und der zuständigen Behörde bis zum 31. März des Folgejahres über die Emissionen zu berichten.

(2) Die Angaben im Emissionsbericht nach Absatz 1 müssen von einer Prüfstelle nach § 21 verifiziert worden sein.

Fußnote

(+++ § 5: Zur Anwendung vgl. § 34 Abs. 2 u. § 35 Abs. 1 +++)

§ 6 Überwachungsplan

(1) Der Betreiber ist verpflichtet, bei der zuständigen Behörde für jede Handelsperiode einen Überwachungsplan für die Emissionsermittlung und Berichterstattung nach § 5 Absatz 1 einzureichen. Dabei hat er die in Anhang 2 Teil 1 Nummer 1 genannten Fristen einzuhalten.

(2) Der Überwachungsplan bedarf der Genehmigung. Die Genehmigung ist zu erteilen, wenn der Überwachungsplan den Vorgaben der Monitoring-Verordnung, der Rechtsverordnung nach § 28 Absatz 2 Nummer 1 und, soweit diese keine Regelungen treffen, des Anhangs 2 Teil 2 Satz 3 entspricht. Entspricht ein vorgelegter Überwachungsplan nicht diesen Vorgaben, ist der Betreiber verpflichtet, die festgestellten Mängel innerhalb einer von der zuständigen Behörde festzusetzenden Frist zu beseitigen und den geänderten Überwachungsplan vorzulegen. Im Verfahren zur Genehmigung des Überwachungsplans ist in den Fällen des § 19 Absatz 1 Nummer 1 der danach zuständigen Behörde Gelegenheit zur Stellungnahme zu geben. Die zuständige Behörde kann die Genehmigung mit Auflagen für die Überwachung von und Berichterstattung über Emissionen verbinden.

(3) Der Betreiber ist verpflichtet, den Überwachungsplan innerhalb einer Handelsperiode unverzüglich anzupassen, soweit sich folgende Änderungen bezüglich der Anforderungen an die Emissionsermittlung oder an ihre Berichterstattung ergeben:

1. Änderung der Vorgaben nach Absatz 2 Satz 2,
2. Änderung seiner Emissionsgenehmigung oder
3. sonstige Änderung seiner Tätigkeit.

Die zuständige Behörde kann nachträgliche Anordnungen treffen, um die Erfüllung der Pflicht nach Satz 1 sicherzustellen. Für den angepassten Überwachungsplan nach Satz 1 gelten Absatz 1 Satz 1 und Absatz 2 entsprechend.

Fußnote

(+++ § 6 Abs. 1 Satz 1: Zur Nichtanwendung vgl. § 35 Abs. 2 +++)

Abschnitt 3
Berechtigungen und Zuteilung

§ 7 Berechtigungen

(1) Der Betreiber hat jährlich bis zum 30. April an die zuständige Behörde eine Anzahl von Berechtigungen abzugeben, die den durch seine Tätigkeit im vorangegangenen Kalenderjahr verursachten Emissionen entspricht. Anlagenbetreiber können ihre Verpflichtung nach Satz 1 nicht durch die Abgabe von Luftverkehrsberechtigungen erfüllen.

(2) Die Berechtigungen gelten jeweils für eine der nachfolgend genannten Handelsperioden:

1. die Handelsperiode für Tätigkeiten nach Anhang 1 des Treibhausgas-Emissionshandelsgesetzes vom 8. Juli 2004 (BGBl. I S. 1578), das zuletzt durch Artikel 9 des Gesetzes vom 11. August 2010 (BGBl. I S. 1163) geändert worden ist, die am 1. Januar 2008 begonnen hat, endet am 31. Dezember 2012 (Handelsperiode 2008 bis 2012);
2. die erste Handelsperiode für Luftverkehrstätigkeiten, die am 1. Januar 2012 beginnt, endet am 31. Dezember 2012 (Handelsperiode 2012);
3. die Handelsperiode für alle Tätigkeiten, die am 1. Januar 2013 beginnt, endet am 31. Dezember 2020 (Handelsperiode 2013 bis 2020);

4. die sich an die Handelsperiode 2013 bis 2020 anschließenden Handelsperioden umfassen einen Zeitraum von jeweils acht Jahren.

Berechtigungen einer abgelaufenen Handelsperiode werden vier Monate nach Ende dieser Handelsperiode gelöscht und von der zuständigen Behörde durch Berechtigungen der laufenden Handelsperiode ersetzt. Der Inhaber von Berechtigungen kann jederzeit auf sie verzichten und ihre Löschung verlangen.

(3) Berechtigungen sind übertragbar. Die Übertragung von Berechtigungen erfolgt durch Einigung und Eintragung auf dem Konto des Erwerbers im Emissionshandelsregister nach § 17. Die Eintragung erfolgt auf Anweisung des Veräußerers an die kontoführende Stelle, Berechtigungen von seinem Konto auf das Konto des Erwerbers zu übertragen.

(4) Soweit für jemanden eine Berechtigung in das Emissionshandelsregister eingetragen ist, gilt der Inhalt des Registers als richtig. Dies gilt nicht für den Empfänger ausgegebener Berechtigungen, wenn ihm die Unrichtigkeit bei Ausgabe bekannt ist.

(5) Berechtigungen sind keine Finanzinstrumente im Sinne des § 1 Absatz 11 des Kreditwesengesetzes oder des § 2 Absatz 2b des Wertpapierhandelsgesetzes.

Fußnote

(+++ § 7: Zur Anwendung vgl. § 34 Abs. 2 u. § 35 Abs. 1 +++)

§ 8 Versteigerung von Berechtigungen

(1) Alle der Bundesrepublik Deutschland durch die Europäische Kommission nach der Richtlinie 2003/87/EG in der jeweils geltenden Fassung zur Versteigerung zugewiesenen Berechtigungen werden versteigert. Die Versteigerung erfolgt nach den Regeln der Verordnung (EU) Nr. 1031/2010 der Kommission vom 12. November 2010 über den zeitlichen und administrativen Ablauf sowie sonstige Aspekte der Versteigerung von Treibhausgasemissionszertifikaten gemäß der Richtlinie 2003/87/EG des Europäischen Parlaments und des Rates über ein System für den Handel mit Treibhausgasemissionszertifikaten in der Gemeinschaft (ABl. L 302 vom 18.11.2010, S. 1) in der jeweils geltenden Fassung.

(2) Das Bundesministerium für Umwelt, Naturschutz, Bau und Reaktorsicherheit beauftragt im Einvernehmen mit dem Bundesministerium der Finanzen und dem Bundesministerium für Wirtschaft und Energie eine geeignete Stelle mit der Durchführung der Versteigerung.

(3) Die Erlöse aus der Versteigerung der Berechtigungen nach Absatz 1 stehen dem Bund zu. Die Kosten, die dem Bund durch die Wahrnehmung der ihm im Rahmen des Emissionshandels zugewiesenen Aufgaben entstehen und nicht durch Gebühren nach § 22 gedeckt sind, werden aus den Erlösen nach Satz 1 gedeckt.

(4) Zur Gebotseinstellung auf eigene Rechnung oder im Namen der Kunden ihres Hauptgeschäftes bedürfen die in § 2a Absatz 1 Nummer 9 des Wertpapierhandelsgesetzes genannten Unternehmen einer Erlaubnis der Bundesanstalt für Finanzdienstleistungsaufsicht (Bundesanstalt). Für Berechtigungen, die nicht in Form eines Finanzinstruments gemäß Artikel 38 Absatz 3 der Verordnung (EG) Nr. 1287/2006 der Kommission vom 10. August 2006 zur Durchführung der Richtlinie 2004/39/EG des Europäischen Parlaments und des Rates betreffend die Aufzeichnungspflichten für Wertpapierfirmen, die Meldung von Geschäften, die Markttransparenz, die Zulassung von Finanzinstrumenten zum Handel und bestimmte Begriffe im Sinne dieser Richtlinie (ABl. L 241 vom 2.9.2006, S. 1) versteigert werden, bedürfen zur Gebotseinstellung im Namen der Kunden ihres Hauptgeschäftes auch

1. Institute im Sinne des § 1 Absatz 1b des Kreditwesengesetzes, denen eine Erlaubnis nach § 32 des Kreditwesengesetzes erteilt worden ist, und
2. nach § 53 Absatz 1 Satz 1 des Kreditwesengesetzes tätige Unternehmen, denen eine Erlaubnis nach § 32 des Kreditwesengesetzes erteilt worden ist,

einer Erlaubnis der Bundesanstalt. Die Erlaubnis wird erteilt, sofern das Unternehmen die Bedingungen des Artikels 59 Absatz 5 der Verordnung (EU) Nr. 1031/2010 erfüllt. Die Bundesanstalt kann die Erlaubnis außer nach den Vorschriften des Verwaltungsverfahrensgesetzes aufheben, wenn ihr Tatsachen bekannt werden, welche eine Erteilung der Erlaubnis nach Satz 3 ausschließen würden.

§ 9 Zuteilung von kostenlosen Berechtigungen an Anlagenbetreiber

(1) Anlagenbetreiber erhalten eine Zuteilung von kostenlosen Berechtigungen nach Maßgabe der Grundsätze des Artikels 10a Absatz 1 bis 5, 7 und 11 bis 20 der Richtlinie 2003/87/EG in der jeweils geltenden Fassung und des Beschlusses 2011/278/EU der Kommission vom 27. April 2011 zur Festlegung EU-weiter Übergangsvorschriften zur Harmonisierung der kostenlosen Zuteilung von Emissionszertifikaten gemäß Artikel 10a der Richtlinie 2003/87/EG (ABl. L 130 vom 17.5.2011, S. 1).

(2) Die Zuteilung setzt einen Antrag bei der zuständigen Behörde voraus. Der Antrag auf Zuteilung von kostenlosen Berechtigungen ist innerhalb einer Frist, die von der zuständigen Behörde mindestens drei Monate vor ihrem Ablauf im Bundesanzeiger bekannt gegeben wird, zu stellen. Die Bekanntgabe der Frist erfolgt frühestens nach Inkrafttreten der Rechtsverordnung über Zuteilungsregeln gemäß § 10. Bei verspätetem Antrag besteht kein Anspruch auf kostenlose Zuteilung. Dem Antrag sind die zur Prüfung des Anspruchs erforderlichen Unterlagen beizufügen. Soweit in der Verordnung nach § 10 nichts anderes bestimmt ist, müssen die tatsächlichen Angaben im Zuteilungsantrag von einer Prüfstelle nach § 21 verifiziert worden sein.

(3) Die zuständige Behörde berechnet die vorläufigen Zuteilungsmengen, veröffentlicht eine Liste aller unter den Anwendungsbereich dieses Gesetzes fallenden Anlagen und der vorläufigen Zuteilungsmengen im Bundesanzeiger und meldet die Liste der Europäischen Kommission. Bei der Berechnung der vorläufigen Zuteilungsmengen werden nur solche Angaben des Betreibers berücksichtigt, deren Richtigkeit ausreichend gesichert ist. Rechtsbehelfe im Hinblick auf die Meldung der Zuteilungsmengen können nur gleichzeitig mit den gegen die Zuteilungsentscheidung zulässigen Rechtsbehelfen geltend gemacht werden.

(4) Die zuständige Behörde entscheidet vor Beginn der Handelsperiode über die Zuteilung von kostenlosen Berechtigungen für eine Anlage an Anlagenbetreiber, die innerhalb der nach Absatz 2 Satz 2 bekannt gegebenen Frist einen Antrag gestellt haben. Im Übrigen gelten für das Zuteilungsverfahren die Vorschriften des Verwaltungsverfahrensgesetzes.

(5) Bedeutete eine Zuteilung nach den Zuteilungsregeln nach § 10 eine unzumutbare Härte für den Anlagenbetreiber und für ein mit diesem verbundenes Unternehmen, das mit seinem Kapital aus handels- oder gesellschaftsrechtlichem Rechtsgrund für die wirtschaftlichen Risiken des Anlagenbetriebes einstehen muss, teilt die zuständige Behörde auf Antrag des Betreibers zusätzliche Berechtigungen in der für einen Ausgleich angemessenen Menge zu, soweit die Europäische Kommission diese Zuteilung nicht nach Artikel 11 Absatz 3 der Richtlinie 2003/87/EG ablehnt.

(6) Die Zuteilungsentscheidung ist aufzuheben, soweit sie auf Grund eines Rechtsakts der Europäischen Union nachträglich geändert werden muss. Die §§ 48 und 49 des Verwaltungsverfahrensgesetzes bleiben im Übrigen unberührt.

Fußnote

(+++ § 9: Zur Anwendung vgl. § 34 Abs. 2 +++)

§ 10 Rechtsverordnung über Zuteilungsregeln

Die Bundesregierung wird ermächtigt, nach Maßgabe der Richtlinie 2003/87/EG in der jeweils geltenden Fassung und des Beschlusses 2011/278/EU der Kommission vom 27. April 2011 zur Festlegung EU-weiter Übergangsvorschriften zur Harmonisierung der kostenlosen Zuteilung von Emissionszertifikaten gemäß Artikel 10a der Richtlinie 2003/87/EG (ABl. L 130 vom 17.5.2011, S. 1) nach Anhörung der beteiligten Kreise die Einzelheiten der Zuteilung von kostenlosen Berechtigungen an Anlagenbetreiber durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, zu bestimmen. In dieser Rechtsverordnung kann die Bundesregierung insbesondere regeln:

1. die Produkte, für die die Berechtigungen kostenlos zugeteilt werden,
2. die Berechnung der Anzahl zuzuteilender Berechtigungen,
3. die Erhebung von Daten über die Emissionen und die Produktion von Anlagen und sonstiger für das Zuteilungsverfahren relevanter Daten,
4. die Bestimmung der Produktionsmenge oder sonstiger Größen, die zur Berechnung der Zuteilungsmenge erforderlich sind,
5. Emissionswerte je erzeugter Produkteinheit,

6. die Fälle, in denen von einer Zuteilung auf Grundlage von Emissionswerten je erzeugter Produkteinheit ausnahmsweise abgesehen wird oder in denen gesonderte Zuteilungsregeln bestehen, sowie die Methoden, die in diesen Fällen zur Anwendung kommen,
7. die Basisperiode, deren Daten für die Zuteilung von kostenlosen Berechtigungen maßgeblich sind, sowie Fälle, in denen von dieser Basisperiode abgewichen werden kann,
8. die Zuteilung für Neuanlagen und Kapazitätserweiterungen, einschließlich der Bestimmung der Kapazität und der Auslastung von Neuanlagen,
9. die Bestimmung der jährlich auszugebenden Mengen von kostenlosen Berechtigungen in der Zuteilungsentscheidung,
10. Festlegungen zu den Anteilen der Wärmeproduktion an den Emissionswerten nach Nummer 5,
11. die im Antrag nach § 9 Absatz 2 Satz 1
    a) erforderlichen Angaben und
    b) erforderlichen Unterlagen sowie die Art der beizubringenden Nachweise und
12. Anforderungen an die Verifizierung von Zuteilungsanträgen nach § 9 Absatz 2 Satz 5 sowie Ausnahmen von der Verifizierungspflicht.

Die Rechtsverordnung nach den Sätzen 1 und 2 bedarf der Zustimmung des Bundestages. Der Bundestag kann diese Zustimmung davon abhängig machen, ob Änderungswünsche übernommen werden. Übernimmt die Bundesregierung die Änderungen, ist eine erneute Beschlussfassung durch den Bundestag nicht erforderlich. Hat sich der Bundestag nach Ablauf von sechs Sitzungswochen seit Eingang der Rechtsverordnung nicht mit ihr befasst, gilt seine Zustimmung zu der unveränderten Rechtsverordnung als erteilt.

§ 11 Regelzuteilung von kostenlosen Berechtigungen an Luftfahrzeugbetreiber

(1) Luftfahrzeugbetreiber erhalten für eine Handelsperiode eine Anzahl von kostenlosen Luftverkehrsberechtigungen zugeteilt, die dem Produkt aus ihrer Transportleistung im Basisjahr in Tonnenkilometern und dem Richtwert entspricht, der in der Entscheidung der Europäischen Kommission nach Artikel 3e Absatz 3 Satz 1 Buchstabe e und Satz 2 der Richtlinie 2003/87/EG bestimmt wird.

(2) Das Basisjahr für die Transportleistung ist das Kalenderjahr, das 24 Monate vor Beginn der Handelsperiode endet, auf die sich die Zuteilung bezieht. Für die Handelsperiode 2012 und die Handelsperiode 2013 bis 2020 ist das Jahr 2010 das Basisjahr.

(3) Die Zuteilung für eine Handelsperiode setzt einen Antrag bei der zuständigen Behörde voraus, der spätestens 21 Monate vor Beginn der jeweiligen Handelsperiode gestellt werden muss. Bei einem verspäteten Antrag besteht kein Anspruch auf Zuteilung kostenloser Luftverkehrsberechtigungen mehr. Die Sätze 1 und 2 gelten nicht für die Handelsperiode 2012 und die Handelsperiode 2013 bis 2020.

(4) In dem Antrag muss der Antragsteller die nach den Anforderungen der Monitoring-Verordnung ermittelte Transportleistung angeben, die er im Basisjahr durch seine Luftverkehrstätigkeit erbracht hat. Hat der Luftfahrzeugbetreiber einen Bericht über Flugstrecke und Nutzlast nach § 5 Absatz 1 Satz 1 der Datenerhebungsverordnung 2020 abgegeben, so gilt dieser Bericht als Antrag auf Zuteilung für die Handelsperiode 2012 und die Handelsperiode 2013 bis 2020, sofern der Luftfahrzeugbetreiber dem nicht innerhalb eines Monats nach Inkrafttreten dieses Gesetzes widerspricht. Im Fall des Widerspruchs besteht kein Anspruch auf kostenlose Zuteilung nach Absatz 1. Die Angaben zur Transportleistung müssen von einer Prüfstelle nach § 21 verifiziert worden sein. Dies gilt nicht, soweit ein Bericht über Flugstrecke und Nutzlast bereits nach § 11 der Datenerhebungsverordnung 2020 geprüft worden ist.

(5) Die zuständige Behörde übermittelt die Anträge spätestens 18 Monate vor Beginn der Handelsperiode an die Europäische Kommission. Die zuständige Behörde überprüft die Angaben des Antragstellers zur Transportleistung und übermittelt nur solche Angaben an die Europäische Kommission, deren Richtigkeit zum Ablauf der Übermittlungsfrist ausreichend gesichert ist. Sofern die zuständige Behörde zur Prüfung des Antrags und der darin gemachten Angaben zusätzliche Angaben oder Nachweise benötigt, ist der Luftfahrzeugbetreiber verpflichtet, diese auf Verlangen der zuständigen Behörde innerhalb einer von dieser festzusetzenden Frist zu übermitteln.

(6) Die zuständige Behörde teilt die kostenlosen Berechtigungen innerhalb von drei Monaten zu, nachdem die Europäische Kommission den Richtwert gemäß Artikel 3e Absatz 3 der Richtlinie 2003/87/EG bekannt gegeben

hat. Die zuständige Behörde veröffentlicht eine Liste mit den Namen der Luftfahrzeugbetreiber und der Höhe der Zuteilungen im Bundesanzeiger.

§ 12 Zuteilung von kostenlosen Berechtigungen aus der Sonderreserve

(1) Luftfahrzeugbetreiber erhalten für eine Handelsperiode eine Zuteilung von kostenlosen Luftverkehrsberechtigungen aus der Sonderreserve, wenn

1. sie erstmals nach Ablauf des Basisjahres nach § 11 Absatz 2 eine Luftverkehrstätigkeit neu aufgenommen haben oder
2. die im Rahmen ihrer Luftverkehrstätigkeit erbrachte Transportleistung in Tonnenkilometern im Zeitraum zwischen dem Basisjahr und dem Ende des zweiten Kalenderjahres der laufenden Handelsperiode durchschnittlich um mehr als 18 Prozent jährlich angestiegen ist.

Weiterhin setzt eine Zuteilung nach Satz 1 voraus, dass der Luftfahrzeugbetreiber durch die neu aufgenommene Tätigkeit oder durch die angestiegene Transportleistung keine zuvor von einem anderen Unternehmen durchgeführte Tätigkeit ganz oder teilweise fortführt. Satz 1 gilt nicht für die Handelsperiode 2012.

(2) Im Fall der Neuaufnahme einer Tätigkeit entspricht die Anzahl der zuzuteilenden Luftverkehrsberechtigungen dem Produkt aus der im zweiten Kalenderjahr der Handelsperiode erbrachten Transportleistung und dem Richtwert, der in der Entscheidung der Europäischen Kommission nach Artikel 3f Absatz 5 der Richtlinie 2003/87/EG bestimmt wird.

(3) Im Fall der angestiegenen Transportleistung nach Absatz 1 Satz 1 Nummer 2 entspricht die Anzahl der zuzuteilenden Luftverkehrsberechtigungen dem Produkt aus dem Anstieg der Transportleistung in Tonnenkilometern, soweit der Anstieg den in Absatz 1 Satz 1 Nummer 2 genannten prozentualen Anstieg in Tonnenkilometern übersteigt, und dem Richtwert, der in der Entscheidung der Europäischen Kommission nach Artikel 3f Absatz 5 der Richtlinie 2003/87/EG bestimmt wird. Die Zuteilung nach Satz 1 beträgt höchstens 1 Million Luftverkehrsberechtigungen pro Luftfahrzeugbetreiber.

(4) Die zuständige Behörde teilt die kostenlosen Berechtigungen innerhalb von drei Monaten zu, nachdem die Europäische Kommission den Richtwert gemäß Artikel 3f Absatz 5 der Richtlinie 2003/87/EG bekannt gegeben hat. Sie weist dabei die Zuteilung für eine gesamte Handelsperiode und für die einzelnen verbleibenden vollen Jahre dieser Handelsperiode aus. Die zuständige Behörde veröffentlicht eine Liste mit den Namen der Luftfahrzeugbetreiber und der Höhe der Zuteilungen im Bundesanzeiger.

§ 13 Antrag auf Zuteilung aus der Sonderreserve

(1) Die Zuteilung aus der Sonderreserve setzt einen Antrag bei der zuständigen Behörde voraus, der spätestens bis zum 30. Juni des dritten Jahres der jeweils laufenden Handelsperiode gestellt werden muss. Bei einem verspäteten Antrag besteht kein Anspruch auf Zuteilung kostenloser Luftverkehrsberechtigungen mehr.

(2) Der Antragsteller hat in dem Antrag nach Absatz 1 das Vorliegen der in § 12 Absatz 1 aufgeführten Zuteilungsvoraussetzungen nachzuweisen. Ein Antrag nach § 12 Absatz 1 Satz 1 Nummer 2 muss insbesondere jeweils bezogen auf den Zeitraum zwischen dem Basisjahr und dem zweiten Kalenderjahr der laufenden Handelsperiode folgende Angaben enthalten:

1. den prozentualen Anstieg der Transportleistung des Antragstellers seit dem Basisjahr,
2. den absoluten Anstieg der Transportleistung des Antragstellers seit dem Basisjahr in Tonnenkilometern und
3. den Anteil des absoluten Anstiegs nach Nummer 2, der den in § 12 Absatz 1 Satz 1 Nummer 2 genannten prozentualen Anstieg in Tonnenkilometern überschreitet.

Die zuständige Behörde übermittelt die Anträge spätestens sechs Monate nach Ablauf der Frist nach Absatz 1 Satz 1 an die Europäische Kommission. § 11 Absatz 4 Satz 4 und Absatz 5 Satz 2 und 3 gelten entsprechend.

(3) In dem Antrag nach Absatz 1 Satz 1 ist die nach den Anforderungen der Monitoring-Verordnung ermittelte Transportleistung anzugeben, die der Antragsteller im zweiten Kalenderjahr der laufenden Handelsperiode durch seine Luftverkehrstätigkeit erbracht hat.

(4) Zur Ermittlung und Angabe der Transportleistung nach Absatz 3 hat der Luftfahrzeugbetreiber einen Tonnenkilometer-Überwachungsplan zu erstellen und bei der zuständigen Behörde innerhalb der in Anhang 2 Teil 1 Nummer 2 genannten Frist zur Genehmigung einzureichen.

(5) Die Genehmigung nach Absatz 4 ist zu erteilen, wenn der Überwachungsplan den Vorgaben der Monitoring-Verordnung entspricht. § 6 Absatz 2 Satz 3 und 5 gilt entsprechend.

§ 14 Ausgabe von Berechtigungen

(1) Die zuständige Behörde gibt die nach § 9 Absatz 4 zugeteilten Berechtigungen nach Maßgabe der Zuteilungsentscheidung bis zum 28. Februar eines Jahres, für das Berechtigungen abzugeben sind, aus.

(2) Abweichend von Absatz 1 werden für Anlagen, die nach Beginn der Handelsperiode in Betrieb genommen wurden, für das erste Betriebsjahr zugeteilte Berechtigungen unverzüglich nach der Zuteilungsentscheidung ausgegeben. Ergeht die Zuteilungsentscheidung vor dem 28. Februar eines Kalenderjahres, so werden Berechtigungen nach Satz 1 erstmals zum 28. Februar desselben Jahres ausgegeben.

(3) Bei der Regelzuteilung für Luftfahrzeugbetreiber nach § 11 gibt die zuständige Behörde die für eine Handelsperiode insgesamt zugeteilte Menge an Luftverkehrsberechtigungen in den Jahren der Handelsperiode jeweils bis zum 28. Februar in jährlich gleichen Teilmengen aus. Bei der Zuteilung aus der Sonderreserve nach § 12 gibt die zuständige Behörde die für eine Handelsperiode insgesamt zugeteilte Menge an Luftverkehrsberechtigungen in den auf die Zuteilungsentscheidung folgenden Kalenderjahren der Handelsperiode in jährlich gleichen Teilmengen aus.

Fußnote

(+++ § 14: Zur Anwendung vgl. § 34 Abs 2 +++)

§ 15 Durchsetzung von Rückgabeverpflichtungen

Soweit der Betreiber im Fall der Aufhebung der Zuteilungsentscheidung zur Rückgabe zu viel ausgegebener Berechtigungen verpflichtet ist, kann die zuständige Behörde diese Verpflichtung nach den Vorschriften des Verwaltungs-Vollstreckungsgesetzes durchsetzen. Die Höhe des Zwangsgeldes beträgt bis zu 500 000 Euro.

§ 16 Anerkennung von Berechtigungen und Emissionsgutschriften

(1) Berechtigungen, die von anderen Mitgliedstaaten der Europäischen Union in Anwendung der Richtlinie 2003/87/EG für die laufende Handelsperiode ausgegeben worden sind, stehen Berechtigungen gleich, die in der Bundesrepublik Deutschland ausgegeben worden sind.

(2) Die Vorschriften über Berechtigungen nach § 7 Absatz 3 bis 5 und § 17 gelten für Emissionsreduktionseinheiten, zertifizierte Emissionsreduktionen und Emissionsgutschriften, die in einer Rechtsverordnung nach § 28 Absatz 1 Nummer 3 anerkannt sind, entsprechend.

(3) Berechtigungen, die von Drittländern ausgegeben werden, mit denen Abkommen über die gegenseitige Anerkennung von Berechtigungen gemäß Artikel 25 Absatz 1 der Richtlinie 2003/87/EG geschlossen wurden, werden von der zuständigen Behörde nach Maßgabe der auf Grundlage von Artikel 25 Absatz 2 der Richtlinie 2003/87/EG erlassenen Vorschriften in Berechtigungen überführt.

§ 17 Emissionshandelsregister

Berechtigungen werden in einem Emissionshandelsregister nach der Verordnung gemäß Artikel 19 Absatz 3 der Richtlinie 2003/87/EG gehalten und übertragen.

§ 18 Umtausch von Emissionsgutschriften in Berechtigungen

(1) Auf Antrag des Betreibers tauscht die zuständige Behörde Emissionsreduktionseinheiten, zertifizierte Emissionsreduktionen oder andere Gutschriften für Emissionsminderungen nach Maßgabe der Absätze 2 und 3 in Berechtigungen für die Handelsperiode 2013 bis 2020 um.

(2) Der Umtausch ist in der Handelsperiode 2013 bis 2020 vorbehaltlich einer Erhöhung durch eine Rechtsverordnung nach § 28 Absatz 1 Nummer 3 auf folgende Höchstmengen beschränkt:

1. für eine Anlage, für die der Anlagenbetreiber in der Handelsperiode 2008 bis 2012 eine Zuteilung nach den §§ 6 bis 9 oder § 12 des Zuteilungsgesetzes 2012 erhalten hat, auf 22 Prozent dieser Zuteilungsmenge, soweit dieser Anteil nicht zur Erfüllung der Abgabepflicht für die Emissionen in der Handelsperiode 2008 bis 2012 genutzt wurde;

2. für eine Anlage, die nicht von Nummer 1 erfasst ist, auf eine Menge, die 4,5 Prozent der nach § 7 Absatz 1 für die Emissionen in der Handelsperiode 2013 bis 2020 insgesamt abzugebenden Menge an Berechtigungen entspricht;
3. für Luftfahrzeugbetreiber auf eine Menge, die 1,5 Prozent der vom jeweiligen Luftfahrzeugbetreiber nach § 7 Absatz 1 für die Emissionen in der Handelsperiode 2013 bis 2020 insgesamt abzugebenden Menge an Berechtigungen entspricht; diese Menge erhöht sich um eine Menge, die 15 Prozent der Menge an Berechtigungen entspricht, die der jeweilige Luftfahrzeugbetreiber für die Handelsperiode 2012 abzugeben hatte, soweit der Luftfahrzeugbetreiber diesen Anteil nicht zur Erfüllung dieser Abgabepflicht genutzt hat.

(3) Folgende Emissionsreduktionseinheiten oder zertifizierte Emissionsreduktionen sind vorbehaltlich einer Einschränkung durch eine Rechtsverordnung nach § 28 Absatz 1 Nummer 3 umtauschbar:

1. Emissionsreduktionseinheiten oder zertifizierte Emissionsreduktionen für Emissionsminderungen, die vor dem Jahr 2013 erbracht wurden;
2. zertifizierte Emissionsreduktionen aus Projekten, die vor dem Jahr 2013 von dem Exekutivrat im Sinne des § 2 Nummer 22 des Projekt-Mechanismen-Gesetzes registriert wurden.

Satz 1 gilt nur für Emissionsreduktionseinheiten und zertifizierte Emissionsreduktionen, die aus Projekttypen stammen, deren Gutschriften auch in der Handelsperiode 2008 bis 2012 genutzt werden durften.

Fußnote

(+++ § 18: Zur Anwendung vgl. § 33 Abs. 1 +++)

Abschnitt 4
Gemeinsame Vorschriften

§ 19 Zuständigkeiten

(1) Zuständige Behörde ist

1. für den Vollzug des § 4 bei genehmigungsbedürftigen Anlagen nach § 4 Absatz 1 Satz 3 des Bundes-Immissionsschutzgesetzes die nach Landesrecht für den Vollzug des § 4 zuständige Behörde,
2. für den Vollzug des § 31 Absatz 2 im Fall eines gewerblichen Luftfahrzeugbetreibers das Luftfahrt-Bundesamt,
3. im Übrigen das Umweltbundesamt.

(2) Ist für Streitigkeiten nach diesem Gesetz der Verwaltungsrechtsweg gegeben, ist für Klagen, die sich gegen eine Handlung oder Unterlassung des Umweltbundesamtes richten, das Verwaltungsgericht am Sitz der Deutschen Emissionshandelsstelle im Umweltbundesamt örtlich zuständig.

(3) Soweit die nach Absatz 1 Nummer 3 zuständige Behörde Aufgaben nach § 2 Absatz 7 wahrnimmt, unterliegt sie der gemeinsamen Fachaufsicht durch das Bundesministerium für Wirtschaft und Energie und das Bundesministerium für Umwelt, Naturschutz, Bau und Reaktorsicherheit.

§ 20 Überwachung

(1) Die nach § 19 jeweils zuständige Behörde hat die Durchführung dieses Gesetzes und der auf dieses Gesetz gestützten Rechtsverordnungen zu überwachen.

(2) Betreiber sowie Eigentümer und Besitzer von Luftfahrzeugen oder von Grundstücken, auf denen sich Luftfahrzeuge befinden oder auf denen Anlagen betrieben werden, sind verpflichtet, den Angehörigen der zuständigen Behörde und deren Beauftragten unverzüglich

1. den Zutritt zu den Anlagen, Luftfahrzeugen oder Grundstücken zu den Geschäftszeiten zu gestatten,
2. die Vornahme von Prüfungen einschließlich der Ermittlung von Emissionen zu den Geschäftszeiten zu gestatten sowie
3. auf Anforderung die Auskünfte zu erteilen und die Unterlagen vorzulegen, die zur Erfüllung ihrer Aufgaben erforderlich sind.

Im Rahmen der Pflichten nach Satz 1 haben die Betreiber Arbeitskräfte sowie Hilfsmittel bereitzustellen.

(3) Für die zur Auskunft verpflichtete Person gilt § 55 der Strafprozessordnung entsprechend.

§ 21 Prüfstellen

(1) Zur Prüfung von Emissionsberichten nach § 5 Absatz 2 und zur Prüfung von Zuteilungsanträgen nach § 9 Absatz 2 Satz 6, § 11 Absatz 4 Satz 4 und § 13 Absatz 2 Satz 4 sind berechtigt:

1. akkreditierte Prüfstellen nach der Verordnung (EU) Nr. 600/2012 der Kommission vom 21. Juni 2012 über die Prüfung von Treibhausgasemissionsberichten und Tonnenkilometerberichten sowie die Akkreditierung von Prüfstellen gemäß der Richtlinie 2003/87/EG des Europäischen Parlaments und des Rates (ABl. L 181 vom 12.7.2012, S. 1) in der jeweils geltenden Fassung,
2. zertifizierte Prüfstellen, die durch die auf Grundlage des § 28 Absatz 4 Satz 1 Nummer 1 beliehene Zulassungsstelle oder durch die entsprechende nationale Behörde eines anderen Mitgliedstaates nach Artikel 54 Absatz 2 der Verordnung (EU) Nr. 600/2012 zertifiziert sind.

(2) Die Prüfstelle hat die Prüfung von Emissionsberichten nach § 5 Absatz 2 sowie die Prüfung von Zuteilungsanträgen nach § 11 Absatz 4 Satz 4 und § 13 Absatz 2 Satz 4 nach den Vorgaben der Verordnung (EU) Nr. 600/2012 in der jeweils geltenden Fassung und der Rechtsverordnung nach § 28 Absatz 2 Nummer 1 durchzuführen. Die Prüfstelle hat Zuteilungsanträge von Anlagenbetreibern nach den Anforderungen der Rechtsverordnung nach § 10 zu prüfen.

(3) Die Prüfstelle nimmt die ihr nach Absatz 2 zugewiesenen Aufgaben nur im öffentlichen Interesse wahr.

§ 22 Gebühren für individuell zurechenbare öffentliche Leistungen von Bundesbehörden

(1) Für die Verwaltung eines Personen- oder Händlerkontos in dem Emissionshandelsregister erhebt die zuständige Behörde von dem Kontoinhaber eine Gebühr von 400 Euro pro Handelsperiode.

(2) Für Amtshandlungen der Zulassungsstelle nach § 28 Absatz 4 Satz 1 Nummer 1 werden Gebühren und Auslagen erhoben.

(3) Wird ein Widerspruch gegen Entscheidungen nach diesem Gesetz vollständig oder teilweise zurückgewiesen, mit Ausnahme des Widerspruchs gegen Entscheidungen nach § 4, beträgt die Gebühr entsprechend dem entstandenen Verwaltungsaufwand 50 bis 2 000 Euro. Dies gilt nicht, wenn der Widerspruch nur deshalb keinen Erfolg hat, weil die Verletzung einer Verfahrens- oder Formvorschrift nach § 45 des Verwaltungsverfahrensgesetzes unbeachtlich ist. Wird der Widerspruch nach Beginn der sachlichen Bearbeitung jedoch vor deren Beendigung zurückgenommen, ermäßigt sich die Gebühr um mindestens 25 Prozent.

(4) Die Befugnis der Länder zur Erhebung von Gebühren und Auslagen für Amtshandlungen nach § 4 bleibt unberührt.

Fußnote

(+++ § 22 Abs 1: Zur Anwendung vgl. § 33 Abs 3 +++)

§ 23 Elektronische Kommunikation

(1) Die zuständige Behörde kann für die in Satz 3 genannten Dokumente, für die Bekanntgabe von Entscheidungen und für die sonstige Kommunikation die Verwendung der Schriftform oder der elektronischen Form vorschreiben. Wird die elektronische Form vorgeschrieben, kann die zuständige Behörde eine bestimmte Verschlüsselung sowie die Eröffnung eines Zugangs für die Übermittlung elektronischer Dokumente vorschreiben. Die zuständige Behörde kann auch vorschreiben, dass Betreiber oder Prüfstellen zur Erstellung von Überwachungsplänen oder Berichten oder zur Stellung von Anträgen nur die auf ihrer Internetseite zur Verfügung gestellten elektronischen Formularvorlagen zu benutzen und die ausgefüllten Formularvorlagen in elektronischer Form sowie unter Verwendung einer qualifizierten Signatur nach dem Signaturgesetz vom 16. Mai 2001 (BGBl. I S. 876), das zuletzt durch Artikel 4 des Gesetzes vom 17. Juli 2009 (BGBl. I S. 2091) geändert worden ist, zu übermitteln haben. Wenn die Benutzung elektronischer Formatvorlagen vorgeschrieben ist, ist die Übermittlung zusätzlicher Dokumente als Ergänzung der Formatvorlagen unter Beachtung der Formvorschriften des Satzes 3 möglich. Soweit das Umweltbundesamt zuständige Behörde ist, werden Anordnungen nach den Sätzen 1 bis 3 im Bundesanzeiger bekannt gemacht; im Übrigen werden sie im amtlichen Veröffentlichungsblatt der zuständigen Behörde bekannt gemacht.

(2) Für Verfahren zur Bewilligung von Beihilfen im Sinne von § 2 Absatz 7 gilt Absatz 1 entsprechend.

§ 24 Einheitliche Anlage

Auf Antrag stellt die zuständige Behörde fest, dass das Betreiben mehrerer Anlagen im Sinne von Anhang 1 Teil 2 Nummer 7 sowie Nummer 8 bis 11, die von demselben Betreiber an demselben Standort in einem technischen Verbund betrieben werden, zur Anwendung der §§ 5 bis 7 und 9 als Betrieb einer einheitlichen Anlage gilt, wenn die erforderliche Genauigkeit bei der Ermittlung der Emissionen gewährleistet ist.

Fußnote

(+++ § 24: Zur Anwendung vgl. § 34 Abs. 2 +++)

§ 25 Änderung der Identität oder Rechtsform des Betreibers

(1) Ändert sich die Identität oder die Rechtsform eines Betreibers, so hat der neue Betreiber dies unverzüglich nach der Änderung der Behörde anzuzeigen, die für den Vollzug von § 6 Absatz 3 Satz 1 zuständig ist, und bei immissionsschutzrechtlich genehmigten Anlagen der Behörde, die für den Vollzug von § 4 Absatz 5 Satz 1 zuständig ist. Der neue Betreiber übernimmt die noch nicht erfüllten Pflichten des ursprünglichen Betreibers nach den §§ 5 und 7.

(2) Ein Wechsel des Betreibers im Verlauf der Handelsperiode lässt die Zuteilungsentscheidung unberührt. Noch nicht ausgegebene Berechtigungen werden ab dem Nachweis des Betreiberwechsels an den neuen Betreiber ausgegeben, soweit er die Tätigkeit übernommen hat. Im Falle der Aufteilung einer Anlage teilt die zuständige Behörde die in der ursprünglichen Zuteilungsentscheidung ausgewiesene Zuteilungsmenge auf die aus der Aufteilung hervorgehenden Anlagen in dem Verhältnis auf, in dem sie die Tätigkeit der Anlage übernommen haben.

§ 26 Ausschluss der aufschiebenden Wirkung

Widerspruch und Anfechtungsklage gegen Zuteilungsentscheidungen oder Entscheidungen nach § 29 Satz 1 oder § 31 Absatz 2 Satz 1 haben keine aufschiebende Wirkung.

§ 27 Befreiung für Kleinemittenten

(1) Die zuständige Behörde befreit den Betreiber einer Anlage für die Handelsperiode 2013 bis 2020 von der Pflicht nach § 7 Absatz 1, sofern

1. die Anlage in den Jahren 2008 bis 2010 jeweils weniger als 25 000 Tonnen Kohlendioxidäquivalent emittiert hat und
2. die Europäische Kommission keine Einwände nach Artikel 27 Absatz 2 der Richtlinie 2003/87/EG gegen die Befreiung erhebt.

Bei Anlagen der in Anhang 1 Teil 2 Nummer 2 bis 6 genannten Tätigkeiten ist eine Befreiung nach Satz 1 ausgeschlossen, sofern die Feuerungswärmeleistung der Anlage 35 Megawatt oder mehr beträgt; dies gilt für die Gesamtfeuerungswärmeleistung von Verbrennungseinheiten nach Anhang 1 Teil 2 Nummer 1 in einer Anlage entsprechend. Für die Dauer der Befreiung besteht kein Anspruch auf eine Zuteilung von kostenlosen Berechtigungen nach § 9 Absatz 1.

(2) Die Befreiung nach Absatz 1 setzt einen Antrag des Betreibers bei der zuständigen Behörde voraus, der nur zusammen mit dem Antrag nach § 9 Absatz 2 gestellt werden kann. Er ist für die Handelsperiode 2013 bis 2020 mit der Auswahl einer der beiden Maßnahmen nach Satz 3 zu verbinden. Als Ausgleich für die Pflichtenbefreiung nach Absatz 1 unterliegt der Betreiber für die Handelsperiode 2013 bis 2020 einer der nachfolgenden gleichwertigen Maßnahmen:

1. Zahlung eines Ausgleichsbetrages für ersparte Kosten des Erwerbs von Emissionsberechtigungen für die Berichtsjahre der Handelsperiode 2013 bis 2020 nach Maßgabe des Absatzes 3;
2. Selbstverpflichtung zu spezifischen Emissionsminderungen der Anlage in der Handelsperiode 2013 bis 2020 nach Maßgabe des Absatzes 4.

(3) Der nach Absatz 2 Satz 3 Nummer 1 letztendlich zu zahlende Ausgleichsbetrag ergibt sich aus der berechneten Zahlungsverpflichtung, vermindert um einen Betrag, der sich aus der Anwendung eines

Kürzungsfaktors auf die Ausgleichszahlung ergibt. Der Kürzungsfaktor entspricht dem Verhältnis der erreichten Reduzierung des spezifischen Emissionswertes in Prozentpunkten zu 1,74 Prozentpunkten. Die Zahlungsverpflichtung ist das Produkt aus der anzusetzenden Menge an Emissionsberechtigungen, die dem Zukaufbedarf für das jeweilige Berichtsjahr der Handelsperiode 2013 bis 2020 entspricht, und dem durchschnittlichen, volumengewichteten Zuschlagspreis der Versteigerungen nach § 8 im Berichtsjahr oder dem Kalenderjahr vor dem Berichtsjahr, je nachdem, welcher der beiden Zuschlagspreise der geringere ist; für das Berichtsjahr 2013 ist nur der Zuschlagspreis dieses Berichtsjahres maßgeblich. Der Zukaufbedarf einer Anlage entspricht der Differenz zwischen der Emissionsmenge des Vorjahres und der sich aus den Berechnungsvorschriften der Rechtsverordnung nach § 10 ergebenden Menge an Berechtigungen. Die Einnahmen aus der Ausgleichszahlung stehen dem Bund zu und fließen in das Sondervermögen „Energie- und Klimafonds“.

(4) Gegenstand der Selbstverpflichtung zu spezifischen Emissionsminderungen der Anlage nach Absatz 2 Nummer 2 ist die Reduzierung des anlagenspezifischen Emissionswertes pro Produkteinheit gegenüber dem Emissionswert der Basisperiode um jährlich 1,74 Prozent. Für die Berechnung der erforderlichen, spezifischen Emissionsminderung sind die Vorgaben des Anhangs 5 Teil 1 maßgeblich. Der Betreiber ist verpflichtet, der zuständigen Behörde jeweils bis zum 31. März eines Jahres die Produktionsmenge des Vorjahres zu berichten. Erfüllt ein Betreiber die Verpflichtung nach Satz 1 in drei aufeinanderfolgenden Berichtsjahren der Handelsperiode 2013 bis 2020 nicht, so unterliegt er für jedes dieser Berichtsjahre der Ausgleichszahlung nach Absatz 2 Nummer 1 bis zum Beginn des Berichtsjahres, in dem die Verpflichtung wieder erfüllt wird. Der Betreiber unterliegt der Ausgleichszahlung auch, wenn er seine Verpflichtung nach Satz 1 im Berichtsjahr 2020 oder in den beiden Berichtsjahren 2019 und 2020 nicht erfüllt. Für die Berechnung der Ausgleichszahlung in den Fällen der Sätze 4 und 5 sind die Vorgaben des Anhangs 5 Teil 2 maßgeblich.

(5) Für Anlagen, die in den Jahren 2008 bis 2010 oder in den drei Kalenderjahren vor dem Berichtsjahr jeweils weniger als 20 000 Tonnen Kohlendioxidäquivalent emittiert haben, gilt die Pflicht zur Emissionsermittlung und Berichterstattung nach § 5 mit der Maßgabe, dass ein vereinfachter Emissionsbericht jeweils einen Zeitraum von zwei Berichtsjahren umfasst. Sofern sich bei diesen Anlagen aus dem Emissionsbericht Gesamtemissionen in einem Berichtsjahr von mehr als 20 000 Tonnen Kohlendioxidäquivalent ergeben, kann die zuständige Behörde die Vorlage jährlicher Emissionsberichte anordnen.

(6) Die Befreiung erlischt, wenn die Anlage in einem Jahr der Handelsperiode 2013 bis 2020 25 000 Tonnen Kohlendioxidäquivalent oder mehr emittiert. In diesem Fall unterliegt der Betreiber ab dem Jahr der Überschreitung der Emissionsgrenze bis zum Jahr 2020 der Pflicht nach § 7 Absatz 1 und erhält eine Zuteilung gemäß § 9.

§ 28 Verordnungsermächtigungen

(1) Die Bundesregierung wird ermächtigt, durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf,

1. die Kohlendioxidäquivalente im Sinne des § 3 Absatz 1 Nummer 3 für die einzelnen Treibhausgase nach Maßgabe internationaler Standards zu bestimmen;
2. Einzelheiten für die Versteigerung nach § 8 vorzusehen; dabei kann die Bundesregierung insbesondere Vorschriften erlassen über die Zulassung von Stellen, die Versteigerungen durchführen, über die Aufsicht über diese Stellen sowie über die Zulassung von weiteren Bietern;
3. Einzelheiten zum Umtausch von Emissionsreduktionseinheiten, zertifizierten Emissionsreduktionen oder anderen Emissionsgutschriften in Berechtigungen nach § 18 und weitere Formen der Nutzung dieser Gutschriften zu regeln; dabei kann die Bundesregierung insbesondere
   a) vorsehen, dass nach den Vorgaben von Maßnahmen der Europäischen Kommission nach Artikel 11a Absatz 8 Unterabsatz 4 bis 6 der Richtlinie 2003/87/EG zusätzliche Mengen von Gutschriften in Berechtigungen umgetauscht werden können, die von den in § 18 Absatz 2 genannten Werten abweichen,
   b) Anforderungen an das Umtauschverfahren sowie Antragsfristen festlegen,
   c) Umtausch und Nutzung für weitere Arten von Gutschriften für Emissionsminderungen zur Umsetzung von Artikel 11a Absatz 4 bis 6 der Richtlinie 2003/87/EG zulassen und
   d) Projekttypen festlegen, deren Gutschriften durch Maßnahmen nach Artikel 11a Absatz 9 der Richtlinie 2003/87/EG in der Handelsperiode 2013 bis 2020 einer Verwendungsbeschränkung unterliegen, sowie den Zeitpunkt, ab dem die Verwendungsbeschränkung beginnt;

4. Einzelheiten zur Anwendung des § 24 für Anlagen, die von demselben Betreiber am gleichen Standort in einem technischen Verbund betrieben werden, zu regeln; dies umfasst insbesondere Regelungen, dass
   a) der Antrag nach § 24 auch zulässig ist für einheitliche Anlagen aus Anlagen nach Anhang 1 Teil 2 Nummer 1 bis 6 und anderen Anlagen nach Anhang 1 Teil 2,
   b) bei Anlagen nach Anhang 1 Teil 2 Nummer 8 bis 11 die Produktionsmengen der in den einbezogenen Anlagen hergestellten Produkte anzugeben sind,
   c) Anlagen nach Anhang 1 Teil 2 Nummer 7 mit sonstigen in Anhang 1 Teil 2 aufgeführten Anlagen als einheitliche Anlage gelten;
5. Einzelheiten zur Ausgestaltung der Pflichtenfreistellung nach § 27 zu regeln, insbesondere Bestimmungen zu erlassen über
   a) Angaben im Befreiungsantrag nach § 27 Absatz 2,
   b) Anforderungen an den vereinfachten Emissionsbericht nach § 27 Absatz 5 Satz 1 sowie zusätzliche Erleichterungen bei der Berichterstattung nach § 5 für Anlagen, die in den Jahren 2008 bis 2010 oder in den drei Kalenderjahren vor dem Berichtsjahr jeweils weniger als 5 000 Tonnen Kohlendioxidäquivalent emittiert haben,
   c) Anforderungen an den Nachweis des anlagenspezifischen Emissionswertes,
   d) die Berücksichtigung der gekoppelten Produktion von Strom und Wärme sowie die Berücksichtigung mehrerer Einzelelemente der Zuteilung bei der Berechnung der spezifischen Emissionsminderung,
   e) Anforderungen an die gemeinsame Nachweisführung nach Anhang 5 Teil 1 Nummer 1 Buchstabe b und
   f) gesonderte Fristen für die Erfüllung der Pflichten nach den §§ 5 und 7 in Fällen des § 27 Absatz 6.

(2) Das Bundesministerium für Umwelt, Naturschutz, Bau und Reaktorsicherheit wird ermächtigt, durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, zu regeln:

1. Einzelheiten zur Ermittlung von und Berichterstattung über Emissionen nach § 5 Absatz 1, zur Verifizierung der Angaben in Emissionsberichten nach § 5 Absatz 2 und zur Verifizierung der Angaben zur Transportleistung in Anträgen nach § 11 Absatz 4 Satz 4 und § 13 Absatz 2 Satz 4, soweit diese Sachverhalte nicht den Vollzug des § 4 betreffen und nicht in der Monitoring-Verordnung oder in der Verordnung (EU) Nr. 600/2012 in ihrer jeweils geltenden Fassung abschließend geregelt sind;
2. im Einvernehmen mit dem Bundesministerium für Wirtschaft und Energie Einzelheiten zur Überführung von Berechtigungen, die von Drittländern ausgegeben werden, nach § 16 Absatz 3 und
3. Einzelheiten zur Einrichtung und Führung eines Emissionshandelsregisters nach § 17, insbesondere die in der Verordnung nach Artikel 19 Absatz 3 der Richtlinie 2003/87/EG aufgeführten Sachverhalte zur ergänzenden Regelung durch die Mitgliedstaaten.

(3) Das Bundesministerium für Umwelt, Naturschutz, Bau und Reaktorsicherheit wird ermächtigt, durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf, eine juristische Person des Privatrechts mit der Wahrnehmung aller oder eines Teils der Aufgaben des Umweltbundesamtes nach diesem Gesetz und den hierfür erforderlichen hoheitlichen Befugnissen zu beleihen, wenn diese Gewähr dafür bietet, dass die übertragenen Aufgaben ordnungsgemäß und zentral für das Bundesgebiet erfüllt werden. Dies gilt nicht für Befugnisse nach § 20 Absatz 2 Nummer 1 und 2 und Abschnitt 5 dieses Gesetzes sowie für Maßnahmen nach dem Verwaltungs-Vollstreckungsgesetz. Eine juristische Person bietet Gewähr im Sinne des Satzes 1, wenn

1. diejenigen, die die Geschäftsführung oder die Vertretung der juristischen Person wahrnehmen, zuverlässig und fachlich geeignet sind,
2. die juristische Person über die zur Erfüllung ihrer Aufgaben notwendige Ausstattung und Organisation verfügt und ein ausreichendes Anfangskapital hat und
3. eine wirtschaftliche oder organisatorische Nähe zu Personen ausgeschlossen ist, die dem Anwendungsbereich dieses Gesetzes unterfallen.

Die Beliehene untersteht der Aufsicht des Umweltbundesamtes.

(4) Das Bundesministerium für Umwelt, Naturschutz, Bau und Reaktorsicherheit wird ermächtigt, durch Rechtsverordnung, die nicht der Zustimmung des Bundesrates bedarf,

1. eine juristische Person mit den Aufgaben und Befugnissen einer Zulassungsstelle für Prüfstellen zu beleihen;

2. Anforderungen an die Zulassungsstelle und den Informationsaustausch mit der zuständigen Behörde nach § 19 Absatz 1 Nummer 3 sowie mit den für den Emissionshandel zuständigen Behörden anderer Mitgliedstaaten zu regeln;
3. Einzelheiten zum Zertifizierungsverfahren, insbesondere zu Anforderungen an die zu zertifizierenden Prüfstellen nach § 21 und zu deren Aufgaben und Pflichten, sowie zur Aufsicht über die Prüfstellen zu regeln;
4. die Erhebung von Gebühren und Auslagen für Amtshandlungen der Zulassungsstelle zu regeln.

Die Beleihung nach Satz 1 Nummer 1 ist nur zulässig, wenn die zu beleihende juristische Person die Gewähr für die ordnungsgemäße Erfüllung der Aufgaben der Zulassungsstelle im Einklang mit den Anforderungen der Verordnung (EU) Nr. 600/2012 in ihrer jeweils geltenden Fassung bietet; die Beliehene untersteht der Aufsicht des Bundesministeriums für Umwelt, Naturschutz, Bau und Reaktorsicherheit.

Abschnitt 5
Sanktionen

§ 29 Durchsetzung der Berichtspflicht

Kommt ein Betreiber seiner Berichtspflicht nach § 5 Absatz 1 nicht nach, so verfügt die zuständige Behörde die Sperrung seines Kontos. Die Sperrung ist unverzüglich aufzuheben, sobald der Betreiber der zuständigen Behörde einen den Anforderungen nach § 5 entsprechenden Bericht vorlegt oder eine Schätzung der Emissionen nach § 30 Absatz 2 Satz 1 erfolgt.

§ 30 Durchsetzung der Abgabepflicht

(1) Kommt ein Betreiber seiner Pflicht nach § 7 Absatz 1 nicht nach, so setzt die zuständige Behörde für jede emittierte Tonne Kohlendioxidäquivalent, für die der Betreiber keine Berechtigungen abgegeben hat, eine Zahlungspflicht von 100 Euro fest. Die Zahlungspflicht erhöht sich entsprechend dem Anstieg des Europäischen Verbraucherpreisindex für das Berichtsjahr gegenüber dem Bezugsjahr 2012; diese Jahresindizes werden vom Statistischen Amt der Europäischen Union (Eurostat) veröffentlicht. Die Festsetzung einer Zahlungspflicht nach Satz 1 ist nur innerhalb eines Jahres ab dem Pflichtenverstoß zulässig. Von der Festsetzung einer Zahlungspflicht kann abgesehen werden, wenn der Betreiber seiner Pflicht nach § 7 Absatz 1 auf Grund höherer Gewalt nicht nachkommen konnte.

(2) Soweit ein Betreiber nicht ordnungsgemäß über die durch seine Tätigkeit verursachten Emissionen berichtet hat, schätzt die zuständige Behörde die durch die Tätigkeit verursachten Emissionen entsprechend den Vorgaben des Anhangs 2 Teil 2. Die Schätzung ist Basis für die Verpflichtung nach § 7 Absatz 1. Die Schätzung unterbleibt, wenn der Betreiber im Rahmen der Anhörung zum Festsetzungsbescheid nach Absatz 1 seiner Berichtspflicht ordnungsgemäß nachkommt.

(3) Der Betreiber bleibt verpflichtet, die fehlenden Berechtigungen bis zum 31. Januar des Folgejahres abzugeben; sind die Emissionen nach Absatz 2 geschätzt worden, so sind die Berechtigungen nach Maßgabe der erfolgten Schätzung abzugeben. Gibt der Betreiber die fehlenden Berechtigungen nicht bis zum 31. Januar des Folgejahres ab, so werden Berechtigungen, auf deren Zuteilung oder Ausgabe der Betreiber einen Anspruch hat, auf seine Verpflichtung nach Satz 1 angerechnet.

(4) Die Namen der Betreiber, die gegen ihre Verpflichtung nach § 7 Absatz 1 verstoßen, werden im Bundesanzeiger veröffentlicht. Die Veröffentlichung setzt einen bestandskräftigen Zahlungsbescheid voraus.

§ 31 Betriebsuntersagung gegen Luftfahrzeugbetreiber

(1) Erfüllt ein Luftfahrzeugbetreiber seine Pflichten aus diesem Gesetz nicht und konnte die Einhaltung der Vorschriften nicht durch andere Durchsetzungsmaßnahmen gewährleistet werden, so kann die zuständige Behörde die Europäische Kommission ersuchen, eine Betriebsuntersagung für den betreffenden Luftfahrzeugbetreiber zu beschließen. Die zuständige Behörde hat dabei eine Empfehlung für den Geltungsbereich der Betriebsuntersagung und für Auflagen, die zu erfüllen sind, abzugeben. Die zuständige Behörde hat bei dem Ersuchen im Fall eines gewerblichen Luftfahrzeugbetreibers Einvernehmen mit dem Luftfahrt-Bundesamt herzustellen.

(2) Hat die Europäische Kommission gemäß Artikel 16 Absatz 10 der Richtlinie 2003/87/EG die Verhängung einer Betriebsuntersagung gegen einen Luftfahrzeugbetreiber beschlossen, so ergreift im Fall eines gewerblichen Luftfahrzeugbetreibers das Luftfahrt-Bundesamt und im Fall eines nichtgewerblichen Luftfahrzeugbetreibers

das Umweltbundesamt die zur Durchsetzung dieses Beschlusses erforderlichen Maßnahmen. Dazu können sie insbesondere

1. ein Startverbot verhängen,
2. ein Einflugverbot verhängen und
3. die Erlaubnis nach § 2 Absatz 7 des Luftverkehrsgesetzes oder die Betriebsgenehmigung nach § 20 Absatz 4 oder § 21a des Luftverkehrsgesetzes, soweit vorhanden, widerrufen.

§ 32 Bußgeldvorschriften

(1) Ordnungswidrig handelt, wer

1. entgegen § 5 Absatz 1 in Verbindung mit Anhang 2 Teil 2 Satz 1 der Behörde nicht richtig berichtet,
2. einer Rechtsverordnung nach § 10 Satz 3 Nummer 11 Buchstabe a oder einer vollziehbaren Anordnung auf Grund einer solchen Rechtsverordnung zuwiderhandelt, soweit die Rechtsverordnung für einen bestimmten Tatbestand auf diese Bußgeldvorschrift verweist,
3. entgegen § 11 Absatz 4 Satz 1 eine Angabe nicht richtig macht oder
4. entgegen § 11 Absatz 5 Satz 3, auch in Verbindung mit § 13 Absatz 2 Satz 4, eine Angabe oder einen Nachweis nicht richtig übermittelt.

(2) Ordnungswidrig handelt, wer eine in Absatz 1 bezeichnete Handlung fahrlässig begeht.

(3) Ordnungswidrig handelt, wer vorsätzlich oder fahrlässig

1. ohne Genehmigung nach § 4 Absatz 1 Satz 1 Treibhausgase freisetzt,
2. entgegen § 4 Absatz 2 eine Angabe nicht richtig oder nicht vollständig beifügt,
3. entgegen § 4 Absatz 5 Satz 1 oder § 25 Absatz 1 Satz 1 eine Anzeige nicht, nicht richtig, nicht vollständig oder nicht rechtzeitig erstattet,
4. entgegen § 6 Absatz 1 einen Überwachungsplan nicht oder nicht rechtzeitig einreicht,
5. einer vollziehbaren Anordnung nach § 6 Absatz 3 Satz 2 zuwiderhandelt,
6. einer Rechtsverordnung nach § 10 Satz 3 Nummer 3 oder Nummer 11 Buchstabe b oder einer vollziehbaren Anordnung auf Grund einer solchen Rechtsverordnung zuwiderhandelt, soweit die Rechtsverordnung für einen bestimmten Tatbestand auf diese Bußgeldvorschrift verweist, oder
7. entgegen § 20 Absatz 2 eine dort genannte Handlung nicht gestattet, eine Auskunft nicht, nicht richtig, nicht vollständig oder nicht rechtzeitig erteilt, eine Unterlage nicht, nicht richtig oder nicht rechtzeitig vorlegt oder eine Arbeitskraft oder ein Hilfsmittel nicht oder nicht rechtzeitig bereitstellt.

(4) Die Ordnungswidrigkeit kann in den Fällen des Absatzes 1 mit einer Geldbuße bis zu fünfhunderttausend Euro und in den Fällen der Absätze 2 und 3 mit einer Geldbuße bis zu fünfzigtausend Euro geahndet werden.

(5) Die zuständige Behörde soll in den Fällen des Absatzes 1 Nummer 1 von einer Ahndung absehen, wenn der Betreiber infolge des nicht richtigen Berichts gegen die Abgabepflicht nach § 7 Absatz 1 Satz 1 verstößt und wegen dieser Handlung eine Zahlungspflicht nach § 30 Absatz 1 Satz 1 festgesetzt wird.

Abschnitt 6
Übergangsregelungen

§ 33 Allgemeine Übergangsregelung

(1) § 18 findet ab dem 1. Januar 2013 Anwendung.

(2) § 13 Absatz 2, § 19 Absatz 1 Nummer 4 und § 27 des Treibhausgas-Emissionshandelsgesetzes vom 8. Juli 2004 (BGBl. I S. 1578), das zuletzt durch Artikel 9 des Gesetzes vom 11. August 2010 (BGBl. I S. 1163) geändert worden ist, gelten für Rechte und Pflichten, die sich auf Emissionen aus der Handelsperiode 2008 bis 2012 beziehen, fort.

(3) § 22 Absatz 1 gilt für die Erhebung von Gebühren für die Verwaltung von Konten ab der Handelsperiode 2013 bis 2020. § 22 Absatz 1 des Treibhausgas-Emissionshandelsgesetzes vom 8. Juli 2004 (BGBl. I S. 1578),

das zuletzt durch Artikel 9 des Gesetzes vom 11. August 2010 (BGBl. I S. 1163) geändert worden ist, gilt für Gebührentatbestände, die bis Ende des Jahres 2012 erfüllt sind.

(4) Abweichend von § 9 Absatz 2 Satz 6 und § 21 können Anlagenbetreiber vor dem 1. Januar 2014 bei der zuständigen Behörde Zuteilungsanträge für Neuanlagen und Kapazitätserweiterungen auch mit einer Verifizierung durch eine sachverständige Stelle einreichen, soweit diese sachverständige Stelle nach § 21 des Treibhausgas-Emissionshandelsgesetzes in seiner bis zum 19. Juli 2013 geltenden Fassung bekannt gegeben wurde.

§ 34 Übergangsregelung für Anlagenbetreiber

(1) Für die Freisetzung von Treibhausgasen durch Tätigkeiten im Sinne des Anhangs 1 des Treibhausgas-Emissionshandelsgesetzes vom 8. Juli 2004 (BGBl. I S. 1578), das zuletzt durch Artikel 9 des Gesetzes vom 11. August 2010 (BGBl. I S. 1163) geändert worden ist, sind in Bezug auf die Handelsperiode 2008 bis 2012 die §§ 1 bis 25 des Treibhausgas-Emissionshandelsgesetzes vom 8. Juli 2004 (BGBl. I S. 1578), das zuletzt durch Artikel 9 des Gesetzes vom 11. August 2010 (BGBl. I S. 1163) geändert worden ist, weiter anzuwenden. Dies gilt auch, wenn die Anlage, in der die Tätigkeit ausgeübt wird, erst zwischen dem 28. Juli 2011 und dem 31. Dezember 2012 in Betrieb genommen wird.

(2) Auf Anlagenbetreiber sind die Pflichten nach den §§ 4, 5 sowie 7 erst ab dem 1. Januar 2013 anzuwenden; soweit sich diese Vorschriften auf Emissionen beziehen, sind sie für Treibhausgase, die ab diesem Datum freigesetzt werden, anzuwenden. Die §§ 9 und 14 sind erst auf die Zuteilung und die Ausgabe von Berechtigungen, die für die Handelsperiode 2013 bis 2020 sowie für nachfolgende Handelsperioden gelten, anzuwenden. § 24 ist auf die Feststellung einheitlicher Anlagen ab der Handelsperiode 2013 bis 2020 anzuwenden. Die zuständige Behörde kann Feststellungen nach § 25 des Treibhausgas-Emissionshandelsgesetzes vom 8. Juli 2004 (BGBl. I S. 1578), das zuletzt durch Artikel 9 des Gesetzes vom 11. August 2010 (BGBl. I S. 1163) geändert worden ist, mit Wirkung ab der Handelsperiode 2013 bis 2020 widerrufen, sofern diese Feststellungen nach § 24 oder der Rechtsverordnung nach § 28 Absatz 1 Nummer 4 nicht getroffen werden durften.

§ 35 Übergangsregelung für Luftfahrzeugbetreiber

(1) Für Luftfahrzeugbetreiber sind die Pflichten nach den §§ 5 und 7 auf Emissionen anzuwenden, die ab dem 1. Januar 2012 freigesetzt werden.

(2) Die Pflicht nach § 6 Absatz 1 Satz 1 gilt in der Handelsperiode 2012 nicht für Luftfahrzeugbetreiber, die bereits über einen genehmigten Überwachungsplan für ihre Emissionsberichterstattung nach § 27 Absatz 4 des Treibhausgas-Emissionshandelsgesetzes vom 8. Juli 2004 (BGBl. I S. 1578), das zuletzt durch Artikel 9 des Gesetzes vom 11. August 2010 (BGBl. I S. 1163) geändert worden ist, verfügen. Reicht ein Luftfahrzeugbetreiber einen Überwachungsplan für die Handelsperiode 2012 ein, so sind für die Genehmigung abweichend von Absatz 2 Satz 2 nicht die Vorgaben der Monitoring-Verordnung, sondern die Vorgaben der Entscheidung 2007/589/EG der Kommission vom 18. Juli 2007 zur Festlegung von Leitlinien für die Überwachung und Berichterstattung betreffend Treibhausgasemissionen im Sinne der Richtlinie 2003/87/EG des Europäischen Parlaments und des Rates (Monitoring-Leitlinien) (ABl. L 229 vom 31.8.2007, S. 1), die zuletzt durch den Beschluss 2010/345/EU (ABl. L 155 vom 22.6.2010, S. 34) geändert worden ist, maßgeblich.

(3) Luftfahrzeugbetreiber können die Abgabepflicht nach § 7 Absatz 1 Satz 1 in der Handelsperiode 2012 durch Abgabe von Emissionsreduktionseinheiten oder zertifizierten Emissionsreduktionen bis zu einem Anteil von höchstens 15 Prozent der Menge der abzugebenden Berechtigungen erfüllen. § 6 Absatz 1c des Treibhausgas-Emissionshandelsgesetzes vom 8. Juli 2004 (BGBl. I S. 1578), das zuletzt durch Artikel 9 des Gesetzes vom 11. August 2010 (BGBl. I S. 1163) geändert worden ist, gilt entsprechend.

(4) Ist ein Luftfahrzeugbetreiber nach § 2 Absatz 6 Satz 2 Nummer 2 der Bundesrepublik Deutschland als zuständigem Verwaltungsmitgliedstaat zugewiesen nach der Verordnung (EG) Nr. 748/2009 (ABl. L 219 vom 22.8.2009, S. 1), die durch die Verordnung (EU) Nr. 82/2010 (ABl. L 25 vom 29.1.2010, S. 12) geändert worden ist, und wird dieser Luftfahrzeugbetreiber durch eine neue Fassung der Verordnung einem anderen Verwaltungsmitgliedstaat zugewiesen, so bleibt dieses Gesetz auf ihn hinsichtlich des Zuteilungsverfahrens nach § 11 mit Ausnahme der Zuteilungsentscheidung nach § 11 Absatz 6 anwendbar.

Anhang 1 (zu § 1, § 2 Absatz 1 bis 3 Satz 1, Absatz 4 Satz 1, Absatz 5 Nummer 3, § 3 Absatz 1 Nummer 2, 5, 9 und 12, § 4 Absatz 1 Satz 1, § 7 Absatz 2 Satz 1 Nummer 1,

§ 24, § 27 Absatz 1 Satz 2 und § 28 Absatz 1 Nummer 4)
Einbezogene Tätigkeiten und Treibhausgase

(Fundstelle: BGBl. I 2011, 1488 - 1491)

Teil 1
Grundsätze

1. Zur Berechnung der Gesamtfeuerungswärmeleistung einer in Teil 2 Nummer 2 bis 6, 11, 13, 19 und 22 genannten Anlage oder der Gesamtfeuerungswärmeleistung der Verbrennungseinheiten einer Anlage nach Teil 2 Nummer 1 werden die Feuerungswärmeleistungen aller technischen Einheiten addiert, die Bestandteil der Anlage sind und in denen Brennstoffe verbrannt werden. Bei diesen Einheiten handelt es sich insbesondere um alle Arten von Heizkesseln, Turbinen, Erhitzern, Industrieöfen, Verbrennungsöfen, Kalzinierungsöfen, Brennöfen, sonstigen Öfen, Trocknern, Motoren, Brennstoffzellen, Fackeln und thermischen oder katalytischen Nachbrennern. Einheiten mit einer Feuerungswärmeleistung von weniger als 3 Megawatt (MW), Notfackeln zur Anlagenentlastung bei Betriebsstörungen, Notstromaggregate und Einheiten, die ausschließlich Biomasse nutzen, werden bei dieser Berechnung nicht berücksichtigt. Ist der Schwellenwert für die Gesamtfeuerungswärmeleistung überschritten, sind alle Einheiten erfasst, in denen Brennstoffe verbrannt werden.
2. Für die Zuordnung einer Anlage, die sowohl einer Tätigkeit mit einem als Produktionsleistung angegebenen Schwellenwert als auch einer Tätigkeit mit einem als Gesamtfeuerungswärmeleistung angegebenen Schwellenwert zugeordnet werden kann, gilt Folgendes:
   a) Wenn die Anlage sowohl den Schwellenwert der Produktionsleistung als auch den Schwellenwert der Gesamtfeuerungswärmeleistung erreicht oder überschreitet, so ist die Anlage derjenigen Tätigkeit zuzuordnen, für die der Schwellenwert als Produktionsleistung angegeben ist.
   b) Wenn die Anlage entweder nur den Schwellenwert der Gesamtfeuerungswärmeleistung oder nur den Schwellenwert der Produktionsleistung erreicht oder überschreitet, ist sie derjenigen Tätigkeit zuzuordnen, deren Schwellenwert sie erreicht.

Teil 2
Tätigkeiten

Nr.	Tätigkeiten	Treib-hausgas
1	Verbrennungseinheiten zur Verbrennung von Brennstoffen mit einer Gesamtfeuerungswärmeleistung von insgesamt 20 MW oder mehr in einer Anlage, soweit nicht von einer der nachfolgenden Nummern erfasst	CO_2
2	Anlagen zur Erzeugung von Strom, Dampf, Warmwasser, Prozesswärme oder erhitztem Abgas durch den Einsatz von Brennstoffen in einer Verbrennungseinrichtung (wie Kraftwerk, Heizkraftwerk, Heizwerk, Gasturbinenanlage, Verbrennungsmotoranlage, sonstige Feuerungsanlage), einschließlich zugehöriger Dampfkessel, mit einer Feuerungswärmeleistung von 50 MW oder mehr	CO_2
3	Anlagen zur Erzeugung von Strom, Dampf, Warmwasser, Prozesswärme oder erhitztem Abgas durch den Einsatz von Kohle, Koks, einschließlich Petrolkoks, Kohlebriketts, Torfbriketts, Brenntorf, naturbelassenem Holz, emulgiertem Naturbitumen, Heizölen, gasförmigen Brennstoffen (insbesondere Koksofengas, Grubengas, Stahlgas, Raffineriegas, Synthesegas, Erdölgas aus der Tertiärförderung von Erdöl, Klärgas, Biogas), Methanol, Ethanol, naturbelassenen Pflanzenölen, Pflanzenölmethylestern, naturbelassenem Erdgas, Flüssiggas, Gasen der öffentlichen Gasversorgung oder Wasserstoff mit einer Feuerungswärmeleistung von mehr als 20 MW bis weniger als 50 MW in einer Verbrennungseinrichtung (wie Kraftwerk, Heizkraftwerk, Heizwerk, Gasturbinenanlage, Verbrennungsmotoranlage, sonstige Feuerungsanlage), einschließlich zugehöriger Dampfkessel	CO_2
4	Anlagen zur Erzeugung von Strom, Dampf, Warmwasser, Prozesswärme oder erhitztem Abgas durch den Einsatz anderer als in Nummer 3 genannter fester oder flüssiger Brennstoffe in einer Verbrennungseinrichtung (wie Kraftwerk, Heizkraftwerk, Heizwerk, Gasturbinenanlage, Verbrennungsmotoranlage, sonstige Feuerungsanlage), einschließlich zugehöriger Dampfkessel, mit einer Feuerungswärmeleistung von mehr als 20 MW bis weniger als 50 MW	CO_2
5	Verbrennungsmotoranlagen zum Antrieb von Arbeitsmaschinen für den Einsatz von Heizöl EL, Dieselkraftstoff, Methanol, Ethanol, naturbelassenen Pflanzenölen, Pflanzenölmethylestern oder gasförmigen Brennstoffen (insbesondere Koksofengas, Grubengas, Stahlgas, Raffineriegas, Synthesegas, Erdölgas aus der Tertiärförderung von Erdöl, Klärgas, Biogas, naturbelassenem Erdgas, Flüssiggas, Gasen der öffentlichen Gasversorgung, Wasserstoff) mit einer Feuerungswärmeleistung von 20 MW oder mehr	CO_2
6	Gasturbinenanlagen zum Antrieb von Arbeitsmaschinen für den Einsatz von Heizöl EL, Dieselkraftstoff, Methanol, Ethanol, naturbelassenen Pflanzenölen, Pflanzenölmethylestern oder gasförmigen Brennstoffen (insbesondere Koksofengas, Grubengas, Stahlgas, Raffineriegas, Synthesegas, Erdölgas aus der Tertiärförderung von Erdöl, Klärgas, Biogas, naturbelassenem Erdgas, Flüssiggas, Gasen der öffentlichen Gasversorgung, Wasserstoff) mit einer Feuerungswärmeleistung von mehr als 20 MW	CO_2

Nr.	Tätigkeiten	Treib-hausgas
7	Anlagen zur Destillation oder Raffination oder sonstigen Weiterverarbeitung von Erdöl oder Erdölerzeugnissen in Mineralöl- oder Schmierstoffraffinerien	CO_2
8	Anlagen zur Trockendestillation von Steinkohle oder Braunkohle (Kokereien)	CO_2
9	Anlagen zum Rösten, Schmelzen, Sintern oder Pelletieren von Metallerzen	CO_2
10	Anlagen zur Herstellung oder zum Erschmelzen von Roheisen oder Stahl einschließlich Stranggießen, auch soweit Konzentrate oder sekundäre Rohstoffe eingesetzt werden, mit einer Schmelzleistung von 2,5 Tonnen oder mehr je Stunde, auch soweit in integrierten Hüttenwerken betrieben	CO_2
11	Anlagen zur Herstellung oder Verarbeitung von Eisenmetallen (einschließlich Eisenlegierung) bei Betrieb von Verbrennungseinheiten mit einer Gesamtfeuerungswärmeleistung von 20 MW oder mehr, soweit nicht von Nummer 10 erfasst; die Verarbeitung umfasst insbesondere Walzwerke, Öfen zum Wiederaufheizen, Glühöfen, Schmiedewerke, Gießereien, Beschichtungs- und Beizanlagen	CO_2
12	Anlagen zur Herstellung von Primäraluminium	CO_2, PFC
13	Anlagen zum Schmelzen, zum Legieren oder zur Raffination von Nichteisenmetallen bei Betrieb von Verbrennungseinheiten mit einer Gesamtfeuerungswärmeleistung (einschließlich der als Reduktionsmittel verwendeten Brennstoffe) von 20 MW oder mehr	CO_2
14	Anlagen zur Herstellung von Zementklinker mit einer Produktionsleistung von mehr als 500 Tonnen je Tag in Drehrohröfen oder mehr als 50 Tonnen je Tag in anderen Öfen	CO_2
15	Anlagen zum Brennen von Kalkstein, Magnesit oder Dolomit mit einer Produktionsleistung von mehr als 50 Tonnen Branntkalk, gebranntem Magnesit oder gebranntem Dolomit je Tag	CO_2
16	Anlagen zur Herstellung von Glas, auch soweit es aus Altglas hergestellt wird, einschließlich Anlagen zur Herstellung von Glasfasern, mit einer Schmelzleistung von mehr als 20 Tonnen je Tag	CO_2
17	Anlagen zum Brennen keramischer Erzeugnisse mit einer Produktionsleistung von mehr als 75 Tonnen je Tag	CO_2
18	Anlagen zum Schmelzen mineralischer Stoffe, einschließlich Anlagen zur Herstellung von Mineralfasern, mit einer Schmelzleistung von mehr als 20 Tonnen je Tag	CO_2
19	Anlagen zum Trocknen oder Brennen von Gips oder zur Herstellung von Gipskartonplatten und sonstigen Gipserzeugnissen bei Betrieb von Verbrennungseinheiten mit einer Gesamtfeuerungswärmeleistung von 20 MW oder mehr	CO_2
20	Anlagen zur Gewinnung von Zellstoff aus Holz, Stroh oder ähnlichen Faserstoffen	CO_2
21	Anlagen zur Herstellung von Papier, Karton oder Pappe mit einer Produktionsleistung von mehr als 20 Tonnen je Tag	CO_2
22	Anlagen zur Herstellung von Industrieruß bei Betrieb von Verbrennungseinheiten mit einer Gesamtfeuerungswärmeleistung von 20 MW oder mehr	CO_2
23	Anlagen zur Herstellung von Salpetersäure	CO_2, N_2O
24	Anlagen zur Herstellung von Adipinsäure	CO_2, N_2O
25	Anlagen zur Herstellung von Glyoxal oder Glyoxylsäure	CO_2, N_2O
26	Anlagen zur Herstellung von Ammoniak	CO_2
27	Anlagen zur Herstellung organischer Grundchemikalien (Alkene und chlorierte Alkene; Alkine; Aromaten und alkylierte Aromaten; Phenole, Alkohole; Aldehyde, Ketone; Carbonsäuren, Dicarbonsäuren, Carbonsäureanhydride und Dimethylterephthalat; Epoxide; Vinylacetat, Acrylnitril; Caprolactam und Melamin) mit einer Produktionsleistung von über 100 Tonnen je Tag	CO_2
28	Anlagen zur Herstellung von Wasserstoff oder Synthesegas durch Reformieren, partielle Oxidation, Wassergas-Shiftreaktion oder ähnliche Verfahren mit einer Produktionsleistung von mehr als 25 Tonnen je Tag	CO_2
29	Anlagen zur Herstellung von Natriumkarbonat und Natriumhydrogenkarbonat	CO_2
30	Anlagen zur Abscheidung von Treibhausgasen aus Anlagen nach den Nummern 1 bis 29 zum Zwecke der Beförderung und geologischen Speicherung in einer in Übereinstimmung mit der Richtlinie 2009/31/EG des Europäischen Parlaments und des Rates vom 23. April 2009 über die geologische Speicherung von Kohlendioxid und zur Änderung der Richtlinie 85/337/EWG des Rates sowie der Richtlinien 2000/60/EG, 2001/80/EG, 2004/35/EG, 2006/12/EG und 2008/1/EG des Europäischen Parlaments und des Rates sowie der Verordnung (EG) Nr. 1013/2006 (ABl. L 140 vom 5.6.2009, S. 114) zugelassenen Speicherstätte	CO_2
31	Rohrleitungsanlagen zur Beförderung von Treibhausgasen zum Zwecke der geologischen Speicherung in einer in Übereinstimmung mit der Richtlinie 2009/31/EG zugelassenen Speicherstätte	CO_2
32	Speicherstätte zur geologischen Speicherung von Treibhausgasen, die in Übereinstimmung mit der Richtlinie 2009/31/EG zugelassen ist	CO_2
33	Flüge, die von einem Flugplatz abgehen oder auf einem Flugplatz enden, der sich in einem Hoheitsgebiet eines Vertragsstaats des Abkommens über den Europäischen Wirtschaftsraum befindet, bei Mitgliedstaaten der Europäischen Union jedoch nur, soweit der Vertrag über die Europäische Union in dem Gebiet Anwendung findet. Nicht unter diese Tätigkeit fallen:	CO_2

Nr.	Tätigkeiten	Treib-hausgas
	a) Flüge, die ausschließlich durchgeführt werden, um aa) regierende Monarchinnen und Monarchen und ihre unmittelbaren Familienangehörigen, bb) Staatschefinnen und Staatschefs, Regierungschefinnen und Regierungschefs und zur Regierung gehörende Ministerinnen und Minister eines Nichtmitgliedstaats des Abkommens über den Europäischen Wirtschaftsraum in offizieller Mission zu befördern, soweit dies durch einen entsprechenden Statusindikator im Flugplan vermerkt ist; b) Militärflüge in Militärluftfahrzeugen sowie Zoll- und Polizeiflüge; c) Flüge im Zusammenhang mit Such- und Rettungseinsätzen, Löschflüge, Flüge im humanitären Einsatz sowie Ambulanzflüge in medizinischen Notfällen, soweit eine Genehmigung der jeweils zuständigen Behörde vorliegt; d) Flüge, die ausschließlich nach Sichtflugregeln im Sinne der §§ 28 und 31 bis 34 der Luftverkehrs-Ordnung durchgeführt werden; e) Flüge, bei denen das Luftfahrzeug ohne Zwischenlandung wieder zum Ausgangsflugplatz zurückkehrt; f) Übungsflüge, die ausschließlich zum Erwerb eines Pilotenscheins oder einer Berechtigung für die Cockpit-Besatzung durchgeführt werden, sofern dies im Flugplan vermerkt ist; diese Flüge dürfen nicht zur Beförderung von Fluggästen oder Fracht oder zur Positionierung oder Überführung von Luftfahrzeugen dienen; g) Flüge, die ausschließlich der wissenschaftlichen Forschung oder der Kontrolle, Erprobung oder Zulassung von Luftfahrzeugen oder Ausrüstung dienen, unabhängig davon, ob es sich um Bord- oder Bodenausrüstung handelt; h) Flüge von Luftfahrzeugen mit einer höchstzulässigen Startmasse von weniger als 5 700 Kilogramm; i) Flüge im Rahmen von gemeinwirtschaftlichen Verpflichtungen nach Maßgabe des Artikels 16 der Verordnung (EG) Nr. 1008/2008 auf Routen innerhalb von Gebieten in äußerster Randlage im Sinne des Artikels 349 des Vertrags über die Arbeitsweise in der Europäischen Union oder auf Routen mit einer angebotenen Kapazität von höchstens 30 000 Sitzplätzen pro Jahr sowie j) Flüge, die nicht bereits von den Buchstaben a bis i erfasst sind und von einem Luftfahrzeugbetreiber durchgeführt werden, der gegen Entgelt Linien- oder Bedarfsflugverkehrsleistungen für die Öffentlichkeit erbringt, bei denen er Fluggäste, Fracht oder Post befördert (gewerblicher Luftfahrzeugbetreiber), sofern aa) dieser Luftfahrzeugbetreiber innerhalb eines Kalenderjahres jeweils weniger als 243 solcher Flüge in den Zeiträumen Januar bis April, Mai bis August und September bis Dezember durchführt oder bb) die jährlichen Gesamtemissionen solcher Flüge dieses Luftfahrzeugbetreibers weniger als 10 000 Tonnen betragen; diese Ausnahme gilt nicht für Flüge, die ausschließlich zur Beförderung von regierenden Monarchinnen und Monarchen und ihren unmittelbaren Familienangehörigen sowie von Staatschefinnen und Staatschefs, Regierungschefinnen und Regierungschefs und zur Regierung gehörenden Ministerinnen und Ministern eines Mitgliedstaats des Abkommens über den Europäischen Wirtschaftsraum in Ausübung ihres Amtes durchgeführt werden.	

Anhang 2 (zu § 5 Absatz 1, § 6 Absatz 1 Satz 2, Absatz 2 Satz 2, § 13 Absatz 4, § 30 Absatz 2 Satz 1 und § 32 Absatz 1 Nummer 1) Anforderungen an die Vorlage und Genehmigung von Überwachungsplänen nach den §§ 6 und 13 sowie an die Ermittlung von Emissionen und die Berichterstattung nach § 5

(Fundstelle: BGBl. I 2011, 1492)

Teil 1
Fristen für die Vorlage eines Überwachungsplans

1. Für die Einreichung eines Überwachungsplans nach § 6 Absatz 1 Satz 1 gelten folgende Fristen:
   a) Für Betreiber von Anlagen, die spätestens zehn Monate vor Beginn einer Handelsperiode in Betrieb genommen wurden, endet die Frist fünf Monate vor Beginn der Handelsperiode;
   b) Betreiber von Anlagen, die später als zehn Monate vor Beginn einer Handelsperiode in Betrieb genommen wurden, müssen den Überwachungsplan vor Inbetriebnahme der Anlage vorlegen;
   c) Luftfahrzeugbetreiber, die ihre Tätigkeit bis zum 28. Juli 2011 aufgenommen haben, müssen unverzüglich nach dem 28. Juli 2011 einen Überwachungsplan über die Emissionsberichterstattung für die Jahre 2010 bis 2012 vorlegen;

d) Luftfahrzeugbetreiber, die ihre Tätigkeit nach dem unter Buchstabe c genannten Zeitpunkt aufnehmen, müssen unverzüglich nach diesem Zeitpunkt einen Überwachungsplan über die Emissionsberichterstattung für die Jahre 2010 bis 2012, soweit diese noch nicht abgelaufen sind, vorlegen;

e) Luftfahrzeugbetreiber, die ihre Tätigkeit bis zum 31. August 2012 aufnehmen, müssen bis zum 30. September 2012 einen Überwachungsplan über die Emissionsberichterstattung für die Handelsperiode 2013 bis 2020 vorlegen;

f) Luftfahrzeugbetreiber, die ihre Tätigkeit nach den unter Buchstabe e genannten Zeitpunkten aufnehmen, müssen unverzüglich nach diesem Zeitpunkt einen Überwachungsplan über die Emissionsberichterstattung für die Handelsperiode 2013 bis 2020, soweit diese noch nicht abgelaufen ist, vorlegen.

2. Luftfahrzeugbetreiber müssen den Überwachungsplan zur Ermittlung und Berichterstattung der Transportleistung für das zweite Kalenderjahr der laufenden Handelsperiode nach § 13 Absatz 4 spätestens drei Monate vor Beginn des zweiten Kalenderjahres der laufenden Handelsperiode vorlegen.

Teil 2
Anforderungen an die Ermittlung von Emissionen und die Emissionsberichterstattung

Ein Betreiber hat seine Emissionen nach seinem genehmigten Überwachungsplan zu ermitteln. Soweit dieser Überwachungsplan keine Regelungen trifft, hat er die Emissionen nach der Monitoring-Verordnung und der Rechtsverordnung nach § 28 Absatz 2 Nummer 1 zu ermitteln und darüber zu berichten. Soweit diese keine Regelungen treffen, sind die folgenden Regelungen zu beachten:

1. Bei Oxidationsprozessen ist ein Oxidationsfaktor von 1 zugrunde zu legen; eine unvollständige Verbrennung bleibt auch bei der Bestimmung des Emissionsfaktors unberücksichtigt.
2. Die CO_2-Emissionen von Anlagen im Sinne des Anhangs 1 Teil 2 Nummer 8 bis 10 sind über die Bilanzierung und Saldierung der Kohlenstoffgehalte der CO_2-relevanten Inputs und Outputs zu erfassen, soweit diese Anlagen nach § 24 als einheitliche Anlage gelten; Verbundkraftwerke am Standort von Anlagen zur Eisen- und Stahlerzeugung dürfen nicht gemeinsam mit den übrigen Anlagen bilanziert werden.

Abweichend von Satz 2 haben Luftfahrzeugbetreiber die Emissionen des Jahres 2012 nach der Entscheidung 2007/589/EG der Kommission zu ermitteln.

Anhang 3 (weggefallen)

Anhang 4 (weggefallen)

**Anhang 5 (zu § 27 Absatz 4 und § 28 Absatz 1 Nummer 5 Buchstabe e)
Berechnung der spezifischen Emissionsminderung sowie des Ausgleichsbetrages bei Nichterfüllung der Selbstverpflichtung nach § 27 Absatz 4**

(Fundstelle: BGBl. I 2011, 1496 - 1497)

Teil 1
Berechnung der spezifischen Emissionsminderung nach § 27 Absatz 4

1. Anlagenspezifischer Emissionswert für die Berechnung der spezifischen Emissions

a) Der anlagenspezifische Emissionswert für den Ausgangswert der Berechnung der spezifischen Emissionsminderung ist der Quotient aus der Emissionsmenge und der Produktionsmenge der betreffenden Anlage in der für die Zuteilung nach § 9 maßgeblichen Basisperiode; für die Berechnung des Emissionswertes sind die im Zuteilungsverfahren verwendeten Daten maßgeblich. Die jährliche erforderliche Minderung des spezifischen Emissionswertes der Anlage um 1,74 Prozent beginnt erstmals 2010.

b) Der Nachweis der erforderlichen Minderung des anlagenspezifischen Emissionswertes kann auch gemeinsam für mehrere Anlagen geführt werden, die der Verpflichtung nach § 27 Absatz 2 Nummer 2 unterliegen, sofern in den Befreiungsanträgen alle Anlagen benannt sind, für die ein gemeinsamer Nachweis geführt wird. In diesen Fällen werden die nach Buchstabe a ermittelten Minderungsbeiträge der einzelnen Anlagen nach Formel 7 entsprechend dem Anteil der Emissionsmenge jeder einzelnen Anlage an den Gesamtemissionen aller in den gemeinsamen Nachweis einbezogenen Anlagen in der für die Zuteilung nach § 9 maßgeblichen Basisperiode gewichtet.

2. Berechnungsformeln

a) Berechnungsformeln für Einzelanlagen-Nachweis

Formel 1	(Erfüllung der Minderungspflicht):	E-Mind-Ist(n) ≥ E-Mind-Soll(n)
Formel 2	(Notwendiger Minderungsprozentsatz):	E-Mind-Soll(n) = 1,74 x (n – 2009)
Formel 3	(Erreichter Minderungsprozentsatz):	E-Mind-Ist(n) = 100 – (E(n) x 100) / EBas)

b) Berechnungsformeln für gemeinsamen Nachweis

Formel 4	(Erfüllung der Minderungspflicht):	EPool-Ist(n) ≥ EPool-Soll(n)
Formel 5	(Notwendiger Minderungsprozentsatz):	EPool-Soll(n) = 1,74 x (n – 2009)
Formel 6	(Erreichter Minderungsprozentsatz der Einzelanlage):	EPool-Ist-Sg(a, n) = 100 – (E(a, n) x 100) / (EBas(a))
Formel 7	(Gewichtung der Minderungsbeiträge bei gemeinsamem Nachweis):	$\text{EPool-Ist(n)} = \sum_{a} \text{EPool-Ist-Sg(a, n)} \times \text{W(a)}$

Erläuterung der Abkürzungen:

Formeln 1 bis 3:

n	Index des Berichtsjahres in der Handelsperiode 2013 – 2020
EMind-Ist(n)	Erreichte Minderung des anlagenspezifischen Emissionswertes für das Berichtsjahr n in Prozent
EMind-Soll(n)	Erforderliche Minderung des anlagenspezifischen Emissionswertes für das Berichtsjahr n in Prozent
E(n)	Im Berichtsjahr n erreichter anlagenspezifischer Emissionswert in t CO_2Äq pro Produkteinheit
EBas	In der für die Zuteilungsentscheidung nach § 9 maßgeblichen Basisperiode erreichter anlagenspezifischer Emissionswert in t CO_2Äq

Formeln 4 bis 7:

a	Index der Anlagen bei gemeinsamem Nachweis
n	Index des Berichtsjahres in der Handelsperiode 2013 – 2020
EPool-Ist(n)	Erreichte Minderung des Emissionswertes aller in den gemeinsamen Nachweis einbezogenen Anlagen für das Berichtsjahr n in Prozent
EPool-Soll(n)	Erforderliche Minderung des Emissionswertes für das Berichtsjahr n in Prozent
EPool-Ist-Sg(a, n)	Erreichte Minderung des spezifischen Emissionswertes der Anlage a für das Berichtsjahr n in Prozent
E(a, n)	Im Berichtsjahr n erreichter anlagenspezifischer Emissionswert in t CO_2Äq pro Produkteinheit
EBas(a)	In der für die Zuteilungsentscheidung nach § 9 maßgeblichen Basisperiode erreichter anlagenspezifischer Emissionswert in t CO_2Äq
W(a)	Gewichtungsfaktor des Minderungsbeitrags einer Anlage a entsprechend Nummer 1 Buchstabe b in Prozent

Teil 2
Berechnung des Ausgleichsbetrages bei Nichterfüllung der Selbstverpflichtung nach § 27 Absatz 4 Satz 4 und 5

Sofern im Fall des § 27 Absatz 4 Satz 4 in einem Zeitraum von jeweils drei aufeinanderfolgenden Berichtsjahren die Pflicht nach § 27 Absatz 4 Satz 1 nicht erfüllt wurde, ergibt sich der Ausgleichsbetrag aus der berechneten Zahlungsverpflichtung vermindert um einen Betrag, der sich aus der Anwendung eines Kürzungsfaktors auf die berechnete Zahlungsverpflichtung ergibt. Der Kürzungsfaktor entspricht dem Verhältnis der im

Dreijahreszeitraum erreichten Reduzierung des spezifischen Emissionswertes in Prozentpunkten zu 5,22 Prozentpunkten. Der Betrag der Zahlungsverpflichtung berechnet sich nach § 27 Absatz 3. Für die in § 27 Absatz 4 Satz 5 geregelten Fälle gelten die Sätze 2 bis 4 entsprechend, wobei die maßgeblichen Werte an die verkürzten Zeiträume anzupassen sind.