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Subject : Proposal for a Directive of the European Parliament and of the Council amending the Directive establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the **Kyoto Protocol's project mechanisms**

- Examination of EP ENVI Committee amendments with a view to a possible first reading agreement with the EP
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INTRODUCTION

1. The Commission submitted its proposal to the Council on 29 July 2003. The proposal is based on Article 175(1) of the Treaty.
2. The European Economic and Social Committee delivered its opinion on 11 December 2003.¹

¹ OJ C 80, 30.3.2004.

3. There have been a number of informal contacts between the Presidency and Mr Alexander de Roo, the EP Rapporteur for this file to explore possibilities to reach an agreement at first reading between the institutions.
4. At its meeting on 2 April 2004, the Committee of Permanent Representatives examined a compromise package contained in doc. 7931/04, and gave the Presidency a mandate to enter into final negotiations with the EP on the basis of the compromise package as modified by Coreper.
5. Following the latest informal triologue meeting with the EP on 5 April 2004, four issues remained open in negotiations with the EP. As a further attempt to reach a compromise on these issues and agreement in first reading with the EP, the Presidency now proposes a small number of changes to the existing compromise package, as set out in the Annex to this note. The proposed changes relate to the following issues and are marked in **bold**:
 - Recital 15b (page 10) – linking with non-Kyoto schemes
 - Article 11(bis), paragraph 3, point (a) (page 12) – credits from nuclear facilities
 - Article 11(ter), paragraph 6 (page 14); Article 30, paragraph 2, point (l) (page 16) – large hydro (Member States’ oversight; consideration in the Commission review)
 - Article 30, paragraph 3, second subparagraph – supplementarity (reporting by Member States and by the Commission) (page 17).

On all other issues, the EP is prepared to accept the Council position as part of a global compromise package.

It is noted that FR maintains a parliamentary scrutiny reservation on the proposal.

6. On this basis, the Permanent Representatives Committee is invited

- To accept the modified compromise package as a basis for agreement in first reading with the European Parliament; and
- To mandate the Chairman of Coreper to confirm in writing to the Chairman of the European Parliament's ENVI Committee that, should the European Parliament vote the compromise amendments on the above proposal as reflected in the modified compromise package to be agreed by Coreper, the Council would, in accordance with Article 251(2) of the Treaty, adopt the proposed act thus amended.

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance
trading within the Community, in respect of the Kyoto Protocol's project mechanisms

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 ²,

Having regard to the opinion of the European Economic and Social Committee ³,

Having regard to the opinion of the Committee of the Regions ⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁵,

² OJ C [...], [...], p.[...].

³ OJ C [...], [...], p.[...].

⁴ OJ C [...], [...], p.[...].

⁵ OJ C [...], [...], p.[...].

Whereas:

- (1) 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/EC⁶ aims to promote reductions of greenhouse gas emissions in a cost effective and economically efficient manner, recognising that in the longer-term, global emissions of greenhouse gases will need to be reduced by approximately 70% compared to 1990 levels. It aims at contributing towards fulfilling the commitments of the Community and its Member States to reduce anthropogenic greenhouse gas emissions under 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 (UNFCCC) and the joint fulfilment of commitments thereunder⁷.
- (2) Directive 2003/87/EC states that the recognition of credits from project-based mechanisms for fulfilling obligations as from 2005 will increase the cost-effectiveness of achieving reductions of global greenhouse gas emissions and shall be provided for by provisions for linking the Kyoto project-based mechanisms including Joint Implementation (JI) and the Clean Development Mechanism (CDM) under the Kyoto Protocol with the Community greenhouse emission trading scheme ("the Community scheme").

⁶ OJ L 275, 25.10.2003, p. 32.

⁷ OJ L 130, 15.5.2002, p. 1.

- (3) Linking the Kyoto project-based mechanisms to the Community scheme, while safeguarding its environmental integrity, gives the opportunity to use emission credits generated through project activities eligible under Articles 6 and 12 of the Kyoto Protocol in order to fulfil Member States' obligations under Article 12 (3) of Directive 2003/87/EC. As a result, this will increase the diversity of low cost compliance options within the Community scheme leading to a reduction of overall costs of compliance with the Kyoto Protocol while improving the liquidity of the Community market of greenhouse gas emissions allowances. By stimulating demand for JI credits Community companies will invest in the development and transfer of advanced environmentally sound technologies and know-how. The demand for CDM credits will also be stimulated and thereby developing countries hosting CDM projects will be assisted in achieving their sustainable development goals.
- (4) In addition to the use of the Kyoto project-based mechanisms by the Community and its Member States, and by companies and individuals outside the Community scheme, those mechanisms should be linked to the Community scheme in such a way to ensure consistency with the UNFCCC and the Kyoto Protocol and subsequent decisions adopted thereunder as well as with the objectives and architecture of the Community scheme and provisions laid down by Directive 2003/87/EC.
- (5) Member States may allow operators to use CERs from 2005 and ERUs from 2008 in the Community scheme. The use of CERs and ERUs from 2008 is allowed up to a percentage of the allocation to each installation, to be specified by each Member State in its National Allocation Plan. The use will take place through the issue and immediate surrender of one allowance in exchange for one CER or ERU. An allowance issued in exchange for a CER or ERU will correspond to that CER or ERU.

- (5a) The Commission Regulation for a standardised and secured system of registries, to be adopted pursuant to Article 19(3) of Directive 2003/87/EC and Article 6(1) of Decision No 280/2004/EC⁸ 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, will provide for the relevant processes and procedures in the registries system for use of certified emission reductions during the period 2005-2007 and subsequent periods, and the use of emission reduction units during the period 2008-2012 and subsequent periods.
- (6) Each Member State will decide on the limit for the use of CERs and ERUs from project activities having due regard to the relevant provisions of the Kyoto Protocol and the Marrakech Accords, to meet the requirements therein that the use of the mechanisms should be supplemental to domestic action. Domestic action will thus constitute a significant element of the effort made.
- (7) In accordance with the UNFCCC and the Kyoto Protocol and subsequent decisions adopted thereunder, Member States are to refrain from using certified emission reductions and emission reduction units generated from nuclear facilities to meet their commitments under Article 3, paragraph 1 of the Kyoto Protocol and Decision 2002/358/EC.

⁸ OJ L 49, 19.2.2004, p. 1.

- (7a) Decision 19/CP.7 adopted pursuant to the UNFCCC and the Kyoto Protocol emphasises that environmental integrity is to be achieved through, inter alia, sound modalities, rules and guidelines for the mechanisms, sound and strong principles and rules governing land use, land-use change and forestry activities, and that the issues of non-permanence, additionality, leakage, uncertainties and socioeconomic and environmental impacts, including impacts on biodiversity and natural ecosystems, associated with afforestation and reforestation project activities are taken into account. The Commission should consider, in its review of the Directive in 2006, technical provisions related 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 related 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.
- (8) [...]
- (9) In accordance with the relevant Treaties of Accession, the *acquis communautaire* should be taken into account for the establishment of baselines for project activities undertaken in countries acceding to the Union.
- (9a) In order to avoid double counting, emission reductions units and certified emission reductions should not be issued as a result of project activities undertaken within the Community that also lead to a reduction in, or limitation of, emissions from installations covered by Directive 2003/87/EC, unless an equal number of allowances are cancelled from the registry of the Member State of the ERUs' or CERs' origin.

- (10) A Member State that authorises private or public entities to participate in project activities remains responsible for the fulfilment of its obligations under the UNFCCC and the Kyoto Protocol and should ensure that such participation is consistent with the relevant guidelines, modalities and procedures adopted pursuant to the UNFCCC or the Kyoto Protocol.
- (11) [...].
- (12) In accordance with the UNFCCC, the Kyoto Protocol and any subsequent decision adopted for their implementation, the Commission and the Member States should 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 supportive manner with their sustainable development strategies, and the Commission should review and report on efforts in this regard.
- (13) Since participation in JI and CDM project activities is voluntary, corporate environmental and social responsibility and accountability should be enhanced in accordance with paragraph 17 of the World Summit on Sustainable Development Plan of implementation⁹. In that regard, companies should be encouraged to improve social and environmental performance of JI and CDM activities in which they participate.
- (13a) Criteria and guidelines that are relevant to considering whether hydro-electric power production projects have negative environmental and social impacts have been identified by the World Commission on Dams in its year 2000 Final Report, by the OECD and by the World Bank.
- (14) Information on project activities in which a Member State participates or authorises private or public entities to participate should be made available to the public in accordance with Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information¹⁰.

⁹ Adopted by the World Summit on Sustainable Development, held in Johannesburg, South Africa, from 26 August to 4 September 2002.

¹⁰ OJ L 41, 14.2.2003, p. 26.

- (15) [...]
- (15a) The European Commission may include reference to impacts on the electricity market in its reports on emissions trading and the use of credits from project activities.
- (15b) Following entry into force of the Kyoto Protocol, the Commission should examine, whether it could be possible to conclude agreements with countries listed in Annex B to the Kyoto Protocol which have yet to ratify it, to provide for the recognition of allowances between the Community scheme and mandatory greenhouse gas emissions trading schemes capping absolute emissions established **within** those countries.
- (16) Directive 2003/87/EC should therefore be amended accordingly.
- (17) 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 ¹¹.
- (18) Since the objective of the proposed action, the establishment of a link between the Kyoto project-based mechanisms and the Community scheme, cannot be 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:

¹¹ OJ L 198, 17.7.1999, p. 23.

Article 1
Amendments to Directive 2003/87/EC

Directive 2003/87/EC is hereby amended as follows:

1. In Article 3, the following points are added:

- (k) "Annex I Party" means a Party listed in Annex I to the 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" (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" (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."

2. The following Articles are inserted after Article 11:

"Article 11(bis)

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

1. Subject to paragraph 3 of this Article, Member States may allow operators to use CERs and ERUs from project activities in the Community scheme during each period referred to in Article 11(2) of this Directive, up to a percentage of the allocation to each installation, to be specified by each Member State in its National Allocation Plan for that period. This shall take place through the issue and immediate surrender of one allowance by the Member State in exchange for one CER or ERU held by that operator in its national registry.
2. Subject to paragraph 3 of this Article, during the period referred to in Article 11(1) of this Directive, Member States may allow operators to use CERs from project activities in the Community scheme. This shall take place through the issue and immediate surrender of one allowance by the Member State in exchange for one CER. Member States shall cancel CERs that have been used by operators during the period referred to in Article 11(1) of this Directive.
3. All CERs and ERUs that are issued and may be used in accordance with the UNFCCC and the Kyoto Protocol and subsequent decisions adopted thereunder may be used in the Community Scheme:
 - (a) Except, in recognition that in accordance with the UNFCCC and the Kyoto Protocol and subsequent decisions adopted thereunder, Member States are to refrain from using CERs and ERUs generated from nuclear facilities to meet their commitments under Article 3, paragraph 1 of the Kyoto Protocol and Decision 2002/358/EC, that operators **are to refrain from** using CERs and ERUs generated from such facilities in the Community scheme during the period referred to in Article 11(1) and the first five-year period referred to in Article 11(2); and
 - (b) Except from land use, land-use change and forestry activities.

Article 11(ter)

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 the Treaty of Accession.
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 installations covered by 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 only be issued if an equal number of allowances are 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 under the scope of this Directive, ERUs and CERs may only be issued if an equal number of allowances are 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 hydro-electric power production project activities with a generating capacity exceeding 20MW, Member States shall ensure, when approving such project activities, that relevant international criteria and guidelines, **including** those contained in the World Commission on Dams year 2000 Final Report, will be respected during the development of such project activities.
7. Provisions for the implementation of paragraphs 3 and 4, particularly in respect of the avoidance of double counting, and any provisions necessary for the implementation of paragraph 5 where the host party meets all eligibility requirements for JI project activities shall be adopted in accordance with Article 23(2)."

3. Article 17 is replaced by the following:

"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."

4. [...]

5. In Article 18 the following paragraph is added:

"Member States shall in particular ensure coordination between their designated focal point for approving project activities pursuant to Article 6, paragraph 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."

6. In paragraph 3 of Article 19 the following sentence is added:

"That Regulation shall also include provisions concerning the use and identification of CERs and ERUs in the Community scheme and on monitoring of the level of such use."

7. Article 21 is amended as follows:

(a) In paragraph 1 the second sentence is replaced by the following:

"This report shall pay particular attention to the arrangements for the allocation of allowances, the use of ERUs and CERs in the Community scheme, the operation of registries, the application of the monitoring and reporting guidelines, verification and issues relating to compliance with the Directive and on the fiscal treatment of allowances, if any."

(b) Paragraph 3 is replaced by the following:

"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 and compliance."

8. The following article is inserted after Article 21:

"Article 21(bis)

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 supportive manner with their sustainable development strategies and to facilitate the engagement of entities in JI and CDM project development and implementation."

9. Article 30 is amended as follows:

(a) in paragraph 2, point (d) is replaced by the following:

"(d) the use of credits from project activities, including the need for the harmonisation of the allowed use of ERUs and CERs in the Community scheme;"

(b) in paragraph 2 the following points are added:

"(l) the impact of project activities on host countries, particularly on their development objectives, [...] **whether JI and CDM hydro-electric power production project activities with a generating capacity exceeding 500 MW which have negative environmental or social impacts have been approved, and the future use of CERs or ERUs resulting from any such hydro-electric 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 emissions reductions or limitations resulting from such activities from 2008;

(o) technical provisions related 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 related 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."

(c) paragraph 3 is replaced by the following:

"3. In advance of each period referred to in Article 11(2) of this Directive, 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.

Member States shall, in accordance with Article 3 of Decision 280/2004/EC, 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 the 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 by Member States to ensure that the use of the mechanisms is supplemental to domestic action **within the Community**".

10. [...]

11. In Annex III the following point is added:

"12. The plan shall specify the maximum amount of CERs and ERUs which may be used by operators in the Community scheme as a percentage of the allocation of the allowances to each installation. The percentage shall be consistent with the Member State's supplementarity obligations under the Kyoto Protocol and decisions adopted pursuant to the UNFCCC or the Kyoto Protocol."

Article 2
Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest **12** months after its entry into force. They shall forthwith inform the Commission thereof.

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 the Member States.

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

Article 3
Entry into force

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

Article 4
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
