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EUROPEAN COMMISSION

Brussels,

Draft

COMMISSION REGULATION

of

determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, certain restrictions applicable to the use of international credits from projects involving industrial gases

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on 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 11a(9) thereof,

Whereas:

(1) The ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC), 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,[2] is to stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. In order to meet that objective, the overall global annual mean surface temperature increase should not exceed 2°C above pre-industrial levels as endorsed by the Copenhagen Climate Change Conference in December 2009 and the "Copenhagen Accord". The latest Intergovernmental Panel on Climate Change (IPCC) Assessment Report shows that, in order to reach this objective, global emissions of greenhouse gases must peak by 2020. This implies an increase in efforts by the Union, the quick involvement of developed countries, and encouraging the participation of developing countries in the emission reduction process through appropriate mitigation action.

(2) 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

[1] OJ L 275, 25.10.2003, p. 32.
[2] OJ L 33, 7.2.1994, p. 11.

and the joint fulfilment of commitments thereunder,[3] set emission reduction targets for 39 Parties for the period 2008-12, and established two mechanisms for the creation of international credits that Parties may use to offset emissions. Joint Implementation (JI) provides for the creation of emission reduction units (ERUs), whereas the Clean Development Mechanism (CDM) provides for the creation of certified emission reductions (CERs).

(3) The UNFCCC registration and issuance process and its underlying modalities and procedures have been criticised with regard to a number of important shortcomings that undermine the integrity of CERs and ERUs. These shortcomings have impacted public confidence in market-based mechanisms. JI and CDM are also so-called pure offsetting mechanisms, whereby a tonne of greenhouse gas emissions reduced creates the right to emit a tonne of greenhouse gas elsewhere. While such systems generally help to reduce the cost of global abatement enabling action in countries where it is more cost-efficient, they do not assist in the reduction efforts necessary to progress towards the 2°C target.

(4) To keep global warming below 2°C, the Union has taken the position that commitments by industrialised countries should be complemented by appropriate mitigation action by developing countries, in particular the most advanced. In parallel, a broad international carbon market should gradually develop that can deliver the necessary global reductions in an efficient manner, where international credits are generated for emission reductions achieved below a benchmark that is set below projected emissions in the absence of abatement measures. This requires appropriate mitigation action by developing countries. The Union has therefore advocated an overhaul of the CDM and the creation of a new generation of sectoral market mechanisms. The CDM should focus on Least Developed Countries and should be replaced over time for more advanced developing countries by sectoral market mechanisms and ultimately cap-and-trade systems[4].

(5) Participation in the JI and CDM is voluntary, as are decisions to allow the use of credits in emission trading systems. There is therefore a distinction between credits that may be generated, and credits that signatories to the Kyoto Protocol may have decided to allow for use under their domestic legislation. To this effect, Directive 2003/87/EC already excluded the use of assigned amount units, and Directive 2004/101/EC[5] allowed the use of certain JI and CDM credits, with harmonised restrictions on the use of international credits from nuclear, land-use and forestry projects, and provided that Member States may allow operators to use certain quantities of other types of international credits. Directive 2003/87/EC provides for harmonised implementing provisions to be adopted for restrictions on the use of international credits.

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3 OJ L 130, 15.5.2002, p. 1.

4 Council conclusions, Preparation for the 16th Conference of the Parties to the UNFCCC, Cancun (29.11-10.12.2010) 3036th Environment Council meeting, Luxembourg, 14.10.2010 and Council conclusions EU position for the Copenhagen Climate Change Conference (7-18.12.2009) 2968th Environment Council Meeting, Luxembourg, 21 October 2009 endorsed by the Presidency conclusions of the Brussels European Council of 29/30 October 2009.

5 OJ L338, 13.11.2004, p.18

(6) In absence of sufficient progress towards CDM reform and the establishment of sectoral market mechanisms at UN level, a more targeted approach to the use of international credits in the EU ETS, through the introduction of restrictions on the use of credits generated by certain project types can give new impetus to the relevant negotiations.

(7) The use of international credits from projects involving trifluoromethane (HFC-23) and nitrous oxide (N_2O) from adipic acid production (hereafter "industrial gas projects") should be restricted. This is consistent with the October 2009 European Council conclusions urging developing countries, especially the more advanced, to take appropriate mitigation action, and Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Stepping up international climate finance: A European blueprint for the Copenhagen deal,"[6] encouraging efforts by developing countries to invest in low-carbon technology outside the carbon market based on their respective capabilities. The vast majority of industrial gas projects are located in advanced developing countries with sufficient capabilities to finance those cheap reductions themselves, and the revenues gained from those projects in the past should suffice to finance them.

(8) The dominance of the number of credits issued from industrial gas projects has also resulted in an unbalanced geographical distribution of the benefits of the mechanisms established under the Kyoto protocol in favour of a few advanced developing economies, with few sustainable development benefits. The introduction of use restrictions for industrial gas credits should increase the ability of developing countries to participate and benefit from the carbon market.

(9) Industrial gas projects raise environmental concerns. Exceptionally high rates of return from the destruction of HFC-23 has the consequence of stimulating the continued production and use of chlorodifluoromethane (HCFC-22), a potent ozone depleting and greenhouse gas substance, in registered plants at the maximum level allowed by the project activity methodology. As a result, the production of HCFC-22 could be higher than what it would have been in the absence of project activities. This in turn undermines the '2007 Montreal Adjustment on Production and Consumption of HCFCs' under the Montreal Protocol on Substances that Deplete the Ozone Layer[7], to establish the accelerated phase-out of HCFC-22 for non-feedstock use. It is also inconsistent with Member State financing of the phase-out of HCFC-22 production through contributions to the multilateral fund under the Montreal Protocol. These excessively high rates of return result in distortions of economic incentives and competition and in shifts in production from adipic acid producers established in the Union to registered producers in third countries. The much more favourable treatment of adipic acid producers participating in the Kyoto mechanisms than those entering the Union scheme as of 2013 will increase the risks of similar shifts in production, and a net increase in global emissions. To reduce distortions of economic incentives and competition and avoid greenhouse gas emission leakage, restrictions on the use of these international credits are justified.

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6 COM (2009) 475 final.

7 The Montreal Protocol on Substances that Deplete the Ozone Layer as adjusted and amended by the 19th Meeting of the Parties to the Montreal Protocol (September 17-21 2007)

(10) International credits from industrial gas projects do not contribute to technology transfer or to the necessary long term transformation of energy systems in developing countries. In addition, these projects generate large numbers of ERUs and CERs for very low initial investments and operational costs relative to what compliance buyers pay for them in the Union scheme. Abating these industrial gases through JI or the CDM does not contribute to reducing global emissions in the most efficient manner, because the excessive returns by project developers are not used for emission reductions.

(11) The application of full use restrictions of specific credits is provided for in Article 11a(9) of Directive 2003/87/EC. It is appropriate to apply such a restriction in the case of industrial gas projects. A full restriction of use best eliminates undesirable competitive and environmental consequences of those credits, improves the cost-efficiency of global emission reductions and the environmental performance of the carbon market by encouraging low-carbon investments. A full restriction of use also best encourages policy movement away from the CDM and towards sectoral market mechanisms with appropriate mitigation action, and ultimately cap-and-trade systems, in advanced developing countries.

(12) In accordance with Article 11a(9) of Directive 2003/87/EC, the measures provided for in this Regulation should apply from 1 January 2013, which in accordance with that Article is more than six months and less than three years from its date of adoption.

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

HAS ADOPTED THIS REGULATION:

Article 1

From 1 January 2013, the use of international credits from projects involving the destruction of trifluoromethane (HFC-23) and nitrous oxide (N_2O) from adipic acid production for the purposes of Article 11a of Directive 2003/87/EC is prohibited.

Article 2

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
Member of the Commission