

Scheme for greenhouse gas emission allowance trading within the Community. EU Emissions Trading System (EU ETS) Directive

2001/0245(COD) - 07/01/2004 - Follow-up document

PURPOSE: Commission guidance to assist Member States on the implementation of the criteria establishing a scheme for greenhouse gas emission allowance trading within the Community and a clarification on the use of force majeure **CONTENT:** This Commission Communication seeks to offer clear and unambiguous guidelines to Member States when preparing allocations for greenhouse gas emissions trading. Directive 2003/87/EC provides for the establishment of a Community-wide greenhouse gas emission allowance trading scheme as of 2005. Under the Directive Member States are required to develop a national allocation plan, the first of which has to be published and notified to the Commission and other Member States by 31 March 2004. The Commission urges new Member States to follow suit even though they are only obliged to do so as from 1 May 2004. The Directive mandates the Commission to develop guidance on the implementation of the criteria listed in Annex III by 31 December 2003 as well as offering guidance on the circumstances under which force majeure can be demonstrated. The purpose of the Communication is: - To assist Member States in drawing up their national allocation plans, by indicating the scope of interpretation of the Annex III criteria that the Commission deems acceptable; - To support the Commission assessment of notified national allocation plans, pursuant to Article 9(3); - To describe the circumstances under which force majeure is demonstrated. Concerning the implementation of Annex III criteria the Communication notes that eleven criteria are listed, of which four are mandatory (assessments of emissions development; non-discrimination between companies; involvement of the public; list of installation), four are optional (new entrants; early action; clean technology; competition from outside the Union) and three are designed so that the Member States are free to decide which elements to apply (Kyoto commitments; potential to reduce emissions, consistency with other legislation). The Commission will not reject a plan if all mandatory criteria and mandatory elements of criteria are applied in a correct manner. The Commission will not reject a plan if optional criteria or optional elements of criteria are not applied. However, if these optional criteria or optional elements of criteria or additional transparent and objective criteria are applied, the Commission will assess their application. For the sake of clarity and in order to facilitate its use by Member States a recommended common format for establishing and notifying the national allocation of plans is attached. Regarding the question of force majeure, the Commission recognises that the provisions allowing for a force majeure go counter to the spirit of the Directive. Thus, the Communication makes it clear that it will only consider cases in exceptional and unforeseeable circumstances. The circumstances would have to cause a substantial increase in annual direct emissions of greenhouse gases at an installation and could not have been avoided even if all due care had been exercised. The circumstances would have had to be beyond the control of the operator of the installation concerned and of the Member State submitting an application. Force majeure would include natural disasters, war, threats of war, terrorist acts, revolution, riot, sabotage or acts of vandalism. The presence of force majeure would have to be demonstrated at installation level and on a case-by-case basis. Lastly, a Member State should submit an application to the Commission by 31 January the year following the year of the trading period during which the circumstance occurred for which force majeure is pleaded.