



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.11.2002
COM(2002) 680 final

2001/0245 (COD)

Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(presented by the Commission pursuant to
Article 250 (2) of the EC Treaty)

Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

1. BACKGROUND

Transmission of the Proposals to the Council and the European Parliament (COM (2001) 581 final 2001/0245 (COD)) in accordance with article 175(1) of the Treaty

23 October 2001

Opinion of the Committee of Regions

14 March 2002

Opinion of the Economic and Social Committee

29 May 2002

Opinion of the European Parliament - first reading

10 October 2002

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The proposal establishes a scheme for greenhouse gas emission allowance trading within the Community by establishing an EU framework and ensuring an EU-wide market for emission allowances. Such an instrument is an important cornerstone in the Commission's strategy for reaching the Kyoto target in the most cost-effective way. Emissions trading will reduce the cost of emission reductions by ensuring that these reductions are made where they are least costly. At the same time, emissions trading is environmentally effective by achieving a pre-determined emission reduction from the activities covered. This proposal ensures the proper functioning of the internal market and avoids unacceptable distortions of competition.

The Commission proposes that emissions trading in the EU should start in 2005, and in a first phase cover CO₂ emissions from large industrial and energy activities. The operators of installations covered by the Directive will have to apply to the competent authority in its Member State for a permit allowing it to emit greenhouse gases. This permitting procedure shall be fully co-ordinated with the procedure under Directive 96/61/EC on Integrated Pollution Prevention and Control (IPPC) in order to avoid unnecessary bureaucracy. On the basis of the permits, Member States shall allocate emission allowances to each installation every year. It is these allowances that can be traded, although no operator of an installation will be forced to trade. By 31 March each year, the operator will have to surrender a number of allowances equal to the emissions of its installation in the preceding calendar year. The Directive would set harmonised penalties to be paid by operators for not surrendering a sufficient number of allowances. In the period 2005-2007, the Member States shall allocate allowances free of charge according to a national allocation plan to be approved by the Commission and respecting certain criteria so as to avoid state aids and distortions of competition. For the 2008-2012 period, the Commission shall specify a harmonised method of allocation at a later stage.

3. COMMISSION OPINION ON THE AMENDMENTS ADOPTED BY THE PARLIAMENT

3.1. Amendments accepted by the Commission

The following amendments, which are acceptable to the Commission, are listed in the order of their intended insertion into the legal text of the Commission's original proposal.

Concerning recitals: amendment **13** (new recital 16d) states that the EU's climate change strategy "*should be built on a balance between the emission allowance trading scheme and other types of Community, domestic and international action*". This amendment is acceptable. The Commission has never intended that emissions trading be the only type of action pursued by the EU's climate strategy or internationally.

Concerning penalties: amendment **40** (Article 16, paragraph 2) would confine "naming and shaming" to companies who have not surrendered sufficient allowances pursuant to this Directive. This amendment is acceptable. "Naming and shaming" for every possible minor offence may be excessive. It remains, however, a useful deterrent in the case of infringement of the Directive's basic requirement to surrender allowances equivalent to actual emissions.

Amendment **41** (Article 16, paragraph 3) deletes the provision that the penalty shall be twice the average market price if higher than EUR 100. This amendment is acceptable. This facilitates the practical application of the Directive and creates greater certainty regarding the penalty levels.

Amendment **42** (Article 16, paragraph 4) deletes the provision that in the period 2005-2007 the penalty shall be twice the average market price if higher than EUR 50. This amendment is acceptable for reasons given in respect of amendment 41 above.

Concerning elements for review: amendment **56** (Article 26, paragraph 2, new point (aa)) specifies that the review should examine the relationship between the EU emissions trading scheme and international emissions trading that will start in 2008. This amendment is acceptable. It is reasonable that the review include this.

Amendment **57** (Article 26, paragraph 2, point (b)) inserts "*further harmonisation of the*" method of allocation, as opposed to "*the harmonised method...*". This amendment is acceptable. The requirement that allocation in the period 2005-2007 be for free is already some degree of harmonisation. The amendment is not prejudicial to future decisions on the method of allocation, and it is reasonable to use the word "further" even if no more is decided than an extension of the same degree of harmonisation further into the future.

Amendment **58** (Article 26, paragraph 2, new point (ca)) adds an additional element for review to include the possible amendments to adapt the scheme in the light of EU enlargement. This amendment is acceptable. It would be appropriate to consider what effects EU enlargement may have had on the scheme, bearing in mind that many of the Accession Countries may be Member States as of the start of the scheme in 2005.

3.2. Amendments accepted in part, in principle, or in principle and in part by the Commission

The following amendments, which are acceptable in part, in principle, or in principle and in part by the Commission, are listed in the order of their intended insertion into the legal text of the Commission's original proposal.

Concerning recitals: amendment **10** (new recital 16a) says, in its first sentence, that policies and measures must be implemented across all sectors of the economy and not only the industrial and energy sectors. The second sentence requires Member States to ensure that the choice of policies and measures employed do not give risk to distortions of competition within the same sector. The first sentence is acceptable. It makes explicit a belief that others sectors should contribute to reducing greenhouse gas emissions. The second sentence is an operative provision, the drafting is unclear and it is unacceptable. Policies to reduce greenhouse gas emissions will inevitably impact more on fossil fuel power generators than nuclear power generators, even though both are “*within a particular sector*”.

Amendment **15** (Article 1) states that the present Directive “*aims to contribute towards*” the EU and its Member States fulfilling their commitments under the Kyoto Protocol with the least possible adverse impact on economic development and employment. This amendment is acceptable in principle and in part. This is explanatory text rather than operative text. It should therefore be inserted at the end of existing recital 5 (that refers to the Kyoto Protocol’s targets). “*European Community*” should replace “*EU*” and the words “*least possible diminution of*” should be replaced by the words “*minimum adverse effect on*”.

Concerning transparency: amendment **35** (Article 12, new paragraph 4b) requires that the system “*for the transfer, surrender and cancellation of allowances must ensure transparency as regards the ownership of allowances at all times and as regards the transactions performed between companies inside and outside the Member States*”. This amendment is acceptable in principle. Public access to information is ensured by Article 17 in conjunction with the registries to be established in accordance with Article 19. The registries will “*provide for confidentiality as appropriate*” in order to protect commercially sensitive information, but with the premise that registry information is accessible to all. Wording to give this effect would be: second sentence of Article 19(2), after the words: “*The registry shall*” add “*be accessible to the public and shall...*”.

Concerning reporting by operators: amendment **39** (Article 14, paragraph 3) changes the word “*at*” to “*three months after*” so as to clarify that reporting emissions during a calendar year cannot be made at the exact end of the year (00h00, 1 January). This amendment is acceptable in part. It is acceptable to replace the word “*at*” by the word “*after*”. It is not necessary to specify “*three months*”, as by 31 March the reports have to be verified and corresponding allowances surrendered (see Article 12(3)).

Concerning reporting by Member States: amendment **43** (Article 16, new paragraph 4a) provides that Member States shall report on the way in which penalties and the purchase of additional allowances are treated for tax purposes. This amendment is acceptable in principle and in part. Such a provision would be more appropriately inserted into Article 21 on reporting by Member States. It is all aspects of the fiscal treatment (including capital gains and losses on allowances bought and sold) that would be of possible interest. At the end of the second sentence of Article 21(1), it is acceptable to insert “*and on the fiscal treatment of allowances*”.

Concerning transparency: amendment **46** (Article 17) refers to the forthcoming Directive on access to environmental information. This amendment is acceptable in principle. After the reference to “*Directive 90/313/EEC*”, it would be appropriate to insert the additional words “*or equivalent, when entered into force*”.

Concerning the links with emissions trading schemes in third countries: amendments **51** and **103** (Article 24, paragraph 1) says that agreements on the basis of the Kyoto Protocol may

only be made with Parties that have ratified the Kyoto Protocol. Agreements must be concluded with the applicant countries insofar as it is not provided by the accession negotiations. This amendment is acceptable in principle and in part. The wording “*on the basis of the agreements under the Kyoto Protocol*” is not acceptable. An EC entity based trading scheme necessarily has to have a different basis to trading under the Protocol between Parties to the Protocol. Notwithstanding this, the EC scheme will be compatible with the Kyoto Protocol’s trading. Acceptable wording would be to replace “*third parties*” by “*Parties listed in Annex B of the Kyoto Protocol that have ratified that Protocol*”. The part of the amendment referring to agreements with applicant countries is not acceptable. It would be inappropriate to decide now that links “must” be established before any such schemes have been established and without examination of the environmental credibility of such schemes. Furthermore, not all Accession Countries are listed in Annex B of the Kyoto Protocol.

Concerning review: Amendment **55** (Article 26, paragraph 2, introductory sentence) inserts that the review should be based on experience during the 3-year period starting in 2005. The Commission “*shall*” make a report accompanied by proposals as appropriate. This amendment is acceptable in part. The only acceptable is the word “*shall*”. It is acceptable that the Commission shall make a report as long as it preserves the right of initiative to make appropriate proposals. The reference to “*proposals as appropriate*” is already contained in at the end of the paragraph.

Concerning transparency: Amendment **73** (Annex III, new point 8a) requires that national allocation plans shall list installations included in the scope of the directive “*and of those installations’ emissions permits*” [understood as intended to mean that the cap set for each installation shall be published]. This amendment is acceptable in principle and in part. This amendment serves to improve transparency. Member States must have this information in order to allocate allowances to operators of individual installations, so the requirement to include this in the national allocation plan is not unduly burdensome. The interpretation of the meaning is due to the fact that the “emissions permits” will contain the information required in Article 6(2) (including, for example, monitoring requirements, methodology and frequency specific to the individual installation). What is of more interest to other parties is for the quantitative allocations made to the operators of individual installations to be made available. Acceptable wording would replace “*and those installations’ emissions permits*” with the words “*with the quantities of allowances allocated to each*”.

Amendment **74** (Annex IV, Monitoring of emissions of other greenhouse gases) would require that standardised methods for monitoring the emissions of other greenhouse gases than CO₂ “*shall be developed in collaboration with all stakeholders*” and agreed in accordance with the comitology procedure. This amendment is acceptable in part. The proposed text “*shall be developed in collaboration with all stakeholders*” is acceptable, but the word “*used*” in the original text should be retained rather than deleted, followed by the insertion of a comma. The words “*and agreed in accordance with the procedure referred to in Article 23(2)*” are not acceptable as it is unnecessary to repeat in the Annex the basis for agreement of the guidelines as already stated in Article 14(1).

3.3. Amendments not accepted by the Commission

The following amendments are listed in the order of their intended insertion into the legal text of the Commission’s original proposal.

Amendment **1** (new recital 5a) restates the European Parliament’s endorsement of the Kyoto Protocol and the burden sharing agreement. This amendment is not acceptable. It is

inappropriate to refer here to the European Parliament's opinion given on 6 February 2002 that was made in respect of a separate proposal (Council Decision 2002/358/CE on EC ratification of the Kyoto Protocol).

Amendment 2 (new recital 5b) recalls that Member States are required to meet their national targets *"using the resources they deem to be appropriate"*. This amendment is not acceptable. Member States may not do as they like if this amounts to the disregard of Community legislation.

Amendment 3 (new recital 6a) argues for an EU approach rather than Member States individually because there is an internal market. This amendment is not acceptable. While endorsement of the need to take an integrated approach within the context of the internal market is welcome, this EU approach does not absolve the Member States from taking action to reduce greenhouse gas emissions individually. This intention is already expressed in existing recitals 7 and 14.

Amendment 91 (recital 7) recalls that *"allowances should be allocated in accordance with best available techniques..."*. This amendment is not acceptable. Emissions trading is an instrument that does not need technology standards, but lets operators decide which technologies they use.

Amendment 6 (new recital 11a) provides that Member States must ensure that *"indirect mechanisms to reduce CO₂, such as CHP generation"* receive consideration in national allocation plans. This amendment is not acceptable. It should be for Member States to decide on the quantities to be allocated, including in respect of CHP generation. The wording is operative, inappropriate for recitals. The Directive should not attempt to pick winning technologies, but by the instigation of a price on emissions create an incentive to use more energy-efficient technologies.

Amendment 8 (new recital 15a) affirms that the EC will continue to negotiate with its major trading partners to achieve an international regime for emissions trading. Meanwhile, the EC must show leadership. This amendment is not acceptable. The preamble to this Directive is not the place to make statements about what the European Community will do in the context of the international negotiations on climate change.

Amendment 9 (recital 16) says that emissions trading should form *"a flexible and complementary"* part of a package of measures to address climate change that achieves reductions in all sectors of the economy. Comparable targets need to be set and instruments developed for other sectors, such as the transport sector, agriculture, small & medium-sized businesses and households. Finally, the amendment states that greenhouse gas emissions trading and energy taxation should be complementary instruments. This amendment is not acceptable. The Commission rejects a voluntary approach. Reference to *"flexible"* in this amendment is intended to facilitate a voluntary approach. A voluntary approach to emissions trading will substantially reduce the economic efficiency of the instrument, will pose a greater risk of distortion of the internal market, will teach us less and will not ensure preparedness for emissions trading in the Protocol's commitment period 2008-2012. It is excessive to insist on setting targets and developing other instruments for sectors outside the scope of the present Directive. Existing recital 16 already addresses the interaction with taxation.

Amendment 11 (new recital 16b) states that emissions trading *"shall not replace existing charges levied on energy and CO₂ emissions"*. This amendment is not acceptable. It is an operative provision, inappropriate for recitals. The link with energy taxation is already

addressed in recital 16. In some circumstances, it may be appropriate to replace charges on CO₂ emissions, so it would not be wise to prohibit this.

Amendment **12** (new recital 16c) specifies that the directive applies only to the use of fluorinated gases by activities listed in Annex I and that the use and containment of fluorinated gases in consumer products should be covered by separate legislation. This amendment is not acceptable. The Commission will seek to include fluorinated gases only when it is satisfied that they can be adequately monitored and reported and when the IPPC Directive has been fully implemented in respect of non-CO₂ greenhouse gases for existing installations (October 2007).

Amendment **14** (new recital 17a) maintains that the possibility of linking schemes with other Parties to the Kyoto Protocol will encourage the US to come back on board. This amendment is unacceptable. Even if the Commission shares the wish that the US changes its mind about its rejection of the Kyoto Protocol, there is no need to bring specific non-EU countries into a Directive addressed to Member States.

Amendment **16** (Article 2, paragraph 1) provides for additional sectors to be included provided that such inclusion does not conflict with Article 87 & 88 of the Treaty. Such included sectors shall be notified to the Commission by 31 March 2004 for the period 2005-2007, and for subsequent periods 18 months before. The Commission may reject such applications in the case of conflict with Article 87 and 88 (these are state aid provisions). This amendment is not acceptable. Voluntary and unilateral “opt-in” of additional activities may distort competition and may undermine the environmental integrity of the emissions trading system (depending on the ability to monitor emissions from different sources). All Treaty provisions will have to be respected, not just those relating to state aid. The amendment is linked to Parliament’s proposed extension to cover all 6 gases covered by the Kyoto Protocol (amendment 17).

Amendment **17** (new Article 2a) extends the scope of emissions trading to cover all greenhouse gases covered by the Kyoto Protocol provided that the data with regard to a particular reference year is “*satisfactory*” and that “*accepted methods on measurement, monitoring and calculation*” are developed by the Commission in collaboration with all stakeholders and agreed in comitology. This amendment is not acceptable. It is inappropriate to extend the scope of the Directive in principle and then to limit the practical application of this extension until an indeterminately long process has been completed and a decision made by comitology. Such practice would amount to bad law-making that fails to give certainty for businesses (an installation with N₂O emissions would not know whether or when it would be covered).

Amendment **97** (Article 4, new paragraph 1a) provides that special provision should be made for CHP and the use of waste fuels on the basis guidance to be prepared by the Commission. This amendment is not acceptable. It should be for Member States to decide on the quantities to be allocated, both in respect of particular technologies and in respect of waste fuels. As mentioned for amendment 6 above, emissions trading as a market instrument should not attempt to pick winning technologies, but by the instigation of a price on emissions creates an incentive to use more energy-efficient technologies. As far as waste fuels are concerned, the granting of any additional allowances may encourage waste incineration as opposed to re-use and recycling.

Amendment **19** (Article 5, point (c)) adds “*and volume*” to the details required in an application for a permit about the emissions from an installation. This amendment is not

acceptable. While such information would be useful, it pre-supposes the requirement that the quantity of emissions from an installation is monitored prior to their inclusion within the scope of the Directive. Such monitoring requirements would, therefore, be implicitly required even before the permit explicitly set monitoring requirements.

Amendment **20** (Article 5, new point (da)) would require the operator to provide details of the nature and extent of expected emissions from an installation. This amendment is not acceptable. The “*extent of expected emissions*” is a forecast of future quantities of emissions that will be covered by the obligations of the emissions trading scheme. In practice under emissions trading, an individual installation might increase or decrease actual future emissions subject only to the requirement that the operator holds a corresponding quantity of allowances for the period.

Amendment **21** (Article 6, paragraph 1, subparagraph 1) would insert the words: “*Without prejudice to other requirements laid down in national or Community law*” at the beginning of the Article on the conditions and contents of a permit. This amendment is not acceptable. Under the Treaty, Community Directives over-ride national law, so the Directive cannot be without prejudice to national law.

Amendment **22** (Article 7) provides that the up-dating of a permit in the case of changes to installations is to be done “*in consultation with the operator*” and a month is given for a new operator to notify the competent authority. This amendment is not acceptable. The relevant provisions replicate those of the existing IPPC Directive thereby maintaining a consistent approach towards permitting between the two instruments. The competent authority who issues the permits, as the regulatory authority, should be the final judge of what elements of the permit might need updating. The name and address of new operator, deleted by the amendment, are necessary elements to be up-dated.

Amendment **23** (Article 9 paragraph 1, subparagraph 1) replaces the words “*including those*” by “*the*” so as to make the criteria for allocation plans listed in Annex III exhaustive. This amendment is not acceptable. The Member States should have some degree of flexibility in the setting of targets for their entities so as to reflect differing national circumstances.

Amendment **24** (Article 9, new paragraph 1a) stipulates that the total quantity to be allocated by a Member State to its entities shall not exceed $x\%$ of its assigned amount (allowed emissions under the Kyoto Protocol) where $x\%$ corresponds to the share of total emissions produced by the installations covered by this Directive in 1990. This amendment is not acceptable. It is an additional complication in addition to the safeguards already proposed in the Directive, and is superfluous. Furthermore, the overall effect is that this “cap” will constrain some Member States more than others, and thereby risks the distortion of competition.

Amendment **25** (Article 9, new paragraph 1b) states that installations established since 1990 will be allocated allowances on the basis of best available technology in the year of commissioning, in respect of which the Commission will issue further guidance by 2004. This amendment is not acceptable. Member States should be allowed the freedom to reward early action as they think appropriate. Furthermore, this amendment would create unequal treatment between incumbents in 1990 and existing installations that have been commissioned since then.

Amendment **26** (Article 9, new paragraph 2a) provides that the regulatory committee “*shall compare national allocation plans*” with a view to identifying distortions of competition, and

advise the Commission. This amendment is not acceptable. Requiring comparison of all national allocation plans will constrain all Member States to go at the speed of the slowest. Some Member States may want to notify their allocation plans earlier than required, so as to be able to decide on them sooner and provide businesses with greater certainty. Furthermore, failure by one Member State to submit its national allocation plan on time could prevent the commencement of trading by the other Member States.

Amendment **27** (Article 9, paragraph 3) says that, when evaluating national allocation plans, the Commission “*shall take into account the compatibility with other greenhouse gas emissions trading schemes which already exist in Member States*”. This amendment is not acceptable. Some national trading schemes are incompatible with the present proposal and cannot be linked without special measures being taken. The Member States will have to comply with all the provisions of this Directive as adopted, including any special transitional provisions that may be negotiated.

Amendment **102** (Article 10) introduces 15% auctioning in both the 1st and 2nd periods. Revenues shall be recycled. This amendment is not acceptable. The Commission is opposed to any auctioning in the first period and wishes to take account of experience before deciding on the method of allocation for the second.

Amendment **29** (Article 11, paragraph 1) makes a consequential change in respect of the “x% cap” (amendment 24) concerning the period 2005-2007. Decisions on allocations shall be taken at least six months (instead of 3 months) before the beginning of the period. This amendment is not acceptable. On the “x% cap”, see the comments on amendment 24. A decision on allocations six months before the beginning of trading in 2005 would be good, but taking into account the time limit for national transposition (31.12.2003), submission of the national allocation plans to the Commission (31.03.2004) and a decision by the Commission (30.06.2004) it would be impossible to give a full 6 months notice prior to 01.01.2005. The Commission’s proposal sets the decision as being taken by Member States “*at least 3 months*” before the first period starts, which allows earlier decisions to be taken if Member States wish to notify their national allocation plans earlier than required.

Amendment **76** (Article 11, new paragraph 1a) makes specific provisions for new entrants who “*shall receive their allocation in the same way as all other participants in the market*”. Allowances for all operators “*shall be adjusted*” so that the “x% cap” of amendment 24 is not exceeded. This amendment is not acceptable. Member States should be free to choose whether to allocate to new entrants free of charge or whether to require them to buy allowances in the market. What is essential from a Community perspective is that *access* to allowances is guaranteed. Wording to this effect is already contained in Article 11. In addition, the idea of “adjustment” that may involve taking back from operators allowances already allocated would remove the certainty that is so important for businesses. Operators might be counting on all their holding of allowances for compliance purposes: taking some back might put them into non-compliance.

Amendment **31** (Article 11, paragraph 2) makes a consequential change in respect of the “x% cap” of amendment 24 concerning periods from 2008. This amendment is not acceptable for the reasons given in respect of amendment 24.

Amendment **32** (Article 11, new paragraph 4a) requires that, upon accession of new Member States, the total quantity of allowances issued shall be reduced, after review by the Commission, “*so as to ensure that no surplus of allowances develops*”. This amendment is not acceptable. The inclusion of new Member States into the scheme will bring additional

sources into the scheme – and so additional emissions. In these circumstances, there is no need to reduce the number of allowances issued, but rather there will be a need to increase the number of allowances. Reducing allocations already made would create the same uncertainty and risk of non-compliance as explained for amendment 76 above. To prevent gross over-allocations, the national allocation plans of all Member States participating in the scheme, *including new Member States*, will be subject to Commission review and possible rejection in accordance with the Treaty’s provisions and the criteria of Annex III.

Amendment 33 (Article 12, paragraph 1) provides that allowances allocated in respect of installations in one Member State, owned by the same operator, can be transferred without restrictions “*within the company*”. This amendment is not acceptable. It is not clear what “restrictions” are referred to. The present wording already allows the transfer of allowances between the installations of an individual operator within the same Member State. Indeed, allowances are initially allocated to operators rather than to installations. Furthermore, this Directive imposes no restrictions on the transfer of allowances between one operator and associated operators within a Member State. The use of the word “company” is inconsistent with use of “operator” used throughout, but “companies” can be operators within the meaning of this Directive.

Amendment 34 (Article 12, new paragraph 4a) lays down that Member States shall cancel the allowances of installations that are closed down or where capacity is reduced or “*which continue to operate under the same or worse conditions in non-EU countries*”. This amendment is not acceptable. To cancel allowances in respect of capacity cut-backs or closures would be bureaucratic to implement, and might be prejudicial to the objective of reducing greenhouse gas emissions (e.g. maintaining capacity in order not to lose allowances).

Amendment 36 (Article 12, new paragraph 4c) provides for the mandatory “banking” of allowances between periods. The amendment is not acceptable. The wishes of the amendment are already provided for by Article 13 with the exception of banking between the period 2005-2007 and the period 2008-2012, where the proposal leaves it optional for Member States to take account of their different circumstances. Banking into the period commencing in 2008 may make the fulfilment of commitments under the Kyoto Protocol more difficult for some Member States, which is why Member States should have the choice whether to allow this or not.

Amendment 37 (Article 12, new paragraph 4d) provides for the “banking” and “borrowing” of allowances within the periods defined in Article 11(1) and (2). The amendment is not acceptable. The wishes of the amendment are already provided for by Article 13 except insofar as allowances are not yet issued. “*A proportion*” of allowances are issued each year, and they can only be used by the operator for “banking” and “borrowing” within the period after they have been issued. However, the quantities that will be issued are decided at the beginning of the period for the whole period so as to give operators certainty about the quantities that will be allocated to them.

Amendment 38 (new Article 12a) would require that, when an installation ceases to operate, no further allowances may be issued to the operator in respect of this installation unless it can be demonstrated that the closure is related to a corresponding new investment made within the Community. This amendment is not acceptable. Such a provision is unduly complicated to apply. The Commission considers that, given the expected value of allowances, relocations out of the EU are very unlikely as a consequence of this Directive.

Amendment **80** (Article 16, new paragraph 4b) says that Member States shall use revenues from penalties for the purpose of purchasing allowances by Member States. This amendment is not acceptable. There is no basis in the Treaty for requiring how such revenues are used by Member States.

Amendment **45** (Article 16, new paragraph 4c) provides that Member States shall harmonise the fiscal treatment of trading in allowances and corresponding penalties “*by means of the open method of co-ordination*”. This amendment is not acceptable. As a fiscal measure, Member States cannot be obliged to do this by the present Directive.

Amendment **47** (Article 18, title) adds to title “*and access to justice*”. This amendment is not acceptable. No change to the proposal is necessary. Judicial review is ensured for all legislation in all Member States in accordance with Article 6 of the European Convention on Human Rights. It is unnecessary to make further provisions in every piece of Community legislation.

Amendment **48** (Article 18, new paragraph 1a) provides that Member States shall ensure the possibility of judicial review. This amendment is not acceptable. The reasons are given for amendment 47 above.

Amendment **49** (Article 22) deletes the possibility to amend Annex III (criteria for national allocation plans) by comitology. This amendment is not acceptable. The criteria may need amendment in the light of experience. Only by comitology could an amendment be made prior to the elaboration of national allocation plans by 2006.

Amendment **50** (new Article 23a) allows Member States to apply to exclude until 2007 certain installations if they are subject to equivalent national measures, monitor their emissions and be subject to comparable penalties. The Commission would decide whether to approve temporary exclusions. This amendment is not acceptable. The Commission wants a mandatory scheme as of 2005. A voluntary approach to emissions trading – even during a temporary period – will substantially reduce the economic efficiency of the instrument. A voluntary approach would also pose a greater risk of distortion of the internal market. A voluntary approach will be much less meaningful in terms of “learning-by-doing” and will not ensure preparedness for emissions trading in the Protocol’s commitment period 2008-2012.

Amendment **52** (Article 24, paragraph 2, new subparagraph 1a) lays down that any mutual recognition agreement entered into under Article 24 shall only include “*emission reduction allowances*”, and shall exclude the use of “*carbon sinks*”. This amendment is not acceptable. The Commission does not want to make a direct link to the project mechanisms of the Kyoto Protocol in the present proposal but will be making a separate proposal in 2003.

Amendment **53** (new Article 24a) stipulates that credits from Joint Implementation and the Clean Development Mechanism cannot be used before 2008. Thereafter, only credits that do not involve carbon sinks and nuclear energy sources may be used. This amendment is not acceptable. The Commission does not want to make a direct link to the project mechanisms of the Kyoto Protocol in the present proposal but will be making a separate proposal in 2003. It would be inappropriate to prejudge the content of the Commission’s proposal at this stage. The Parliament will have an opportunity to amend this proposal when the time comes. The Commission will, however, take account of the Parliament’s opinion as expressed here when preparing its proposal.

Amendment **54** (Article 26, paragraph 1) says that the Commission “*shall*” (instead of “*may*”) make a proposal by 30.06.2006 (instead of 31.12.2004) to amend Annex I to include other “*sectors and activities*” (but not gases). This amendment is not acceptable. This provision duplicates the existing provision (Article 26(2)) that the Commission reviews, reports and makes appropriate proposals by 30.06.2006.

Amendment **59** (Article 26, paragraph 2, new point (ea)) says that the review should include considering whether aspects of national schemes operating up to 2005 should be incorporated in to the EU trading scheme from 2008. This amendment is not acceptable. The consideration of what features of existing national schemes should be integrated into the EU scheme should be undertaken now, not left until 2006 as part of the review in the light of experience.

Amendment **61** (Annex I, table, column 2 (Greenhouse gases)) is consequential to amendment 17. It would delete the column of Annex I specifying CO₂ only. This amendment is not acceptable. For practical reasons, it is the Commission’s preference to start with CO₂ only. This is to ensure that emissions trading starts in a manageable way concentrating on the major greenhouse gas that can already be adequately monitored. This is not to exclude the eventual extension to other gases as monitoring capability improves. In such case, separate proposals will be made. In addition, it is also preferable to make full use of the IPPC Directive for non-CO₂ greenhouse gases until its deadline for full implementation by existing installations expires (October 2007).

Amendment **62** (Annex I, table, item “production and processing of ferrous metals”) adds aluminium activities subject to the threshold of 50,000 tonnes of CO₂ equivalent per year. This amendment is not acceptable. Inclusion of these activities only makes sense if the scope is extended to other greenhouse gases than CO₂. As explained for amendment 17, the Commission wishes to start emissions trading with CO₂ only. This will reduce complexities in the initial phase. However, it is the Commission’s intention to extend the coverage of the emissions trading scheme to additional activities and all 6 greenhouse gases covered by the Kyoto Protocol as soon as it is satisfied that good monitoring capability exists, and when compliance with the IPPC Directive shall be fulfilled in respect of all non-CO₂ greenhouse gases. Such amendment would be made by a new proposal to be adopted by co-decision. Having a threshold of 50.000 tonnes of CO₂ equivalent poses practical difficulties. Emissions data is not collected systematically across the EU, so such a threshold would be difficult to administer. All installations will in principle have to monitor their emissions in order to know whether they are above or below the threshold. Emissions vary every year due to a number of factors. One year a company might exceed the threshold, and the next years not exceed it. The manner in which such thresholds would be administered is a further complicating factor.

Amendment **63** (Annex I, table, new item 3a) adds the chemical industry subject to the threshold of 50,000 tonnes of CO₂ equivalent per year. This amendment is not acceptable. The reasons are the same as those for amendment 62 above.

Amendment **64** (Annex II) wishes to add the factors of Global Warming Potentials for each gas to the Annex. This amendment is not acceptable. The factors would more appropriately be contained in the monitoring guidelines to be elaborated under Article 14(1). The factors are subject to periodic revision by the Intergovernmental Panel on Climate Change (a UN body). No factors have been agreed yet for the HFCs.

Amendment **65** (Annex III, point 1) deletes the point as a consequence of the “x% cap”. This amendment is not acceptable. The point contains crucial elements that cannot be omitted. If

allocations are not consistent with targets under the burden sharing agreement, then Member States will be unlikely to reach those targets.

Amendment **66** (Annex III, point 2) deletes the point as a consequence of the “x% cap”. This amendment is not acceptable. Allocations must be consistent with progress towards the European Community’s legally binding commitment under the Kyoto Protocol.

Amendment **78** (Annex III, point 3) introduces the concept of best available techniques (BAT) and benchmarks into the allocation plan criteria. This amendment is not acceptable. Member States should not be required to use such BAT standards or benchmarks. Emissions trading is an instrument that does not need technology standards, but lets operators decide which technologies they use.

Amendment **79** (Annex III, new point 3a) inserts the idea of benchmarks being derived from BAT. This amendment is not acceptable. The reasons are the same as for amendment 78 above, to which this is a consequential amendment.

Amendment **68** (Annex III, new point 3b) stipulates that the practical inclusion of other greenhouse gases than CO₂ is conditional upon the full development of “*standardised or accepted methods*” of monitoring developed to the same standards of accuracy as energy-related CO₂ emissions. This amendment is not acceptable. Including such emissions within the scope of the Directive, but making their *de facto* inclusion dependent on the agreement of monitoring guidelines in comitology is considered an inappropriate way of extending the scope of this Directive, and by implication, reducing the scope of the IPPC Directive. There would remain some uncertainty whether and when such extension to other gases would occur. Extension of the scope is better agreed by co-decision when monitoring standards are sufficiently developed.

Amendment **69** (Annex III, point 4) inserts an explanatory text on the accumulation of financial benefits. States that Member States “*shall avoid*” unduly burdening their industry with multiple instruments to address climate change. This amendment is not acceptable. Subsidiarity should be respected. Member States should be allowed to regulate their operators with multiple instruments. Indeed several Member States could be expected to need to use multiple instruments in the same sectors if they are to fulfil their Kyoto targets.

Amendment **70** (Annex III, point 5) specifies “*allocation*” plan, and further stipulates that allocations cannot be more than an installation is likely to need unless they are in recognition of early action. This amendment is not acceptable. The Commission cannot accept any constraint on what should or should not be considered as incompatible state aid. Member States should be allowed to reward early action as they consider appropriate and as their individual circumstances allow, but always subject to the provisions of the Treaty.

Amendment **104** (Annex III, point 6) lays down that the treatment of new entrants must give rise to no distortions of competition [compared to incumbents]. Information should be included in the allocation plans on how new production capacity will be treated. This amendment is not acceptable. The Commission believes that Member States should be able to choose the method by which allowances are allocated to new entrants, subject only to the requirement that they ensure that new entrants have adequate access to allowances.

Amendment **96** (Annex III, point 7) makes the rewarding of early action between 1990 and 2004 an obligation on Member States. This amendment is not acceptable. The Commission believes that the manner and extent to which Member States reward early action is for them to decide in the light of their national circumstances.

3.4. Amended proposal

Having regard to Article 250, paragraph 2, of the EC Treaty, the Commission modifies its proposals as indicated above.