

## DECISIONS ADOPTED JOINTLY BY THE EUROPEAN PARLIAMENT AND THE COUNCIL

## DECISION No 406/2009/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 April 2009

**on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020**

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,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

- (1) The ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC), which was approved on behalf of the European Community by Council Decision 94/69/EC <sup>(3)</sup>, is to stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.
- (2) The view of the Community, most recently expressed, in particular, by the European Council of March 2007, is that in order to meet this objective, the overall global annual mean surface temperature increase should not exceed 2 °C above pre-industrial levels, which implies that global

greenhouse gas emissions should be reduced to at least 50 % below 1990 levels by 2050. The Community's greenhouse gas emissions covered by this Decision should continue to decrease beyond 2020 as part of the Community's efforts to contribute to this global emissions reduction goal. Developed countries, including the EU Member States, should continue to take the lead by committing to collectively reducing their emissions of greenhouse gases in the order of 30 % by 2020 compared to 1990. They should do so also with a view to collectively reducing their greenhouse gas emissions by 60 to 80 % by 2050 compared to 1990. All sectors of the economy should contribute to achieving these emission reductions, including international maritime shipping and aviation. Aviation is contributing to these reductions through its inclusion in the Community greenhouse gas emission allowance trading scheme (hereinafter referred to as the 'Community scheme'). In the event that no international agreement which includes international maritime emissions in its reduction targets through the International Maritime Organisation has been approved by the Member States or no such agreement through the UNFCCC has been approved by the Community by 31 December 2011, the Commission should make a proposal to include international maritime emissions in the Community reduction commitment with the aim of the proposed act entering into force by 2013. Such a proposal should minimise any negative impact on the Community's competitiveness while taking into account the potential environmental benefits.

- (3) Furthermore, in order to meet this objective, the European Council of March 2007 endorsed a Community objective of a 30 % reduction of greenhouse gas emissions by 2020 compared to 1990 as its contribution to a global and comprehensive agreement for the period after 2012, provided that other developed countries commit themselves to comparable emission reductions and economically more advanced developing countries commit themselves to contributing adequately according to their responsibilities and capabilities.

<sup>(1)</sup> OJ C 27, 3.2.2009, p. 71.

<sup>(2)</sup> Opinion of the European Parliament of 17 December 2008 (not yet published in the Official Journal) and Council Decision of 6 April 2009.

<sup>(3)</sup> OJ L 33, 7.2.1994, p. 11.

- (4) The European Council of March 2007 emphasised that the Community is committed to transforming Europe into a highly energy-efficient and low greenhouse-gas-emitting economy and has decided that, until a global and comprehensive agreement for the period after 2012 is concluded, and without prejudice to its position in international negotiations, the Community makes a firm independent commitment to achieve at least a 20 % reduction of greenhouse gas emissions by 2020 compared to 1990.
- (5) Energy efficiency improvements are a crucial element for Member States to meet the requirements under this Decision. In this context, the Commission should closely monitor progress towards the objective to reduce energy consumption by 20 % by 2020, and propose additional actions if progress is insufficient.
- (6) Directive 2003/87/EC <sup>(1)</sup> establishes a scheme for greenhouse gas emission allowance trading within the Community, which covers certain sectors of the economy. All sectors of the economy should contribute to emission reductions in order to cost-effectively achieve the objective of a 20 % reduction of greenhouse gas emissions by 2020 compared to 1990 levels. Member States should therefore implement additional policies and measures in an effort to further limit the greenhouse gas emissions from sources not covered under Directive 2003/87/EC.
- (7) The effort of each Member State should be determined in relation to the level of its 2005 greenhouse gas emissions covered by this Decision, adjusted to exclude the emissions from installations that existed in 2005 but which were brought into the Community scheme in the period from 2006 to 2012. Annual emission allocations for the period from 2013 to 2020 in terms of tonnes of carbon dioxide equivalent should be determined on the basis of reviewed and verified data.
- (8) Member States' reduction efforts should be based on the principle of solidarity between Member States and the need for sustainable economic growth across the Community, taking into account the relative per capita GDP of Member States. Member States that currently have a relatively low per capita GDP, and thus high GDP growth expectations, should be allowed to increase their greenhouse gas emissions compared to 2005, but should limit this greenhouse gas emissions growth to contribute to the independent reduction commitment of the Community. Member States that currently have a relatively high per capita GDP should reduce their greenhouse gas emissions compared to 2005.
- (9) To further ensure a fair distribution between the Member States of the efforts to contribute to the implementation of the independent reduction commitment of the Community, no Member State should be required to reduce its greenhouse gas emissions in 2020 to more than 20 % below 2005 levels nor allowed to increase its greenhouse gas emissions in 2020 to more than 20 % above 2005 levels. Reductions in greenhouse gas emissions should take place between 2013 and 2020. Each Member State should be allowed to carry forward from the following year a quantity of up to 5 % of its annual emission allocation. Where the emissions of a Member State are below that annual emission allocation, a Member State should be allowed to carry over its excess emission reductions to the subsequent years.
- (10) As a means to even out the differences in abatement costs faced by different Member States, by allowing for increased geographical flexibility, and at the same time, as a means to enhance the overall cost-effectiveness of the total commitment of the Community, Member States should be able to transfer part of their annual emission allocation to other Member States. The transparency of such transfers should be ensured by way of a notification to the Commission and the registration of each transfer in the registries of both Member States involved. Such transfers may be carried out in a manner that is mutually convenient, including by means of auctioning, the use of market intermediaries acting on an agency basis, or by way of bilateral arrangements.
- (11) Significant greenhouse gas emission reductions should be made within the Union. The use of credits from project activities should be limited so that it is supplemental to domestic action. The Union remains committed to the continued improvement of the Clean Development Mechanism (CDM) and will seek improvements through the appropriate international processes. It is important that credits from project activities used by Member States represent real, verifiable, additional and permanent emission reductions and have clear sustainable development benefits and no significant negative environmental or social impacts. Member States should also report on the qualitative criteria they apply for the use of such credits.
- (12) In order to provide for flexibility for Member States in implementing their commitments, to promote sustainable development in third countries, in particular in developing countries, and to provide certainty to investors, the Community should continue to recognise a certain amount of credits from greenhouse gas emission reduction projects in third countries before a future international agreement on climate change (hereinafter referred to as the international agreement on climate change) has been reached. Member States should ensure that their policies for purchasing these credits enhance the equitable geographical distribution of projects, in particular by increasing the share of certified emission reductions (CERs) purchased from least developed countries (LDCs) and small island developing States (SIDS), and enhance the achievement of an international agreement on climate change.

<sup>(1)</sup> 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 (OJ L 275, 25.10.2003, p. 32).

- (13) Member States should therefore be able to use greenhouse gas emission reduction credits issued for reductions that were made during the period from 2008 to 2012 and that result from project types which were eligible for use in the Community scheme during that period. Member States should also be able to use greenhouse gas emission reduction credits for reductions that were made after the period from 2008 to 2012, that result from projects that were registered during the period from 2008 to 2012 and that result from project types which were eligible for use in the Community scheme during that period.
- (14) Very few CDM projects have been implemented in LDCs. Given that the Community supports the equitable distribution of CDM projects, including through the Commission's Global Climate Change Alliance as set out in the Commission Communication of 18 September 2007 entitled 'Building a Global Climate Change Alliance between the European Union and poor developing countries most vulnerable to climate change', it is appropriate to provide certainty on the acceptance of credits from projects started after the period from 2008 to 2012 in LDCs, for project types that were eligible for use in the Community scheme during the period from 2008 to 2012. That acceptance should continue until 2020 or the conclusion of a relevant agreement with the Community, whichever is the earlier.
- (15) In order to provide for further flexibility for Member States and to promote sustainable development in developing countries, Member States should be able to use additional credits from projects resulting from agreements concluded by the Community with third countries. Without an international agreement on climate change that determines the assigned amount for developed countries, Joint Implementation (JI) projects cannot continue after 2012. Greenhouse gas emission reduction credits resulting from such projects should, however, continue to be recognised by means of agreements with third countries.
- (16) The continued ability for Member States to use CDM credits is important to help ensure a market for those credits after 2012. To help ensure such a market and in order to ensure further greenhouse gas emission reductions within the Community, and thus enhance the implementation of the objectives of the Community relating to renewable energy, energy efficiency, energy security, innovation and competitiveness, it is proposed to allow the annual use by Member States of credits from greenhouse gas emission reduction projects in third countries, up to a quantity representing 3 % of the greenhouse gas emissions of each Member State not covered under Directive 2003/87/EC in 2005, or in other Member States, until an international agreement on climate change has been reached. Member States should be allowed to transfer the unused part of that quantity to other Member States. Certain Member States with a negative limit, or a positive limit of at most 5 %, as set out in this Decision, should, in addition to the credits referred to above, be allowed annually to use additional credits amounting to 1 % of their verified emissions in 2005 from projects in LDCs and SIDS, subject to compliance with one of the four conditions set out in this Decision.
- (17) This Decision should be without prejudice to more stringent national objectives. Where Member States limit the greenhouse gas emissions covered by this Decision beyond their obligations under this Decision in order to meet a more stringent objective, the limitation imposed by this Decision on the use of greenhouse gas emission reduction credits should not apply to the additional emission reductions to attain the national objective.
- (18) In order to increase the cost-effectiveness of attaining national objectives, in particular for Member States with ambitious objectives, Member States can make use of credits resulting from Community-level projects as defined in Article 24a of Directive 2003/87/EC.
- (19) Once an international agreement on climate change has been reached, Member States should only accept emission reduction credits from countries which have ratified that agreement and subject to a common approach.
- (20) The fact that certain provisions of this Decision refer to the approval of an international agreement on climate change by the Community is without prejudice to the conclusion of that agreement also by Member States.
- (21) Upon the approval of an international agreement on climate change for the period after 2012 and as provided for in that agreement, the Community and its Member States should participate in the financing of measurable, reportable, verifiable and nationally appropriate greenhouse gas emissions mitigation action, consistent with the objective of limiting overall global annual mean surface temperature increase to 2 °C compared to pre-industrial levels, in developing countries which have ratified the agreement.
- (22) Upon the approval of an international agreement on climate change for the period after 2012 and as provided for in that agreement, the Community and its Member States should participate in the financing of assistance for developing countries which have ratified the agreement, in particular for communities and countries most at risk from climate change, with the aim of supporting them in their adaptation and risk reduction strategies.

- (23) In the event that no international agreement on climate change is approved by the Community by 31 December 2010, the Commission should make a proposal to include emissions and removals related to land use, land use change and forestry in the Community reduction commitment, in accordance with harmonised modalities, building on work carried out in the context of the UNFCCC, and ensure permanence and the environmental integrity of the contribution of land use, land use change and forestry as well as accurate monitoring and accounting, with the aim of the proposed act entering into force from 2013. The Commission should assess if the distribution of individual Member States' efforts should be adjusted accordingly.
- (24) Progress in implementing commitments under this Decision should be annually evaluated on the basis of reports submitted under 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 <sup>(1)</sup>. Every two years an assessment should be made on the projected progress and a full evaluation of the implementation of this Decision should be made in 2016.
- (25) Any adjustments in the coverage of Directive 2003/87/EC should be matched by a corresponding adjustment in the maximum quantity of greenhouse gas emissions covered by this Decision.
- (26) Upon the approval by the Community of an international agreement on climate change, the emission limits for Member States should be adjusted to achieve the Community's greenhouse gas emission reduction commitment set out in that agreement, taking into account the principle of solidarity between Member States and the need for sustainable economic growth across the Community. The amount of credits from greenhouse gas emission reduction projects in third countries that each Member State can use should be increased by up to half of the additional reduction effort under this Decision.
- (27) The registries established under Decision No 280/2004/EC and the Central Administrator designated under Directive 2003/87/EC should be used to ensure an accurate processing and accounting of all transactions for the implementation of this Decision.
- (28) Since the reduction commitment of the Community imposes tasks not only on the central governments of Member States but also on their local and regional governments and on other local and regional advocacy forums and organisations, Member States should ensure cooperation between their central authorities and local authorities at different levels.
- (29) In addition to individual Member States, central governments and local and regional organisations and authorities, market actors — together with households and individual consumers — should be involved in contributing to the implementation of the Community's reduction commitment, irrespective of the level of greenhouse gas emissions which can be attributed to them.
- (30) Member States should ensure funding for the use of new, innovative techniques in order to enable industrial operators to create new jobs, thereby increasing competitiveness and promoting the achievement of the objectives set by the Lisbon Strategy.
- (31) Since increasing electricity generation from renewable energy sources is a particularly important means of reducing greenhouse gas emissions, Member States should seek to do this in the context of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources <sup>(2)</sup>.
- (32) The measures necessary for the implementation of this Decision 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 <sup>(3)</sup>.
- (33) In particular, the Commission should be empowered to determine the annual emission allocations for the period from 2013 to 2020 in terms of tonnes of carbon dioxide equivalent, to indicate modalities in order to facilitate transfers by Member States of parts of their emission allocations and increase the transparency of these transfers, as well as to adopt measures to implement the provisions relating to registries and the Central Administrator. Since those measures are of general scope and are designed to amend the non-essential elements of this Decision by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (34) Since the objectives of this Decision cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, 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 Decision does not go beyond what is necessary in order to achieve those objectives,

<sup>(1)</sup> OJ L 49, 19.2.2004, p. 1.

<sup>(2)</sup> See page 16 of this Official Journal.

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23.

HAVE ADOPTED THIS DECISION:

### Article 1

#### Subject matter

This Decision lays down the minimum contribution of Member States to meeting the greenhouse gas emission reduction commitment of the Community for the period from 2013 to 2020 for greenhouse gas emissions covered by this Decision, and rules on making these contributions and for the evaluation thereof.

This Decision 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 emissions reductions exceeding those required pursuant to Article 3, as reflected in the 30 % reduction commitment as endorsed by the European Council of March 2007.

### Article 2

#### Definitions

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

1. 'Greenhouse gas emissions' means the emission of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF<sub>6</sub>) from the categories listed in Annex I, expressed in terms of tonnes of carbon dioxide equivalent, as determined pursuant to Decision No 280/2004/EC, excluding greenhouse gases emissions covered under Directive 2003/87/EC.
2. 'Annual emission allocation' means the annual maximum allowed greenhouse gas emissions in the years 2013 to 2020 as specified in Article 3(2).

### Article 3

#### Emission levels for the period from 2013 to 2020

1. Each Member State shall, by 2020, limit its greenhouse gas emissions at least by the percentage set for that Member State in Annex II to this Decision in relation to its emissions in 2005.
2. Subject to paragraphs 3, 4 and 5 of this Article and Article 5, each Member State with a negative limit under Annex II shall ensure, including by making use of the flexibilities provided for in this Decision, that its greenhouse gas emissions in 2013 do not exceed its average annual greenhouse gas emissions during 2008, 2009 and 2010, as reported and verified pursuant to Directive 2003/87/EC and Decision No 280/2004/EC.

Subject to paragraphs 3, 4 and 5 of this Article and Article 5, each Member State with a positive limit under Annex II shall ensure, including by making use of the flexibilities provided for in this Decision, that its greenhouse gas emissions in 2013 do not exceed a level defined by a linear trajectory, starting in 2009, on its average annual greenhouse gas emissions during 2008, 2009 and 2010, as reported and verified pursuant to Directive 2003/87/EC and Decision No 280/2004/EC, ending in 2020 on the limit for that Member State as specified in Annex II.

Subject to paragraphs 3, 4 and 5 of this Article and Article 5, each Member State shall annually limit its greenhouse gas emissions in a linear manner, including by making use of the flexibilities provided for in this Decision, in order to ensure that its emissions do not exceed its limit in 2020 as specified in Annex II.

When the relevant reviewed and verified emission data are available, measures shall be adopted within six months to determine the annual emission allocations for the period from 2013 to 2020 in terms of tonnes of carbon dioxide equivalent.

Those measures, designed to amend non-essential elements of this Decision by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 13(2).

3. During the period from 2013 to 2019, a Member State may carry forward from the following year a quantity of up to 5 % of its annual emission allocation. If the greenhouse gas emissions of a Member State are below its annual emission allocation, taking into account the use of flexibilities pursuant to this paragraph and paragraphs 4 and 5, it may carry over the part of its annual emission allocation of a given year that exceeds its greenhouse gas emissions in that year to the subsequent years, until 2020.

A Member State may request an increased carry forward rate in excess of 5 % in 2013 and 2014 in the event of extreme meteorological conditions which have led to substantially increased greenhouse gas emissions in those years compared to years with normal meteorological conditions. To this end, the Member State shall submit a report to the Commission substantiating this request. Within three months, the Commission shall decide whether an increased carry forward can be granted.

4. A Member State may transfer up to 5 % of its annual emission allocation for a given year to other Member States. A receiving Member State may use this quantity for the implementation of its obligation under this Article for the given year or any subsequent years until 2020. A Member State cannot transfer any part of its annual emission allocation if, at the time of transfer, that Member State is not in compliance with the requirements of this Decision.

5. A Member State may transfer the part of its annual emission allocation that exceeds its greenhouse gas emissions for that year, taking into account the use of flexibilities pursuant to paragraphs 3 and 4, to other Member States. A receiving Member State may use this quantity for the implementation of its obligations under this Article for the same year or any subsequent years until 2020. A Member State cannot transfer any part of its annual emission allocation if, at the time of transfer, it is not in compliance with the requirements of this Decision.

6. In order to facilitate the transfers referred to in paragraphs 4 and 5 and increase their transparency, measures indicating the modalities for such transfers shall be adopted.

Those measures, designed to amend non-essential elements of this Decision by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 13(2).

#### Article 4

##### Energy efficiency

1. By 2012, the Commission shall assess and report on the progress of the Community and its Member States towards the objective to reduce energy consumption by 20 % by 2020 compared to projections for 2020, as outlined in the Action Plan for Energy Efficiency which was set out in the Commission Communication of 19 October 2006.

2. If appropriate, in particular in order to assist Member States in their contributions towards meeting the Community's greenhouse gas emission reduction commitments, the Commission shall, by 31 December 2012, propose strengthened or new measures to accelerate energy efficiency improvements.

#### Article 5

##### Use of credits from project activities

1. Member States may use the following greenhouse gas emission reduction credits to implement their obligations under Article 3:

- (a) Certified Emission Reductions (CERs) and Emission Reduction Units (ERUs), as set out in Directive 2003/87/EC, issued in respect of emission reductions until 31 December 2012 which were eligible for use in the Community scheme during the period from 2008 to 2012;
- (b) CERs and ERUs issued in respect of emission reductions from 1 January 2013 from projects which were registered before 2013 and which were eligible for use in the Community scheme during the period from 2008 to 2012;
- (c) CERs issued in respect of emission reductions achieved from projects implemented in LDCs 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;

- (d) temporary CERs (tCERs) or long-term CERs (lCERs) from afforestation and reforestation projects provided that, where a Member State has used tCERs or lCERs towards its commitments under Council Decision 2002/358/EC<sup>(1)</sup> for the period from 2008 to 2012, the Member State commits to the continuing replacement of those credits by tCERs, lCERs or other units valid under the Kyoto Protocol before the expiry date of the tCERs or lCERs, and the Member State also commits to the continuing replacement of tCERs or lCERs used under this Decision with tCERs, lCERs or other units usable towards those commitments before the expiry date of the tCERs or lCERs. Where replacement takes place using tCERs or lCERs, the Member State shall replace also those tCERs or lCERs before their expiry date on a continuing basis, until their replacement with units of unlimited validity.

Member States should ensure that their policies for purchasing these credits enhance the equitable geographical distribution of projects and the achievement of an international agreement on climate change.

2. In addition to paragraph 1 and in the event that negotiations on an international agreement on climate change are not concluded by 31 December 2009, Member States may, for the implementation of their obligations under Article 3, use additional greenhouse gas emission reduction credits resulting from projects or other emission reducing activities in accordance with the agreements referred to in Article 11a(5) of Directive 2003/87/EC.

3. Provided that an international agreement on climate change as referred to in Article 1 has been reached, Member States may, from 1 January 2013, only use credits from projects in third countries which have ratified that agreement.

4. The annual use of credits by each Member State pursuant to paragraphs 1, 2 and 3 shall not exceed a quantity equal to 3 % of the greenhouse gas emissions of that Member State in 2005, plus any quantity transferred in accordance with paragraph 6.

5. Member States with a negative limit, or a positive limit of at most 5 %, as set out in Annex II, which are listed in Annex III, shall, in addition to credits used pursuant to paragraph 4, be allowed to use additional credits amounting to 1 % of their verified emissions in 2005 from projects in LDCs and SIDS each year, subject to compliance with one of the following four conditions:

- (a) the direct costs of the overall package exceed 0,70 % of GDP 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;

<sup>(1)</sup> 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 (OJ L 130, 15.5.2002, p. 1).

- (b) there is an increase of at least 0,1 % of GDP between the target actually adopted for the Member State concerned and the cost-effective scenario according to the Commission's Impact Assessment referred to in point (a);
- (c) more than 50 % of the total emissions covered by this Decision for the Member State concerned are accounted for by transport-related emissions; or
- (d) the Member State concerned has a renewable energies target for 2020 in excess of 30 % as set out in Directive 2009/28/EC.

6. Each year, a Member State may transfer to another Member State the unused part of its annual quantity equal to 3 % as specified in paragraph 4. Where a Member State's annual use of credits does not reach the quantity in paragraph 4, the Member State may carry over the unused part of that quantity to subsequent years.

7. Member States shall, in addition, be able to use credits from Community-level projects issued pursuant to Article 24a of Directive 2003/87/EC towards their emission reduction commitments, without any quantitative limit whatsoever.

#### Article 6

##### **Reporting, evaluation of progress, amendments and review**

1. Member States shall, in their reports submitted pursuant to Article 3 of Decision No 280/2004/EC, include the following:

- (a) their annual greenhouse gas emissions resulting from the implementation of Article 3;
- (b) the use, geographical distribution and types of, as well as the qualitative criteria applied to, credits used in accordance with Article 5;
- (c) projected progress towards meeting their obligations under this Decision, including information on national policies and measures and national projections;
- (d) information on planned additional national policies and measures envisaged with a view to limiting greenhouse gas emissions beyond their commitments under this Decision and in view of the implementation of an international agreement on climate change, as referred to in Article 8.

2. In the event that a Member State uses credits from project types that cannot be used by operators in the Community scheme, that Member State shall provide a detailed justification for the use of such credits.

3. The Commission shall, in its reports submitted pursuant to Article 5(1) and (2) of Decision No 280/2004/EC, evaluate whether the progress made by Member States is sufficient for them to fulfil their obligations under this Decision.

The evaluation shall take into account progress in Community policies and measures and information from Member States in accordance with Article 3 and Article 5 of Decision No 280/2004/EC.

Every two years, starting with the greenhouse gas emissions reported for 2013, the evaluation shall also include the projected progress of the Community towards meeting its reduction commitment and of Member States towards fulfilling their obligations under this Decision.

4. In the report referred to in paragraph 3, the Commission shall assess the overall implementation of this Decision, including the use and quality of CDM credits and the need for further common and coordinated policies and measures at Community level in the sectors covered by this Decision in order to assist Member States in meeting their commitments under this Decision, and shall make proposals as appropriate.

5. In order to implement this Decision, the Commission shall, where appropriate, make proposals to amend Decision No 280/2004/EC and adopt amendments to Commission Decision 2005/166/EC <sup>(1)</sup> with a view to the amending acts applying from 1 January 2013, to ensure in particular:

- (a) faster, efficient, transparent and cost-effective monitoring, reporting and verification of greenhouse gas emissions;
- (b) the development of national projections of greenhouse gas emissions beyond 2020.

#### Article 7

##### **Corrective action**

1. If the greenhouse gas emissions of a Member State exceed the annual emission allocation specified pursuant to Article 3(2), taking into account the flexibilities used pursuant to Articles 3 and 5, the following measures shall apply:

- (a) a deduction from the Member State's emission allocation of the following year equal to the amount in tonnes of carbon dioxide equivalent of those excess emissions, multiplied by an abatement factor of 1,08;
- (b) the development of a corrective action plan in accordance with paragraph 2 of this Article; and
- (c) the temporary suspension of the eligibility to transfer part of the Member State's emission allocation and JI/CDM rights to another Member State until the Member State is in compliance with Article 3(2).

<sup>(1)</sup> Commission Decision 2005/166/EC of 10 February 2005 laying down rules implementing Decision No 280/2004/EC of the European Parliament and of the Council concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (OJ L 55, 1.3.2005, p. 57).

2. A Member State covered by paragraph 1 shall, within three months, submit to the Commission an assessment and a corrective action plan that includes:

- (a) action that the Member State will implement in order to meet its specific obligations under Article 3(2), giving priority to domestic policies and measures and the implementation of Community action;
- (b) a timetable for implementing such action, which enables the assessment of annual progress in the implementation.

The Commission may issue an opinion on the corrective action plan of the Member State in question.

Before issuing that opinion, the Commission may submit the corrective action plan to the Climate Change Committee, referred to in Article 13(1), for comments.

#### Article 8

### **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 move to the 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 emission reduction commitments of the Community and of Member States.

2. On the basis of the report referred to in paragraph 1, the Commission shall, if appropriate, submit a legislative proposal to the European Parliament and to the Council amending this Decision pursuant to paragraph 1, with a view to the amending act 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, Member States to use, in addition to the credits provided for in this Decision, CERs, ERUs or other approved credits from projects in third countries which have ratified the international agreement on climate change.

4. The proposal shall also include, as appropriate, measures to allow for Member States to use the unused part of the additional usable quantity referred to in paragraph 3 in the subsequent years or transfer the unused part of that quantity to another Member State.

5. 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 by Member States of additional types of project credits or of other mechanisms created under the international agreement on climate change, as appropriate.

6. On the basis of rules agreed as part of an international agreement on climate change, the Commission shall propose to include emissions and removals related to land use, land use change and forestry in the Community reduction commitment, as appropriate, according to harmonised modalities ensuring permanence and the environmental integrity of the contribution of land use, land use change and forestry as well as accurate monitoring and accounting. The Commission shall assess whether the distribution of individual Member States' efforts should be adjusted accordingly.



7. The proposal shall include the appropriate transitional and suspensive measures pending the entry into force of the international agreement on climate change.

#### Article 9

### Procedure in relation to land use, land use change and forestry in the event of no international agreement on climate change

In the event that no international agreement on climate change is approved by the Community by 31 December 2010, Member States may specify their intentions for the inclusion of land use, land use change and forestry in the Community reduction commitment taking into account methodologies within the work carried out in the context of UNFCCC. Taking into account such specification by Member States, the Commission shall, by 30 June 2011, assess modalities for the inclusion of emissions and removals from activities related to land use, land use change and forestry in the Community reduction commitment, ensuring permanence and the environmental integrity of the contribution of land use, land use change and forestry as well as accurate monitoring and accounting, and make a proposal, as appropriate, with the aim of the proposed act entering into force from 2013 onwards. The Commission's assessment shall consider if the distribution of individual Member States' efforts should be adjusted accordingly.

#### Article 10

### Changes in the scope of Directive 2003/87/EC and application of Article 24a thereof

The maximum quantity of emissions for each Member State under Article 3 of this Decision shall be adjusted in accordance with the quantity of:

- (a) allowances for greenhouse gas emissions issued pursuant to Article 11 of Directive 2003/87/EC that results from a change in the coverage of sources under that Directive following the final approval by the Commission of the national allocation plans for the period from 2008 to 2012 pursuant to Directive 2003/87/EC;
- (b) allowances or credits issued pursuant to Articles 24 and 24a of Directive 2003/87/EC in respect of emission reductions in a Member State covered by this Decision;
- (c) allowances for greenhouse gas emissions from installations excluded from the Community scheme in accordance with Article 27 of Directive 2003/87/EC for the time that they are excluded.

The Commission shall publish the figures resulting from that adjustment.

#### Article 11

### Registries and Central Administrator

1. The Community and its Member States' registries established pursuant to Article 6 of Decision No 280/2004/EC shall ensure the accurate accounting of transactions under this Decision. This information shall be accessible to the public.

2. The Central Administrator designated under Article 20 of Directive 2003/87/EC shall, through its independent transaction log, conduct an automated check on each transaction under this Decision and, where necessary, block transactions to ensure there are no irregularities. This information shall be accessible to the public.

3. The Commission shall adopt measures necessary to implement paragraphs 1 and 2.

Those measures designed to amend non-essential elements of this Decision by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 13(2).

#### Article 12

### Amendments to Regulation (EC) No 994/2008

In order to implement this Decision, the Commission shall adopt amendments to Commission Regulation (EC) No 994/2008 of 8 October 2008 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council<sup>(1)</sup>.

#### Article 13

### Committee procedure

1. The Commission shall be assisted by the Climate Change Committee established by Article 9 of Decision No 280/2004/EC.

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

#### Article 14

### Report

The Commission shall draw up a report evaluating the implementation of this Decision. That report shall also evaluate how the implementation of this Decision has affected competition at national, Community and international level. The Commission shall submit its report to the European Parliament and to the Council by 31 October 2016, accompanied by proposals as appropriate, in particular whether it is appropriate to differentiate national targets for the period after 2020.

<sup>(1)</sup> OJ L 271, 11.10.2008, p. 3.

*Article 15***Entry into force**

This Decision shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 16***Addressees**

This Decision is addressed to the Member States.

Done at Strasbourg, 23 April 2009.

*For the European Parliament*  
*The President*  
H.-G. PÖTTERING

*For the Council*  
*The President*  
P. NEČAS

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## ANNEX I

**CATEGORIES REFERRED TO IN ARTICLE 2(1) OF THIS DECISION AS FURTHER SPECIFIED IN ANNEX I,  
CATEGORIES 1 to 4 AND 6 OF DECISION 2005/166/EC**

Energy

- Fuel combustion,
- Fugitive emissions from fuels,

Industrial processes

Solvent and other product use

Agriculture

Waste

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## ANNEX II

## MEMBER STATE GREENHOUSE GAS EMISSION LIMITS UNDER ARTICLE 3

	Member State greenhouse gas emission limits in 2020 compared to 2005 greenhouse gas emissions levels
Belgium	- 15 %
Bulgaria	20 %
Czech Republic	9 %
Denmark	- 20 %
Germany	- 14 %
Estonia	11 %
Ireland	- 20 %
Greece	- 4 %
Spain	- 10 %
France	- 14 %
Italy	- 13 %
Cyprus	- 5 %
Latvia	17 %
Lithuania	15 %
Luxembourg	- 20 %
Hungary	10 %
Malta	5 %
Netherlands	- 16 %
Austria	- 16 %
Poland	14 %
Portugal	1 %
Romania	19 %
Slovenia	4 %
Slovakia	13 %
Finland	- 16 %
Sweden	- 17 %
United Kingdom	- 16 %

*ANNEX III***MEMBER STATES REFERRED TO IN ARTICLE 5(5)**

Belgium

Denmark

Ireland

Spain

Italy

Cyprus

Luxembourg

Austria

Portugal

Slovenia

Finland

Sweden

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