COMMISSION OF THE EUROPEAN COMMUNITIES

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OPINION OF THE COMMISSION

pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty, on the European Parliament's amendments to the Council's common position regarding the 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

AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250 (2) of the EC Treaty

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1. BACKGROUND

The Proposal COM(2001)581 final[1] was transmitted to the European Parliament and the Council on 23 October 2001 in accordance with the co-decision procedure pursuant to Article 175(1) of the EC Treaty.

The Committee of Regions gave its opinion on 14 March 2002[2].

The Economic and Social Committee gave its opinion on 29 May 2002[3].

The European Parliament gave its opinion at the first reading in session on 10 October 2002.

Following the opinion of the European Parliament and pursuant to Article 250(2) of the EC Treaty, the Commission amended its Proposal by COM(2002)680 final[4] and transmitted this to the European Parliament and the Council on 27 November 2002.

The Council reached unanimous political agreement on a Common Position on 9 December 2002. The Council adopted the Common Position formally on 18 March 2003.

On 2 July 2003, the European Parliament adopted seventeen amendments to the Council's common position at second reading.

This opinion presents the Commission's position on the European Parliament's amendments pursuant to Article 251(2)(c) of the EC Treaty.

2. PURPOSE OF THE COMMISSION PROPOSAL

The general objective of the proposed Directive is to create a scheme for greenhouse gas emission allowance trading within the Community by establishing an EU

1 OJ C 75 E, 26.03.2002, p. 33.
2 OJ C 192, 12.08.2002, p.59.
3 OJ C 221, 17.09.2002, p.27.
4 Not yet published in the Official Journal

framework and ensuring an EU-wide market for emission allowances. Such an instrument is a 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. The proposal ensures the proper functioning of the internal market and avoids unacceptable distortions of competition.

The Directive is particularly important to ensure that legal commitments to reduce greenhouse gas emissions pursuant to the Kyoto Protocol, which was ratified by the European Community[5] and its Member States on 31 May 2002, are fulfilled more cost-effectively.

3. COMMISSION OPINION ON THE PARLIAMENT'S AMENDMENTS

3.1. Summary of the Commission's position

The Commission can accept the European Parliament's seventeen amendments in full. It considers that the principal aims of the EC emissions trading scheme are safeguarded by the compromise package that these amendments constitute.

3.2. Parliament amendments at second reading

3.2.1. Amendments accepted

3.2.1.1. Amendment 28 (new recital 7a)

Amendment 28 is a clarification of Annex III (3) of the Common Position and as such it is acceptable to the Commission.

3.2.1.2. Amendment 29 (recital 14)

Amendment 29 clarifies that other greenhouse gases and other installations can be included by Member States from 2008, and is acceptable to the Commission.

3.2.1.3. Amendments 30 and 41 (recital 18 and Article 30(3))

These amendments are acceptable to the Commission. The first sentence in recital 18 derives from the Common Position, while the second sentence and the addition to Article 30 paragraph 3 are taken directly from the Marrakech Accords and therefore reflect an existing commitment of the European Community and all its Member States (UNFCCC Decision 15/CP.7).

3.2.1.4. Amendment 31 (recital 19a)

This amendment is acceptable to the Commission, as the emission trading Directive will encourage the use of more energy efficient technologies, including combined

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[5] 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, 15.05.2002, p.1.

heat and power technology, while Directive 2003/…/EC [of … concerning the promotion of CHP] will specifically promote combined heat and power technology.

3.2.1.5. Amendment 32 (recital 23)

Amendment 32 is acceptable as the Commission is committed to ensuring that the transport sector makes a substantial contribution to the Community and its Member States meeting their climate change obligations under the Kyoto Protocol. Moreover, the reference in the recital does not infringe upon the Commission's right of initiative.

3.2.1.6. Amendment 33 and 35 (new recital 26a and Article 22)

These amendments are acceptable to the Commission, as they provide for key criteria for the national allocation plans to be amended only through co-decision, while sufficiently flexibility is maintained for other criteria to be amended through comitology.

3.2.1.7. Amendment 34 (Article 10)

This amendment is acceptable to the Commission because it is a central element of the agreement between the European Parliament and Council enabling agreement to be reached at second reading, and enabling swift implementation of the emissions trading scheme. The level of auctioning allowed in the period 2005-7 is half that which Member States would be able to use in the period 2008-12.

3.2.1.8. Amendment 36 and 37 (Article 27(1) and (2))

These amendments are acceptable to the Commission because its consideration of Article 27 is not changed by the deletion of the words "certain" and "and activities". When a group of installations qualify under this Article, they will do so subject to the conditions of paragraph 2 being fulfilled, subsequent to which the Commission would provide for the temporary exclusion of those installations from the Community scheme.

3.2.1.9. Amendment 17 (Article 29(1a))

The Commission can accept this amendment, while noting the difficulty of identifying possible cases of *force majeure* in advance.

3.2.1.10. Amendment 38 (Article 30(2)(a))

This amendment is acceptable to the Commission since the reference in the review clause does not infringe upon the Commission's right of initiative.

3.2.1.11. Amendment 39 (Article 30(2)(c))

This amendment is acceptable to the Commission since text in the review clause is not prejudicial to future Commission proposals.

3.2.1.12. Amendment 40 (Article 30(2)(new ja))

Emissions trading is an instrument that does not need technology standards, but lets operators decide which technologies they use. However, it is acceptable to the Commission to examine the feasibility of EU-wide benchmarks based on BAT being developed as a basis for allocation.

3.2.1.13. Amendment 42 (Annex III point 1)

This amendment is acceptable to the Commission. It contains qualitative text which limits the total quantity of allowances to no more than is needed for the strict application of Annex III criteria. It also includes additional text which requires the total quantity for the period 2005-07 to be consistent with achieving the Member State's Kyoto obligation in the period 2008-12. These changes are acceptable to the Commission since they further clarify existing Annex III criteria.

3.2.1.14. Amendment 43 (Annex III, point 7)

The Commission can accept this amendment since it clarifies existing criteria in Annex III, and does not impose additional requirements on Member States. This amendment clarifies the possible link between benchmarking and early action, which was a particular concern for the Parliament.

4. CONCLUSION

Pursuant to Article 250(2) of the EC Treaty, the Commission is amending its proposal as indicated above.