



EUROPEAN COMMISSION

Brussels, **XXX**  
[...] (2012) **XXX** draft

Proposal for a

**DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Directive 2003/87/EC clarifying provisions on the timing of auctions of  
greenhouse gas allowances**

(Text with EEA relevance)

## EXPLANATORY MEMORANDUM

### 1. INTRODUCTION

The emission trading system (EU ETS) set up by Directive 2003/87/EC has created the world's first major carbon market and an EU-wide carbon price. The market is generally considered liquid and based on a well-functioning infrastructure. Part of this infrastructure relates to the modalities for auctioning of emissions allowances, where the Directive confers implementing powers to the Commission, notably through the adoption of a Regulation on "the timing, administration and other aspects" of auctioning. The Commission has already exercised this power and the Regulation in question was already amended a number of times.

However, in the context of an ongoing debate about the need and options for possible future action to address imbalances between supply and demand, some stakeholders have challenged the interpretation the Commission has so far relied on as regards to the extent of its powers. The Directive should urgently be clarified on this point so as to eliminate any doubts about the scope of the Commission's powers and ensure legal certainty regarding possible future measures adopted by the Commission on this basis.

### 2. REGULATORY CONTEXT

One of the features of the change from the phase 2 (period from 2008 to 2012) into phase 3 (period from 2013 to 2020) and the implementation provisions adopted so far is that the supply of allowances and international credits is expected to temporarily increase significantly in the short term. This exacerbates the already significant, unforeseen impact of the macro economic developments, due to which emissions have decreased considerably and are not expected to increase significantly in 2012 and 2013. This combination of increased net supply and reduced demand increasingly affects the orderly functioning of the European carbon market in the transition to phase 3.

In the light of such exceptional circumstances, the Commission is therefore currently reviewing the need for a further change of the auctioning timetable and will invite experts in the Climate Change Committee to consider a draft for a future amendment to Commission Regulation (EU) No 1031/2010 and indicate their view on the appropriate action to be taken before the end of this year. The Commission also invites any other interested stakeholders to express their views on this draft and will actively engage with them in this regard. Further information is available in the Commission Staff Working Document *Information provided on the functioning of the EU Emission Trading System, the volumes of greenhouse gas emission allowances auctioned and freely allocated and the impact on the surplus of allowances in the period up to 2020*. Meanwhile, the legislative process to clarify the scope of the Commission's powers by means of the present proposal should proceed swiftly and independently of the result of consultations with the Climate Change Committee.

Finally, the Commission reaffirms its commitment, as stated in the context of the agreement on the Energy Efficiency Directive, to urgently examine and present options for action with a view to adopting further appropriate structural measures to strengthen the ETS during phase 3, and make it more effective.

### 3. LEGAL ELEMENTS OF THE PROPOSAL

For the purposes of legal certainty, it should be clarified that, in order to ensure an orderly functioning of the market, the Commission is able to adapt the auction timetable laid down in

Commission Regulation (EU) No 1031/2010. The proposed amendment would expressly provide such clarification in the relevant provision of the EU ETS Directive.

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

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

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 10(4) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC<sup>3</sup> does not specify how volumes of greenhouse gas emission allowances to be auctioned are to be distributed over the trading period.
- (2) For the purposes of legal certainty and market predictability, it should be clarified that, in order to ensure an orderly functioning of the market, the Commission is able in exceptional circumstances to adapt the auction timetable pursuant to Article 10(4) of Directive 2003/87/EC.
- (3) Directive 2003/87/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DECISION:

*Article 1*

In the first subparagraph of Article 10(4) of Directive 2003/87/EC the following sentence is added:

"The Commission shall, where appropriate, adapt the timetable for each period so as to ensure an orderly functioning of the market."

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ L 275, 25.10.2003, p. 32.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels,

*For the European Parliament  
The President*

*For the Council  
The President*