



**COUNCIL OF
THE EUROPEAN UNION**

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MI 123
ECOFIN 244
TRANS 123
AVIATION 53**

ADDENDUM TO "I/A" NOTE

from: General Secretariat of the Council
to: COREPER/COUNCIL

No. Cion prop.: 5862/08 ENV 52 ENER 29 IND 11 COMPET 31 MI 34 ECOFIN 34 TRANS 22
AVIATION 25 CODEC 105

Subject : Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading system of the Community [**first reading**]
– Adoption of the legislative act (LA + S)
Statements

UK STATEMENT ON THE LEGAL BASE

The UK notes that the adoption of the Directive on the sole legal base of Article 175(1) of the Treaty establishing the European Community (TEC) is inappropriate for a measure which contains significant provisions on fiscal policy. In line with observations the UK has made in similar circumstances previously, the UK continues to take the view that where EC legislation includes fiscal measures the legal base should include, either solely or, where appropriate, jointly, one of the Treaty articles dealing with fiscal issues. In this case the UK takes the view that Article 175(2) TEC should have been included as a legal base for the Directive.

Commission Statements

Commission statement re Article 10(3) on the use of revenues generated from the auctioning of allowances

Between 2013 and 2016, Member States may also use revenues generated from the auctioning of allowances to support the construction of highly efficient power plants, including new energy power plants that are CCS-ready. For new installations exceeding the degree of efficiency of a power plant according to Annex 1 to the Commission Decision of 21 December 2006 (2007/74/EC)¹ the Member States may support up to 15 % of the total costs of the investment for a new installation that is CCS-ready.

Commission statement re Article 10a(6) on the Community guidelines for state aid for environmental protection and the EU emissions trading system

Member States may deem it necessary to compensate temporarily certain installations from CO₂ costs passed on in electricity prices if the CO₂ costs might otherwise expose them to the risk of carbon leakage. In the absence of an international agreement, the Commission undertakes to modify after consulting Member States the Community guidelines on state aid for environmental protection by the end of 2010 to establish detailed provision under which Member States may grant state aid for such support. The provisions will follow the principles as presented in the document submitted to the European Parliament and the Council on 19 November 2008 (Annex II to 15713/1/08).

The Commission will monitor the situation, particularly in the light of the state of interconnection in the Baltic energy market and will report by the end of 2015.

¹ Commission Decision of 21 December 2006 establishing harmonised efficiency reference values for separate production of electricity and heat in application of Directive 2004/8/EC of the European Parliament and of the Council (*notified under document number C(2006) 6817*).