Commission Regulation (EU) No 1123/2013 of 8 November 2013 on determining international credit entitlements pursuant to Directive 2003/87/EC of the European Parliament and of the Council (Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[(1)], and in particular Article 11a(8) thereof,

Whereas:

(1) The Protocol to the United Nations Framework Convention on Climate Change (the Kyoto Protocol) establishes two mechanisms for the creation of international credits that Parties may use to offset emissions. Joint Implementation (JI) provides for the creation of emission reduction units (ERUs), whereas the Clean Development Mechanism (CDM) provides for the creation of certified emission reductions (CERs).

(2) The national allocation plans of Member States adopted pursuant to Article 9 of Directive 2003/87/EC provide for the use by operators of certain quantities of CERs and ERUs to comply with their obligations to surrender allowances as referred to in Article 12 of Directive 2003/87/EC in respect of the period 2008 to 2012.

(3) Article 11a of Directive 2003/87/EC provides for continued use of CERs and ERUs issued under the Kyoto Protocol in the emissions trading scheme set up by Directive 2003/87/EC, in the period from 2013 to 2020 and includes provisions related to the levels allowed by category of operator and aircraft operator to comply with their obligations to surrender allowances under Article 12 of Directive 2003/87/EC. Article 11a(8) sets out certain minimum entitlements, expressed in percentage levels, of international credit use by operators and aircraft operators in the period from 2008 to 2020 and foresees measures to determine the exact percentage limits.

(4) Directive 2003/87/EC provided for linking the Kyoto Protocol's project based mechanisms with the emission trading scheme in order to increase the cost-effectiveness of achieving reductions of global greenhouse gas emissions. In view of the number of allowances valid for the period 2013 to 2020 issued pursuant to the second sub paragraph of Article 13(2) of Directive 2003/87/EC, the entitlements to use

international credits should be set at the minimum levels specified in the first and third subparagraphs of Article 11a(8). As a consequence the overall limit on the use of international credits provided for in the fifth subparagraph of Article 11a(8) of Directive 2003/87/EC will be respected and the second subparagraph and the second sentence of the fourth subparagraph of Article 11a(8) of Directive 2003/87/EC will not apply herein. Any residual entitlement for 2012 from aircraft operators is maintained in accordance with Articles 11a(2), (3) and (4) of Directive 2003/87/EC.

(5) Operators of stationary installations with a significant capacity extension pursuant to Article 20 of Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council[(2)] should be entitled to be treated either as existing operators or as new entrants.

(6) Articles 58 to 61 of Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and (EU) No 1193/2011[(3)] provide details for the practical implementation of entitlement limits set out herein.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS REGULATION:

Article 1

1 Each operator of a stationary installation which received a free allocation or an entitlement to use international credits in the period from 2008 to 2012 shall be entitled to use international credits during the period 2008 to 2020 up to the amount allowed in the period from 2008 to 2012, or to an amount corresponding to a maximum of 11 % of its allocation in the period from 2008 to 2012, whichever is the higher.

2 Each operator of a stationary installation which received neither a free allocation nor an entitlement to use international credits in the period from 2008 to 2012 and, by derogation from paragraph 1, each operator of a stationary installation within the meaning of the first two indents of Article 3(h) of Directive 2003/87/EC shall be entitled to use international credits in the period from 2008 to 2020 up to a maximum of 4,5 % of its verified emissions in the period from 2013 to 2020.

3 Each operator of a stationary installation with a significant capacity extension pursuant to Article 20 of Decision 2011/278/EU shall be entitled to use international credits during the period from 2008 to 2020 up to the amount allowed to it in the period from 2008 to 2012, or to an amount corresponding to a maximum of 11 % of their allocation during the period from 2008 to 2012, or up to a maximum of 4,5 % of their verified emissions during the period from 2013 to 2020, whichever is the higher.

4 Each operator of a stationary installation which received a free allocation for the period from 2008 to 2012 and carrying out activities not listed in Annex I of Directive 2003/87/EC as amended by Regulation (EC) No 219/2009 of the European Parliament and of the Council[(4)], but listed in Annex I of Directive 2003/87/EC as amended by Directive 2009/29/EC of the European Parliament and of the Council[(5)] shall be entitled to use international credits during the period