Commission Regulation (EU) No 550/2011 of 7 June 2011 on determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, certain restrictions applicable to the use of international credits from projects involving industrial gases (Text with EEA relevance)

COMMISSION REGULATION (EU) No 550/2011

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on determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, certain restrictions applicable to the use of international credits from projects involving industrial gases

(Text with EEA relevance)

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(9) thereof,

Whereas:

(1) The ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC), which was approved by Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change,[(2)] is to stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. In order to meet that objective, the overall global annual mean surface temperature increase should not exceed 2 °C above pre-industrial levels as endorsed by the Cancun Climate Change Conference in December 2010 and the 'Copenhagen Accord'. The latest Intergovernmental Panel on Climate Change (IPCC) Assessment Report shows that, in order to reach this objective, global emissions of greenhouse gases must peak by 2020. This implies an increase in global efforts by all major emitting countries.

(2) If we are to live up to this challenge, carbon markets will have to play a key role. They will allow us to meet our targets at a lower cost and also promote greater ambition. In addition, carbon markets can be an effective way to transfer finance to developing countries and help us meet the USD 100 billion international finance package agreed in Copenhagen. This will require substantial scaling up of existing mechanisms, including the reform of the clean development mechanism (CDM) to increase the use of standardised baselines and the creation of new market mechanisms.

(3) The Kyoto Protocol, which was approved by Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 550/2011. (See end of Document for details)*

Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder[3], set emission reduction targets for 39 Parties for the period 2008-2012, and established 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).

(4) JI and CDM are so-called pure offsetting mechanisms, whereby a tonne of greenhouse gas emissions reduced creates the right to emit a tonne of greenhouse gas elsewhere. While such systems generally help to reduce the cost of global abatement enabling action in countries where it is more cost-efficient, they do not assist in the reduction efforts necessary to progress towards the 2 °C target.

(5) To keep global warming below 2 °C, the Union has taken the position that commitments by industrialised countries should be complemented by appropriate mitigation action by developing countries, in particular the most advanced. In parallel, a broad international carbon market should gradually develop that can deliver the necessary global reductions in an efficient manner, where international credits are generated for emission reductions achieved below a benchmark that is set below projected emissions in the absence of abatement measures. This requires appropriate mitigation action by developing countries. While the participation of least developed countries in the CDM should be strengthened, more advanced developing countries should gradually move towards participation in sectoral market mechanisms and ultimately in cap-and-trade systems[4].

(6) Participation in the JI and CDM is voluntary, as are decisions to allow the use of credits in emission trading systems. There is therefore a distinction between credits that may be generated, and credits that signatories to the Kyoto Protocol may have decided to allow for use under their domestic legislation. To this effect, Directive 2003/87/EC already excluded the use of assigned amount units, and Directive 2004/101/EC of the European Parliament and of the Council[5] allowed the use of certain JI and CDM credits, with harmonised restrictions on the use of international credits from nuclear, land-use and forestry projects, and provided that Member States may allow operators to use certain quantities of other types of international credits. Directive 2003/87/EC provides for harmonised implementing provisions to be adopted for restrictions on the use of international credits.

(7) The use of international credits from projects involving trifluoromethane (HFC-23) and nitrous oxide (N_2O) from adipic acid production (hereafter ‘industrial gas projects’) should be restricted. This is consistent with the October 2009 European Council conclusions urging developing countries, especially the more advanced, to take appropriate mitigation action. The vast majority of industrial gas projects are located in advanced developing countries with sufficient capabilities to finance those cheap reductions themselves, and the revenues gained from those projects in the past should suffice to finance them. The introduction of use restrictions for industrial gas credits, in particular if followed by respective decisions at international levels, should contribute to reaching a more balanced geographical distribution of the benefits of the mechanisms established under the Kyoto Protocol.

(8) Industrial gas projects raise environmental concerns. Exceptionally high rates of return from the destruction of HFC-23 has the consequence of stimulating the continued production and use of chlorodifluoromethane (HCFC-22), a potent ozone depleting and greenhouse gas substance, in registered plants at the maximum level allowed by the project activity methodology. As a result, the production of HCFC-22 could be higher than what it would have been in the absence of project activities. This in turn undermines the '2007 Montreal Adjustment on Production and Consumption of HCFCs' under the Montreal Protocol on Substances that Deplete the Ozone Layer[(6)], to establish the accelerated phase-out of HCFC-22 for non-feedstock use. It is also inconsistent with Member State financing of the phase-out of HCFC-22 production through contributions to the multilateral fund under the Montreal Protocol. These high rates of return result in distortions of economic incentives and competition and in shifts in production from adipic acid producers established in the Union to registered producers in third countries. The much more favourable treatment of adipic acid producers participating in the Kyoto mechanisms than those entering the Union scheme as of 2013 will increase the risks of similar shifts in production, and a net increase in global emissions. To reduce distortions of economic incentives and competition and avoid greenhouse gas emission leakage, restrictions on the use of these international credits are justified.

(9) International credits from industrial gas projects do not contribute to technology transfer or to the necessary long-term transformation of energy systems in developing countries. Abating these industrial gases through JI or the CDM does not contribute to reducing global emissions in the most efficient manner, because the high returns by project developers are not used for emission reductions.

(10) The application of full use restrictions of specific credits is provided for in Article 11a(9) of Directive 2003/87/EC. It is appropriate to apply such a restriction in the case of industrial gas projects. A full restriction of use best eliminates undesirable competitive and environmental consequences of those credits, improves the cost-efficiency of global emission reductions and the environmental performance of the carbon market by encouraging low-carbon investments.

(11) In accordance with Article 11a(9) of Directive 2003/87/EC, the measures provided for in this Regulation should apply from 1 January 2013, which in accordance with that Article is more than six months and less than three years from its date of adoption. The use of industrial gas credits for compliance obligations during 2012 is not affected by these measures.

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

HAS ADOPTED THIS REGULATION:

Article 1

From 1 January 2013, the use of international credits from projects involving the destruction of trifluoromethane (HFC-23) and nitrous oxide (N_2O) from adipic acid production for the purposes of Article 11a of Directive 2003/87/EC is prohibited, except for the use of credits in respect of emission reductions before 2013 from existing projects