

STATUTORY INSTRUMENTS

S.I. No. 706 of 2005

European Communities (Greenhouse Gas Emissions Trading) (Amendment)
Regulations 2005

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S.I. NO. 706 OF 2005**EUROPEAN COMMUNITIES (GREENHOUSE GAS EMISSIONS TRADING)
(AMENDMENT) REGULATIONS 2005**

The Minister for the Environment, Heritage and Local Government, in exercise of the powers conferred on him by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive 2003/87/EC¹ of the European Parliament and of the Council of 13th October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC², as amended by Directive 2004/101/EC³ of the European Parliament and of the Council of 27th October 2004 in respect of the Kyoto Protocol's project mechanisms, hereby makes the following Regulations:—

Citation

1. (1) These Regulations may be cited as the European Communities (Greenhouse Gas Emissions Trading) (Amendment) Regulations 2005.
- (2) These Regulations and the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 may be cited together as the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 to 2005.

Commencement

2. These Regulations shall come into operation on 11 November 2005.

Interpretation

3. In these Regulations:—

“the 2004 Regulations” means the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 (S.I. No. 437 of 2004).

¹ OJ L 275/32 of 25.10.2003

² OJ L 257/26 of 10.10.1996

³ OJ L 338/18 of 13.11.2004

Objective and Scope

4. These Regulations provide for the amendment of the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 (S.I. No. 437 of 2004) in order to provide for the linking of the Kyoto Protocol's project mechanisms to the scheme for greenhouse gas emission allowance trading within the European Community.

Amendment of the 2004 Regulations

5. The 2004 Regulations are amended:-

- (a) In Article 2 by inserting at the appropriate point in alphabetical order:

““Annex I Party” means a Party listed in Annex I to the United Nations Framework Convention on Climate Change that has ratified the Kyoto Protocol as specified in Article 1(7) of the Protocol;”

““certified emission reduction unit” means a unit issued pursuant to Article 12 of the Kyoto Protocol and the decisions adopted pursuant to the Convention or the Protocol”

““the Convention” means the 1992 United Nations Framework Convention on Climate Change;”

““emission reduction unit” means a unit issued pursuant to Article 6 of the Protocol and the decisions adopted pursuant to the Convention or the Protocol;”

““project activity” means a project activity within the meaning of Article 6 or Article 12 of the Protocol and the decisions adopted pursuant to the Convention or the Protocol;”

““the Protocol” means the 1997 Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change;”

““the registry” means the registry established and maintained by the Agency for the purposes of article 19 of the 2004 Regulations;”

and by replacing the definition of “directive” with:-

““directive” means Directive 2003/87/EC of the European Parliament and of the Council of 13th October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27th October 2004 in respect of the Kyoto Protocol's project mechanisms;”.

- (b) In Article 9, by inserting after sub-article (1):-

“(1a) In respect of each period specified in sub-article 2(b), the Agency shall, in accordance with the direction provided by the Minister, state in each National Allocation Plan Ireland’s intention on the use of emission reduction units and certified emission reduction units. The Agency shall also specify in each Plan, in accordance with the overall direction provided by the Minister, the amount of emission reduction units and certified emission reduction units that may be used for the purposes of compliance with article 12(3) in respect of each installation. The amount allowed shall be expressed as a percentage of the allocation for each installation.”

(c) In Article 11, by inserting after sub-article (3):-

“(4) For the purpose of article 12(3), the Agency may, subject to sub-articles (5) and (6), approve the use of emission reduction units or certified emission reduction units through the issue and immediate surrender of one allowance in exchange for one emission reduction unit or one certified emission reduction unit held by an operator in the registry.”

(5) Emission reduction units may not be used for compliance with article 12(3) in respect of the period referred to in article 9(2)(a) .

(6) Emission reduction units or certified emission reduction units generated from project activities related to:-

- (a) nuclear facilities; or
- (b) land use, land use change or forestry activities;

may not be used for the purpose of compliance with article 12(3).

(7) For each period specified in article 9 (2)(b), an operator may only use emission reduction units or certified emission reduction units for compliance with article 12(3) up to the limit specified in the National Allocation Plan for that period.”

(d) In Article 19, by replacing sub-article (1) with:-

“(1) The Agency shall establish and maintain, or cause to be established and maintained, a registry in order to ensure the accurate accounting of:-

- (a) the issue, holding, transfer and cancellation of allowances,
- (b) the holding, transfer and cancellation of emission reduction units and certified emission reduction units,

and may do so in a consolidated manner with the registry of one or more Member States of the European Communities.”

(e) In Article 21, by replacing sub-article (1) with:-

“(1) The Agency shall submit to the Commission an annual report on the application of these Regulations, providing information on the allocation of allowances, the use of emission reduction units and certified emission reduction units in the Community scheme, the operation of the registry, the application of the Commission’s Monitoring and Reporting Guidelines, the verification of reports on emissions, compliance with these Regulations, and the fiscal treatment of allowances, if any.”

(f) In Schedule 3, by inserting after paragraph (11):-

“(12) The plan shall specify the maximum amount of emission reduction units and certified emission reduction units which may be used by operators in the Community scheme as a percentage of the allocation of the allowances to each installation.”

Given under the Official Seal of the Minister
for the Environment, Heritage and
Local Government

This 11th day of November 2005.

L.S.

Dick Roche T.D.
Minister for the Environment, Heritage and
Local Government.

EXPLANATORY NOTE

(This note is not part of the Regulations and does not purport to be a legal interpretation)

These Regulations transpose Directive 2004/101/EC⁴ of the European Parliament and of the Council of 27th October 2004 in connection with the Kyoto Protocol's project mechanisms. The European Community greenhouse gas emissions trading scheme was established pursuant to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003, which was transposed into Irish law in the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 (S.I. No. 437 of 2004). Trading under the Community Scheme commenced on 1 January 2005.

These Regulations amend S.I. No. 437 of 2004 to allow operators in the Community Scheme to use certified emissions reduction units (CERs) or emissions reduction units (ERUs) for the purposes of compliance with their obligations under the Scheme. An operator in the Community Scheme who wishes to participate in project activities under the Kyoto Protocol's Flexible Mechanisms (the Clean Development Mechanism and Joint Implementation) or to purchase credits from such project activities, may use the credits for the purposes of meeting the requirement to surrender a number of allowances by 30 April each year equal to the total emissions from the installation during the previous year.

Only certified emissions reductions units (CERs), which arise from projects under the Clean Development Mechanism, may be used by operators for the purposes of compliance during the pilot phase of the Community Scheme (1 January 2005 – 31 December 2007). Thereafter, both certified emissions reductions units and emissions reductions units may be used by operators in the Community Scheme.

The Regulations stipulate that emission reduction units or certified emission reduction units generated from project activities related to nuclear facilities or land use, land use change or forestry project activities may not be used by operators in the Community Scheme.

⁴ OJ L 338/18 of 13.11.2004