



GREENPEACE sandbag

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Request for Internal Review of Commission Decision 2014/746/EU

On behalf of Greenpeace European Unit, WWF European Policy Office, Nature Code (Carbon Market Watch), Sandbag Climate Campaign and Climate Action Network Europe (hereinafter “the Applicants”), we submit this request for internal review (RIR) under Article 10 of Regulation (EC) No 1367/2006 (the Aarhus Regulation) in relation to Commission Decision 2014/746/EU determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage, for the period 2015 to 2019 (the Decision).¹

The Applicants are entitled to make this RIR under Article 11 of Regulation (EC) No 1367/2006.²

¹ OJ L 308, 29.10.2014, p. 114–124

² See, below, Paragraphs 18 to 21

Background

1. The IPCC Fifth Assessment report concludes that continued emission of greenhouse gases will cause further warming and long-lasting changes in all components of the climate system, increasing the likelihood of severe, pervasive and irreversible impacts for people and ecosystems. Limiting climate change would require substantial and sustained reductions in greenhouse gas emissions which, together with adaptation, can limit climate change risks.³
2. A statement (published on 3 June 2014) initiated by the World Bank and supported by 1,000 companies and 73 governments, including the EU, states that pricing carbon is inevitable if governments are to produce a package of effective and cost-efficient policies to support scaled up climate mitigation.⁴
3. The European Commission's 2050 roadmap for moving to a competitive low carbon economy demonstrates that all sectors must contribute to emission reductions in order to deliver on the EU's objective of 80 to 95 percent reductions by 2050. The Commission's analysis shows that greenhouse gas emissions in the industrial sector should be reduced by 83 to 87% by 2050 compared to 1990 levels. The analysis also demonstrates that postponing climate action leads to a lock-in of high carbon technologies and increases costs.⁵
4. In this context, the aim of Directive 2003/87/EC (the "ETS Directive", also referred to as "ETS") is to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner, and to encourage the use of more energy efficient technologies.⁶
5. The ETS Directive provides that auctioning should be the basic principle for allocation of greenhouse gas emission allowances, as acknowledged in Commission Decision 2014/746/EU (paragraph 1). Exemptions to this principle can be granted according to the Article 10a, to sectors or sub-sectors deemed to be exposed to a significant risk of carbon leakage.⁷
6. Article 10b (1) ETS requires the Commission to determine a list of sectors and subsectors deemed to be exposed to a significant risk of carbon leakage ("list of sectors and subsectors"). Those sectors and subsectors should receive free allowances at 100% (Article 10a (12) ETS) of the quantity determined on the basis of the ETS Directive and Decision 2011/278/EU⁸ and subject to the cross-sectoral correction factor referred to in Article 10a(5) ETS and set out in Annex II to Commission Decision 2013/448/EU.⁹
7. The list of sectors and subsectors is defined taking into account:
 - a. the extent to which the sum of direct and indirect additional costs induced by the Directive on the (sub)sector would lead to an increase of production cost, of at least 5%, calculated as a proportion of the Gross Value Added (GVA); and,
 - b. the trade intensity (imports and exports) of the sector with countries outside the EU is above 10%.¹⁰

³ IPCC, 2014: Summary for Policymakers. In: Climate Change 2014: Synthesis Report, p. 8

⁴ World Bank, 2014: Statement on Putting a Price on Carbon (3 June 2014)

⁵ COM, 2011 (112): A Roadmap for moving to a competitive low carbon economy in 2050

⁶ Directive 2003/87/EC (OJ L 275, 25.10.2003, p. 32), amended by Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 (OJ L 140, 5.6.2009, p. 63) Recital 20, Article 1

⁷ The Directive also provides a gradual phase-in of auctioning for industrial sectors not included on list of sectors and subsectors. The rate of auctioning for this category increases gradually to 70% of the allocation for an installation by 2020, and 100% in 2027 (Article 10a (11)).

⁸ 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 (OJ L 130, 17.5.2011, p. 1).

⁹ Commission Decision 2013/448/EU of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 240, 7.9.2013, p. 27)

¹⁰ Article 10a (15) ETS Directive

8. A sector or sub-sector is also deemed to be exposed to a significant risk of carbon leakage if:
 - a. the sum of direct and indirect additional costs is at least 30%; or,
 - b. the non-EU trade intensity is above 30%.¹¹
9. Article 10a (14) ETS requires that the assessments under paragraphs 7 and 8 shall be based on an average carbon price in accordance with the Commission's impact assessment accompanying the package of implementation measures for the EU's objectives on climate change and renewable energy for 2020.¹²
10. The first list of sectors and subsectors for the years 2013 and 2014 was decided in Commission Decision 2010/2/EU. Article 10a (13) ETS mandates the Commission to determine a new carbon leakage list for the next five years (i.e. the period 2015-2019). In accordance with this provision, the Commission decided on a new list of sectors and subsectors for this period, via the regulatory procedure with scrutiny.¹³
11. On 22 January 2014, the Commission published a Communication on a 2030 policy framework for climate and energy in the period from 2020 to 2030. This Communication states, inter alia, that *"it is prudent (...) to maintain the existing policy framework for those industrial sectors most at risk of carbon leakage until the end of trading in phase 3. Therefore, the Commission intends to present a draft decision on the review of the carbon leakage list to the appropriate Regulatory Committee which would maintain the current criteria and existing assumptions"*.¹⁴
12. The Commission reached this conclusion notwithstanding the expected lower risk of carbon leakage: indeed, due to a higher than expected use of international offset credits and the economic crisis and its related output and emission reductions, most energy intensive sectors covered by the ETS Directive have accumulated a significant surplus of free allowances. In addition, the carbon price has declined to reflect the reduced demand for allowances (the current carbon price is around EUR 6-7 per tonne of CO₂ equivalent and prices are expected to remain below EUR 10 per tonne up to 2020¹⁵). These factors mean that the risk of carbon leakage - in the absence of any free allocation to industry – is estimated as considerably lower than when the amendments to the ETS Directive were adopted in 2009.
13. On 5 May 2014, the Commission prepared a draft Decision (D034266/01) and submitted it to the Climate Change Committee for an opinion. On 9 July, the Committee endorsed the Commission's draft Decision without changes. The Commission sent the draft Decision to the European Parliament and the Council of the European Union. Neither institution used their right to reject the draft Decision.
14. On 27 October 2014, the Commission adopted the Decision.
15. The Decision is based on a carbon price of EUR 30 per tonne of CO₂ equivalent and maintains all other parameters of the calculation as in 2009. As a result, it qualifies as *"exposed to a significant risk of carbon leakage"* the industrial sectors receiving more than 99%¹⁶ of the industrial allocations covered under the EU ETS. Pursuant to the Decision, these sectors are eligible for 100% free

¹¹ Article 10a (16) ETS Directive. In addition sectors and subsectors may be added after the completion of a qualitative assessment (Article 10a (17)).

¹² COM, SEC (2008) 85/3: Joint impact assessment on the package of implementation measures for the EU's objectives on climate change and renewable energy for 2020

¹³ Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ L 184, 17.7.1999, p. 23), as amended by Council Decision of 17 July 2006 (OJ L 211, 22.7.2006, p.11), Article 5a.

¹⁴ COM, 2014 (015), A policy framework for climate and energy in the period from 2020 to 2030

¹⁵ Reuters Point Carbon estimates an average price of about 9 euro per tonne between 2014 and 2020 (European Parliament, Directorate General for Internal Policies (2014), Workshop ETS Market Stability Reserve, 5 November, European Parliament. Presentation Reuters Point Carbon)

¹⁶ Sandbag (2014), Slaying the Dragon, the environmental outlook for the EU Emissions Trading Scheme, p. 35: "Our analysis finds that 99.55% of ETS activities, i.e. virtually all of them, have been defined as "at risk" of carbon leakage.

allocation, subject to the cross-sectoral correction factor referred to in Article 10a(5) ETS and set out in Annex II to Commission Decision 2013/448/EU.¹⁷

16. The Applicants consider that, by adopting the Decision on the basis of a carbon price of EUR 30 per tonne of CO₂ equivalent, the Commission breached Article 10a (14) ETS, in addition the Commission failed to adequately state reasons for setting the carbon price at the said level.
17. In relation to this Decision, the Applicants respectfully submit the present Request for Review of an Administrative Act.

Administrative Review under the Aarhus Regulation

18. The Aarhus Regulation implements the obligations arising under the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention), by laying down rules to apply the provisions of the Convention to EU institutions and bodies, in particular by granting access to justice in environmental matters at EU level.
19. Under Article 10 (1) of the Aarhus Regulation, any non-governmental organisation which meets the criteria set out in Article 11 thereof is entitled to make a request for internal review to the Community institution or body that has adopted an administrative act under environmental law or, in case of an alleged administrative omission, should have adopted such an act.

Criteria for Entitlement

20. In line with the criteria set in Article 11 of the Aarhus Regulation, a non-governmental organisation is entitled to make a request for internal review in accordance with Article 10 thereof, provided that:
 - a. it is an independent non-profit-making legal person in accordance with a Member State's national law or practice;
 - b. it has the primary stated objective of promoting environmental protection in the context of environmental law;
 - c. it has existed for more than two years and is actively pursuing the objective referred to under (b);
 - d. the subject matter in respect of which the request for internal review is made is covered by its objective and activities.
21. As detailed in Annex I, each applicant meets the criteria set out in Article 11 of the Aarhus Regulation.

Administrative act under Environmental Law

22. The Applicants consider that the Commission Decision is an administrative act, within the meaning of Article 2(1)(g) of the Aarhus Regulation, which can be subject to internal review.
23. In this regard, the Applicants note that, following the Judgement of the General Court of 14 June 2012,¹⁸ the fact that an administrative act under environmental law is of general, rather than

¹⁷ Commission Decision 2013/448/EU

¹⁸ Judgment of the General Court of 14 June 2012, Case T-338/08, Stichting Natuur en Milieu and Pesticide Action Network Europe v. Commission.

individual, scope, should not be considered as an obstacle for its submission to internal review under the Aarhus Regulation.

24. The Applicants are aware that an appeal against the said Judgment is pending before the EU Court of Justice (Case C-404/12 P) and that the decision on this appeal will provide guidance on the distinction between administrative and legislative acts, on the one hand, and on the possibility of submitting a request for internal review for administrative acts of general scope, on the other hand.
24. On this basis, the Applicants respectfully submit that the Commission should not take a position on the admissibility of the present request until the EU Court of Justice's decision on the above mentioned appeal. The Applicants reserve the right to submit comments on the admissibility, following the Court's ruling, as appropriate.

Procedural Aspects

25. Pursuant to Article 10(2), a request must be made within six weeks after the administrative act was published. In the present case, the Applicants are requesting the review of the Commission Decision of 27 October 2014 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage, for the period 2015 to 2019. The decision was published on the Official Journal on 29 October 2014. This request is therefore submitted within the prescribed deadline.

Grounds for Internal Review

The Commission arbitrarily departed from its own impact assessment, without stating the reasons for doing so, and violated Article 10a (14) of the ETS Directive

26. The Commission prepared an Impact Assessment¹⁹ in view of the adoption of Decision 2014/746/EU. The Impact Assessment recommended a preferred option with the following elements: a list of sectors and subsectors based on a carbon price of EUR 16.50, and using sectoral auctioning factors, an emission factor of 423 gram CO₂/KWh, trade intensity of the EU-28 and EEA-EFTA states and a framework for qualitative assessment.
27. According to the Impact Assessment, this option leads to a carbon leakage list covering about 59% of industrial GVA and 68% of allocations to industries, providing some balance between competitiveness and emission reduction incentives. This option ranks high on efficiency and effectiveness because it uses the most updated data. Moreover, it would be expected to increase the auctioning revenues of Member States by about EUR 5 billion for the whole period 2015 to 2019²⁰.
28. The Impact Assessment acknowledges the existence of facts, clearly illustrating the rapid policy and market developments, "*which make questionable whether using a 30€ carbon price for cost calculations is realistic and based on best available data.*"²¹
29. The Commission explains, in this regard, that "*(s)ince the Directive does not mention explicitly a value to be used for the price the interpretation is that the Commission must determine it based on the guidance given in the Directive. The text in the Directive can either be interpreted as referring to*

¹⁹ European Commission (2014), Impact Assessment:
http://ec.europa.eu/clima/policies/ets/cap/leakage/docs/20140502_impact_assessment_en.pdf
A summary of the 'Preferred option' is on page 4.

²⁰ Ibid. On the basis of an assumed carbon price of EUR 10

²¹ Ibid. Page 32

*a specific, now outdated impact assessment, or be interpreted as making reference to the general methodology of that impact assessment.*²²

30. The Commission considers the latter interpretation as the preferred one. It also notes that “*Stakeholders were very active in expressing their views on the carbon price: some, mainly industrial sectors, advocate a 30€ price, while others, mainly Member States, NGOs and academia, support the use of a value reflecting market reality*”, underscoring the importance of using an impartial and objective methodology for the determination of the carbon price.²³
31. The Commission observes that “*In the context of the cost criterion analysis, one fundamental question is if the risk of carbon leakage is determined independently of the carbon price, or whether this risk is related to the carbon price: e.g. is the risk of carbon leakage higher with a carbon price of 5€ than with 30€.*” Consequently, it explains, “*(t)he approach taken in this impact assessment is that the risk is related to the current market and expected carbon price.*”
32. On the basis of this approach, the Impact Assessment reaches the following conclusion: “*In sum, these elements result in the following option values for the carbon price. The 16.5€ and 10€ options take into account the potential impact of back-loading and certain ideas of structural measures, because if these were not taken into account, the expected price options would be of the range 5-7€ (...).*”²⁴
33. Inexplicably, the Decision disregards the recommendations and arguments in the Impact Assessment, notably the one regarding the carbon price used for assessments to define the list of sectors and subsectors. The Decision does not refer to the recommendations (“preferred option”) listed above in paragraph 26, the arguments listed above in paragraph 27 and the carbon price considerations listed in paragraphs 28 to 32.
34. In particular, the Commission failed to follow, in the Decision, the preferred option in the Impact Assessment. It did not prepare the list of sectors and subsectors on the basis of a EUR 16.50 carbon price, and did not include auctioning factors, an emission factor of 423 g/CO₂/KWh, an assessment of trade intensity of the EU28 and EEA-EFTA states and a framework for qualitative assessment in the measures. Neither does it put forward specific reasons for not following these recommendations.
35. The Decision simply observes that, due to the proposed 40% unconditional greenhouse gas target and the market stability reserve, “*it is expected that the carbon price will in the future more strongly driven by mid- and long-term emission reduction*” and concludes that “*(i)t is therefore considered justified to continue using an assumed carbon price of EUR 30 per tonne of CO₂ equivalent for the assessment underlying this Decision*”.²⁵
36. The Decision does not make any reference to objective and verifiable data, to support the assumption that the carbon price used as a reference will almost double in comparison with the highest option value, determined on the basis of the methodology used in the Impact Assessment.
37. It is indeed highly unlikely that carbon prices will increase to a level of EUR 30 per tonne. According to Reuters Point Carbon projections the average carbon price between 2014 and 2020 will be

²² This interpretation is perfectly consistent with the letter of Article 10a (14), second sentence, ETS: “*These assessments shall be based on an average carbon price according to the Commission’s impact assessment accompanying the package of implementation measures for the EU’s objectives on climate change and renewable energy for 2020 and, if available, trade, production and value added data from the three most*

recent years for each sector or subsector.” The quoted provision requires that the average carbon price be determined in accordance with the impact assessment used for the 2020 package. It does not prescribe the use of the same average carbon price resulting from that particular impact assessment. Had the EU legislator intended to impose the use of the average carbon price, concretely determined and used for the 2020 package, it could have stated so in a simpler and more direct way.

²³ Impact Assessment, Page 34

²⁴ Impact Assessment, Page 34.

²⁵ Decision, Recital 10.

around 9 euro per tonne of CO₂ equivalent with implementation of the European Commission proposals on the market stability reserve and the 2030 greenhouse gas target²⁶.

38. Moreover, the Decision fails to take into account that the proposed ETS annual reduction factor of 2.2% (based on the 40% greenhouse gas target) applies only from 2021 onwards. Similarly, the market stability reserve is proposed to start in 2021. These proposals will therefore have no impact on the allocation of greenhouse gas emission allowances for the years 2015-2019 and will have only a limited and indirect impact on the carbon prices for the said years.
39. The Commission's failure to take into account the preferred option resulting from the Impact Assessment constitutes a breach of Article 10a (14) ETS. As stated above,²⁷ this provision requires that, in view of determining the sectors or subsectors which are exposed to a significant risk of carbon leakage, "[the] assessments shall be based on an average carbon price according to the Commission's impact assessment accompanying the package of implementation measures for the EU's objectives on climate change and renewable energy for 2020 and, if available, trade, production and value added data from the three most recent years for each sector or subsector." (Emphasis added).
40. The Commission is under a strict legal obligation (which, moreover, it has effectively identified), to use an impact assessment based on the same general methodology as the impact assessment used for the so-called "2020 package". It may not, without justification, derogate from it.
41. In this regard, it is noted that, in the Decision's recitals, the Commission explains its determination as follows:
42. *"Furthermore, to determine the direct and indirect additional costs, the Commission had to estimate the average carbon price. In order to establish the first list of sectors and subsectors an assumed carbon price of EUR 30 per tonne of CO₂ equivalent was used for the assessments. In the period of application of Decision 2010/2/EU, there has been a substantial difference between the carbon price assumed for the assessments and the actual carbon price, the latter one being considerably lower. However, the Commission has in its Communication entitled 'A policy framework for the climate and energy in the period from 2020 to 2030' (proposed a 40 % unconditional greenhouse gas emission reduction target by 2030 as compared to 1990 and a corresponding renewable energy sources target. The Commission has also proposed to establish a market stability reserve in the EU ETS. Under those circumstances, it is expected that the carbon price will in the future be more strongly driven by mid- and long-term emission reductions. It is therefore considered justified to continue using an assumed carbon price of EUR 30 per tonne of CO₂ equivalent for the assessments underlying this Decision."*
43. It appears from the quoted Recital that the Commission has openly abandoned the legal interpretation of Article 10a (14) ETS that it used in view of conducting the Impact Assessment.²⁸ In doing so, the Commission has also declined to follow the methodology prescribed by the above provision.
44. In addition, however, the Commission has failed to replace the methodology used in the Impact Assessment for the calculation of an assumed carbon price with a different one. Its decision to continue using an assumed carbon price of EUR 30 is apparently based on the existence of a number of policy initiatives, whose concrete or expected impact on the carbon price has not been assessed in the context of this Decision.
45. In the light of the foregoing, the Decision appears to lack any logical reasoning and justification.

²⁶ European Parliament, Directorate General for Internal Policies (2014), Workshop ETS Market Stability Reserve, 5 November, European Parliament. Presentation Reuters Point Carbon

²⁷ See footnote 21.

²⁸ See paragraph 29 and subs., above.

46. The choice to depart from the impact assessment is all the more incomprehensible, once it is noted that, in the Commission's own words, *"impact assessments are key tools for ensuring that Commission initiatives and EU legislation are prepared on the basis of transparent, comprehensive and balanced evidence and 'can be updated'. The objective of the impact assessment system is to 'facilitate better-informed decision making' 'based on sound analysis supported by best available data'."*²⁹
47. If the Commission's considerations on the use of the impact assessment are correct, then it can be inferred that by departing from its own methodology, the Commission is not in a position to ensure that the carbon price it assumed in the Decision is based on transparent, comprehensive and balanced evidence.
48. Furthermore, the European Commission Impact Assessment Guidelines state that the Impact Assessment should be used actively when presenting the merits of the proposal during the legislative process. However, the Impact Assessment was not published in the European Parliament's Comitology register and was not publicly available until the final adoption of the Commission decision on 27 October 2014.

Effects of the Commission's administrative act

49. The applicants' submission is motivated by the grave concern that the Commission Decision results in a strongly weakened incentive for emission reductions and investments in clean industrial technologies, untargeted financial support for firms participating in the EU carbon market, a severe distortion of competition and lower government revenues in times of severe budgetary constraints.
50. The Decision results in an allocation of nearly 4 billion free allowances up to 2020, for more than 99% of the industrial sector allocations under the EU ETS. This means the overwhelming majority of industrial sectors lack a direct price incentive to reduce emissions and invest in low carbon technologies. The resulting delay in EU climate action undermines a cost-efficient achievement of the EU's objective to reduce greenhouse gas emissions by 80 to 95 percent by 2050.
51. The applicants consider that carbon leakage is a relevant concern in the design and implementation of EU climate policy. In order to prevent carbon leakage, a robust, strict and fact-based policy approach by the European Commission is required. However, extensive fact-finding on the cost structure and competitiveness situation of different EU industrial sectors subject to the EU ETS detected no evidence for the occurrence of carbon leakage as defined by the ETS Directive³⁰.
52. In monetary terms, the free allocation represents a value of about EUR 39 billion between 2015 and 2019. Had the Commission acted lawfully, and used a more realistic carbon price parameter (the Impact Assessment recommends EUR 16.50 per tonne in the 'preferred option') this would result in fewer sectors being eligible for 100% free pollution permits and raise auctioning revenues of member states by at least EUR 5 billion.
53. When using a carbon price of EUR 16.50 instead of EUR 30, six sectors would be excluded from the list of sectors and subsectors. These sectors receive 24.7% of free allocation to industry but generate only 1.1% of industrial Gross Value Added (GVA). The Impact Assessment notes that there is a positive correlation between GVA and employment, which indicates that these sectors are also not responsible for a significant share of employment.

²⁹ Impact Assessment, Page 33.

³⁰ Ecorys (2014), Carbon Leakage Evidence Project, commissioned by the European Commission. http://ec.europa.eu/clima/policies/ets/cap/leakage/docs/cl_evidence_factsheets_en.pdf

Conclusion

Based on the foregoing, the applicants request the Commission to carry out the internal review of its administrative act.

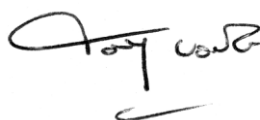
The applicants request the Commission to:

1. Annul Commission Decision 2014/746/EU, of 27 October 2014;
2. Adopt a new Decision, on the basis of the recommendations and arguments set out in the European Commission Impact Assessment;
3. Determine, on the basis of the conclusion of the Impact Assessment and in compliance with Article 10(a) ETS, a list of sectors and subsectors deemed to be exposed to a significant risk of carbon leakage, on the basis of an assessment assuming an average carbon price of EUR 16.50 per CO₂ equivalent.

Yours sincerely,



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Annex 1

1. Greenpeace European Unit

1.1 Existence, legal form and objectives of the association

Greenpeace European Unit is an independent and non-profit making organisation, established under Belgian law in the form of “*vereniging zonder winstoogmerk*” (association without lucrative purpose). It therefore meets the requirement set out in Article 11 (1) (a) of the Aarhus Regulation.

The objectives of the association are nature and environmental protection and management. The activities of Greenpeace European Unit focus on specific nature and environmental themes dealt with by the European Institutions in Brussels. The aim of these activities is to influence EU political decision-making on environmental issues (see Statutes, Article 3). The organisation, therefore, meets the requirement set out in Article 11 (1) (b) of the Aarhus Regulation.

The association exists and is active since 9 October 2003, thereby fulfilling the criterion defined by Article 11 (1) (c) of the Aarhus Regulation.

Greenpeace European Unit's Executive Director, Jorgo Riss, has the power to represent the organisation with the EU Institutions, as per Article 17 of its Statutes (Statutes, Article 17 and page 6).

In compliance with the Annex of Commission Decision 2008/50/EC, points (1) and (3), a copy of the Statutes, as published in the annex of the Belgian Official Journal of 3 November 2003, is attached to this application, together with a copy of the sworn translation, as Annex II.

1.2 The subject matter, in respect of which the request for internal review is made, is covered by the objectives and activities of the non-governmental organisation

As part of its environmental objectives, Greenpeace European Unit promotes the development of an environmentally sound and sustainable climate and energy policy in the European Union.

Greenpeace European Unit does not publish annual reports. Such publication is not required by Belgian law. However, and for the purpose of Article 11 of the Aarhus Regulation and Article 3 (2) of Decision 2008/50/EC, below is a list of the organisation's policy activities, reports, briefings and press releases in the field of climate and energy (and specifically on the issue of fuel quality).

(a) Policy activities

Greenpeace European Unit is listed in the EU Transparency Register. In 2013 and 2014, the organisation covered, among others, the following EU activities:³¹

- EC No. 2000/60/EC & EC No 2008/105/EC Water legislation; Proposal for a Directive on priority substances in the field of water policy.2011/0429(COD)
- EC No 1907/2006 Chemicals legislation – REACH Chemicals in products – Conference – ANEC and ASI CC (October 2013)
- Illegal logging and related trade / Implementation of the EU FLEGT Action Plan including Voluntary Partnership Agreements and Regulation establishing obligations for operators who place timber and timber products on the market
General Union Environment Action Programme to 2020: 'Living well, within the limits of our planet'
- 2013/2135(INI) 2030 framework for climate & energy policies
- CFP reform (2011/0195(COD))EMFF (2011/0380(COD))
- Proposal for a Regulation on the modalities for reaching the 2020 target to reduce CO2 emissions from new passenger cars COM(2012) 393; OEIL 2012/0190(COD)

³¹ <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=9832909575-41>

- Proposal for a Regulation on the modalities for reaching the 2020 target to reduce CO2 emissions from new light commercial vehicles COM(2012) 394; OEIL 2012/0191(COD)
- Draft EC Directive laying down calculation methods and reporting requirements pursuant to Directive 98/70/EC of the EP and Council relating to the quality of petrol and diesel fuels; no OEIL reference (comitology)
- Greenhouse gas emission allowance trading: timing of auctions 2012/0202(COD)
EU 2030 climate and energy policy framework 2013/2135(INI)
Arctic 2009/2814(RSP)
- Offshore oil and gas safety Directive 2011/0309(COD)
- 2030 framework for climate and energy policies (COM (2013) 0169)
- Guidelines on State Aid for environmental protection and energy 2014-2020 (C (2014) 2322)
- Insurance and compensation of damages caused by accidents of nuclear power plants (nuclear liability)
- State aid SA. 34947 (2013/C) notified by the United Kingdom in connection with the Investment Contract (early Contract for Difference) for the Hinkley Point C new nuclear power station.
- EC Implementing Regulation (EU) No 485/2013 of 24 May 2013 amending Implementing Regulation (EU) No 540/2011, as regards the conditions of approval of the active substances clothianidin, thiamethoxam and imidacloprid, and prohibiting the use and sale of seeds treated with plant protection products containing those active substances. 25.5.2013 L 139/12
- EC proposal to authorize the cultivation of GM maize 1507 Genetically modified organisms: possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory. 2010/0208(COD)

(b) Reports, briefing and press releases

- *“Contribution of Greenpeace European Unit, vzw-asbl, to the European Commission consultation regarding the review of the EU ETS auction profile”*, 15 October 2012;³²
- Greenpeace European Unit, with Greenpeace International and EREC: *“Energy Revolution – A sustainable EU 27 energy outlook”*, October 2012.
- Greenpeace European Unit, with Greenpeace Germany, WWF European Policy Office, WWF Germany and OKO Institute: *“Strengthening the European Union emissions trading scheme and raising climate ambition. Facts, Measures and Implications”*. Report, June 2011.³³
- Greenpeace European Unit, with Greenpeace Germany, WWF European Policy Office, WWF Germany and OKO Institute: *“The costs of inaction - Auctioning revenues under different climate ambition scenarios for the EU Emissions Trading Scheme”*. Report, June 2012
- *Contribution of Greenpeace European Unit to the European Commission consultation regarding the review of the EU ETS auction profile*, 15 October 2012;³⁴
- *Contribution of Greenpeace European Unit to the European Commission consultation on structural options to strengthen the EU Emissions Trading System*, 28 February 2013
- Ecofys, commissioned by Greenpeace European Unit, *The Next Step in Europe’s Climate Action - setting targets for 2030*. Report, June 2013
- *Contribution of Greenpeace European Unit to the European Commission Consultation Paper on the Environmental and Energy Aid Guidelines 2014 – 2020*, 30 April 2013
- *Submission to the European Commission public consultation on a 2030 framework for climate and energy policies*, June 2013
- *Greenpeace submission to the European Commission public consultation on Emission Trading System (ETS) post-2020 carbon leakage provisions*, August 2014
- Greenpeace European Unit, with WWF European Policy Office and Climate Action Network Europe: *Stronger together - investment support and solidarity mechanisms under the EU’s 2030 climate and energy policy framework*, September 2014

³² http://ec.europa.eu/clima/consultations/articles/0016/organisation/greenpeace_en.pdf

³³ <http://www.greenpeace.org/eu-unit/en/Publications/2012/ETS-report/>

³⁴ http://ec.europa.eu/clima/consultations/articles/0016/organisation/greenpeace_en.pdf

2. WWF European Policy Office

2.1 Existence, legal form and objectives of the association

WWF EPO, established in 1989 as an AISBL under Belgian law, an association without lucrative purpose. It therefore meets the requirement set out in Article 11 (1) (a) of the Aarhus Regulation.

The objectives of the association are related to nature and environmental protection. The aim of WWF activities is to influence EU political decision-making on environmental issues. The organisation, therefore, meets the requirement set out in Article 11 (1) (b) of the Aarhus Regulation.

The association exists and is active since 28/02/2006, thereby fulfilling the criterion defined by Article 11 (1) (c) of the Aarhus Regulation.

Anthony Long has the power to represent the organisation with the EU Institutions, these powers were granted to him by the general assembly 11 June 2013 and published to the Belgian Official journal Oct 4, 2013

In compliance with the Annex of Commission Decision 2008/50/EC, points (1) and (3), a copy of the Statutes, as published in the annex of the Belgian Official Journal of 28/02/2006, is attached to this application

2.2 The subject matter, in respect of which the request for internal review is made, is covered by the objectives and activities of the non-governmental organisation

The WWF European Policy Office (WWF EPO) works to shape and influence European policies and leadership to deliver change on the scale needed to halt and reverse the on-going destruction of planet Earth. WWF EPO is listed in the EU Transparency Register under the identification number 1414929419-24³⁵.

For the purpose of Article 11 of the Aarhus Regulation and Article 3 (2) of Decision 2008/50/EC, the most recent annual report can be found on its website:

- WWF EPO Annual Review 2013:
http://awsassets.panda.org/downloads/web_wwf_ar_2013_1.pdf
- WWF EPO Annual Review 2012:
http://awsassets.panda.org/downloads/lr_wwf_epo_annual__review_2012.pdf
- WWF EPO Annual Review 2011:
http://awsassets.panda.org/downloads/wwf_epo_annual_review_2011.pdf

Policy activities, reports, briefing and press releases

In addition, below is a list of the organisation's most recent policy activities, reports, briefings and press releases in the field of climate and energy (and specifically on the issue the EU Emission Trading System and carbon leakage).

- January 2013, joint NGO briefing: EU ETS at a crossroads: recalibrating an oversupplied market to spur investments and innovation
- January 2013, joint NGO – Trade Union position statement on EU ETS: February 2013, press release: Parliament lead Committee throws lifeline to ailing EU carbon market
- February 2013, press release: Environment Committee confirms the need for global aviation emissions deal
- April 2013, press release: Green groups stage the world's first open air carbon auction to urge MEPs to put the right price on pollution

³⁵ <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=1414929419-24&isListLobbyistView=true&locale=en#en>

- April 2013, press release: EU ETS: Green Groups Urge European Parliament to Vote for the Climate
- April 2013, press release: European Parliament votes against the climate and for more pollution
- July 2013: Advocacy towards European Parliament plenary vote on EU ETS backloading in Strasbourg. Distribution of briefing material and reactive press statement.
- August 2013: WWF input to EC Consultation on methodology for Commission Decision determining the list of sectors and subsectors deemed exposed to a significant risk of carbon leakage, for the period 2015-2019. September 2013: WWF input to EC Consultation on the policy options for market-based measures to reduce the climate change impact from international aviation.
- February 2014: Joint position: Emissions Performance Standard (EPS) – a key to countering the EU’s coal addiction
- February 2014: WWF recommendations: 2030 framework for climate & energy - The European Council must call for a more effective system
- April 2014, press release: European Parliament’s vote for continued ‘Stop the Clock’ on aviation emissions a high risk move
- April 2014, press release: WWF files complaint against world’s biggest coal company for misleading advertising
- May 2014: Op-ed by Sam Van den plas: Time to end free pollution permits to counter CO2 leakage, Carbon Market News
- June 2014: WWF briefing on Competitiveness & climate policy: The “either-or” fallacy
- July 2014: WWF EPO input to EC Consultation post-2020 carbon leakage provisions under the the EU ETS
- July 2014, report: Europe’s Dirty 30 - How the EU’s coal-fired power plants are undermining its climate efforts
- September 2014, report: Stronger together - Investment support and solidarity mechanisms under the EU's 2030 climate and energy framework, 17th Sept,
- October 2014, briefing paper: 2030 framework for climate & energy – The European Council must reach a meaningful agreement

3. Nature Code – Centre of Development & Environment (Carbon Market Watch)

3.1 Existence, legal form and objectives of the association

Nature Code was founded in 2012 to advocate for policy solutions that genuinely promote sustainable development, environmental integrity and good governance. Nature Code is a non-profit organisation. It therefore meets the requirement set out in Article 11 (1) (a) of the Aarhus Regulation.

The objectives of the organisation are related to nature and environmental protection. The aim of Nature Code activities is to influence EU political decision-making on environmental issues. The organisation, therefore, meets the requirement set out in Article 11 (1) (b) of the Aarhus Regulation.

The association exists and is active since 11 April 2012, thereby fulfilling the criterion defined by Article 11 (1) (c) of the Aarhus Regulation.

In compliance with the Annex of Commission Decision 2008/50/EC, points (1) and (3), a copy of the Statutes is attached to this application, together with a copy of the sworn translation, as Annex II.

3.2 The subject matter, in respect of which the request for internal review is made, is covered by the objectives and activities of the non-governmental organisation

As part of its mission, Nature Code champions policy solutions, including in the European Union, that promote environmental integrity, transparency, good governance and contribute to sustainable development

For the purpose of Article 11 of the Aarhus Regulation and Article 3 (2) of Decision 2008/50/EC, the most recent annual report can be found on its website:

- Nature Code Annual Report 2013:
http://carbonmarketwatch.org/wp-content/uploads/2014/09/Annual-report-2013_final_web.pdf
- Nature Code Annual Report 2012:
http://carbonmarketwatch.org/wp-content/uploads/2013/12/Annual-report-final-print-NO-int.Bleed_.pdf

Policy activities, reports, briefing and press releases

- 2 May 2014, Press Release: Transparency in the EU Emissions Trading Scheme has been unnecessarily reduced – Crucial data hidden from Investors and Civil Society
- 15 May 2014, Press Release: New data shows China, Ukraine and Russia still benefit from EU's Emissions Trading Scheme
- 28 May 2014, Tackling 60% of the EU's Climate Problem: The Effort Sharing Decision Post-2020
- 28 May 2014, Tackling 60% of the EU's Climate Problem: Member States progress in implementing the Effort Sharing Decision
- 5 June 2014, Press release: Russia wins and EU consumers lose as weak targets hold back climate savings
- 5 June 2014, Tackling 60% of the EU's Climate Problem: The Legislative Framework of the Effort Sharing Decision
- 9 July 2014, What's needed to fix the EU's carbon market: Recommendations for the Market Stability Reserve and future ETS reform proposals
- 31 July 2014, Questions for stakeholder consultation on Emission Trading System (ETS) post-2020 carbon leakage provisions
- 1 September 2014, Carbon Leakage Rebuttal
- 2 September 2014, Carbon Market Watch reaction to leaked 2030 Council Conclusions
- 17 September 2014, Myths and realities around carbon leakage in Europe
- 24 September 2014, 2030 Loopholes Infographic Brief: 4 billion tonnes of hot air in the EU could turn the proposed 40% climate target into merely 26%
- 17 October 2014, Carbon Market Watch reaction to the leaked 2030 Council Conclusions

- 20 October 2014, Media advisory: Integrity of Europe's 2030 climate target in limbo over choice of flexibility options
- 24 October 2014, Media statement: EU leaders broker climate deal at expense of climate integrity and tax payers
- 30 October 2014, Analysis of Europe's 2030 Climate Ambition

5. Sandbag Climate Campaign

4.1 Existence, legal form and objectives of the association

Sandbag Climate Campaign CIC, established in 2008 as a non-profit organisation under English law, with five staff. Sandbag is an independent UK-based not-for-profit think tank conducting research and campaigning for environmentally effective climate policies. Sandbag takes the legal form of a Community Interest Company Limited by guarantee under English law. It therefore meets the requirement set out in Article 11 (1) (a) of the Aarhus Regulation.

The focus of Sandbag's work includes reform of the EU Emissions Trading System, the EU 2020 and 2030 climate and energy packages, and the persistence of old coal in Europe. The organisation, therefore, meets the requirement set out in Article 11 (1) (b) of the Aarhus Regulation.

The association exists and is active since 1 September 2008, thereby fulfilling the criterion defined by Article 11 (1) (c) of the Aarhus Regulation.

Sandbag's Director, Baroness Bryony Worthington, has the power to represent the organization with the EU Institutions, as per Article 4 of its Statutes.

In compliance with the Annex of Commission Decision 2008/50/EC, points (1) and (3), a copy of the Statutes is attached to this application, as Annex II.

4.2 The subject matter, in respect of which the request for internal review is made, is covered by the objectives and activities of the non-governmental organisation

As part of our objectives to promote environmentally-effective climate policy, we work extensively on the European Union Emissions Trading Scheme.

For the purpose of Article 11 of the Aarhus Regulation and Article 3 (2) of Decision 2008/50/EC, below is a list of the organisation's policy activities, reports, briefings and press releases in the field of EU climate and energy.

Sandbag is on the EU Parliament Transparency Register under identification number 94944179052-82. As a sample, in 2013 and 2014 Sandbag was involved in *2013/2135(INI) 2030 framework for climate & energy policies* and *Greenhouse gas emission allowance trading: timing of auctions 2012/0202(COD) EU 2030 climate and energy policy framework 2013/2135(INI)*

Following is a list of recent reports and briefings, which provide evidence that Sandbag is active in ETS policy:

- December 2013: *Aviation in the Emissions Trading Scheme - What happened in 2012 under Stop the Clock?*
- January 2014: *Carbon Budgets vs Greenhouse gas targets: How the ETS undermines the EU's climate policy*
- March 2014: *A 2030 Decarbonisation Obligation or Emissions Performance Standard: Breaking the deadlock on EU climate and energy targets*
- March 2014: *Sharing the Load: Poland's coming of age on climate policy*
- June 2014: *US EPA's Emissions Standards Deliver US Copenhagen Pledges a Decade Late*
- July 2014: *All you need to know about the world's largest carbon market*
- July 2014: *Sandbag's Policy Briefing on the Market Stability Reserve*
- July 2014: *Europe's failure to quit coal: Time for a rethink in EU climate and energy policy*
- August 2014: *The ETS and post-2020 carbon leakage*
- September 2014: *EU policy is failing to tackle coal generation*
- October 2014: *Slaying the Dragon: The 2014 State of the EU ETS Report*
- October 2014: *Sandbag's ETS surplus projection to 2020*
- December 2014: *Amendments to the Market Stability Reserve proposal*
- December 2014: Sandbag's Market Stability Reserve interactive online tool

4. Climate Action Network Europe

4.1 Existence, legal form and objectives of the association

Climate Action Network (CAN) Europe, established in 2005 as a non-profit organization under Belgian law. It therefore meets the requirement set out in Article 11 (1) (a) of the Aarhus Regulation.

CAN Europe works to prevent dangerous climate change and promote sustainable energy and environment policy in Europe. The organisation, therefore, meets the requirement set out in Article 11 (1) (b) of the Aarhus Regulation.

The association exists and is active since 15 February 2000, thereby fulfilling the criterion defined by Article 11 (1) (c) of the Aarhus Regulation.

Climate Action Network's Director, Wendel Trio, has the power to represent the organization with the EU Institutions, as per Article 14 of its Statutes.

In compliance with the Annex of Commission Decision 2008/50/EC, points (1) and (3), a copy of the Statutes, as published in the annex of the Belgian Official Journal of 3 November 2003, is attached to this application, as Annex II.

4.2 The subject matter, in respect of which the request for internal review is made, is covered by the objectives and activities of the non-governmental organisation

The CAN Europe secretariat in Brussels provides a hub for coordinating the work of our members. We work both on domestic European policies and the international policy framework.

For the purpose of Article 11 of the Aarhus Regulation and Article 3 (2) of Decision 2008/50/EC, the most recent annual report can be found on its website:

Annual Report 2013: http://www.caneurope.org/resources/doc_download/2434-annual-report-2013
Annual Report 2012: http://www.caneurope.org/resources/doc_view/2199-annual-report-2012

A list of recent reports and briefings, that "proof" CAN Europe is active on the ETS

- October 2014, CAN Europe's position on the EU Market Stability Reserve proposal
- September 2014, CAN Europe report: Stronger Together - Investment support and solidarity mechanisms under the EU's 2030 climate and energy framework
- February 2013, CAN Europe's contribution to the European Commission's public consultation on options to strengthen the EU Emissions Trading System
- January 2013, CAN Europe report: EU ETS at a crossroads: recalibrating an oversupplied market to spur investments and innovation
- October 2012, CAN Europe's contribution to the European Commission's public consultation on review of the auction time profile for the EU Emissions Trading System
- July 2012, CAN-Europe Position Paper: Best use of auctioning revenues from the EU Emissions Trading Scheme