

Manual of European Environmental Policy

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Effort sharing to reduce greenhouse gas emissions

<p>Formal reference Decision 406/2009/EC (OJ L140 05.06.2009)</p>	<p>Decision on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020</p>
<p>Legal base</p>	<p>Articles 192 and 294 TFEU (Originally Articles 175 and 251 TEC)</p>
<p>Binding dates Becomes effective Commission to assess and report on the progress on reducing energy consumption by 20 per cent by 2020 compared to projections for 2020 If appropriate in the light of the above assessment, the Commission to propose strengthened or new measures to accelerate energy efficiency improvements Member States to include reporting requirements pursuant to Article 6 in their reporting under Decision 280/2004/EC Commission to include reporting requirements pursuant to Article 6 in their reporting under Decision 280/2004/EC Commission to assess modalities for the inclusion of land use, land use changes and forestry in the Community reduction commitment (in the absence of an international agreement by 31 December 2010) Commission report evaluating implementation of the Decision</p>	<p>25 June 2009 2012 31 December 2012 15 January 2013 2013 30 June 2011 31 October 2016</p>

Purpose of the Decision

The purpose of Decision 404/2009/EC is to address the greenhouse emissions not covered by the EU [emission trading scheme \(ETS\)](#). In relation to these, it establishes the minimum contribution by each Member State to meeting the greenhouse gas emission reduction of the Community as a whole for the period from 2013 to 2020. The Decision also includes provisions enabling the assessment and implementation of a stricter Community commitment (in excess of 20 per cent over 1990 levels), in the light of an international agreement on climate change.

Summary of the Decision

Greenhouse gases covered

The Decision covers carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphurhexafluoride.

Member State emission levels for the period 2013–2020

Article 3 lays down mandatory targets for emission reductions in the non-ETS sectors for each Member State. Annex II of the Decision sets out the percentage reduction in carbon dioxide equivalents of greenhouse gas emissions that each Member State is required to reach by 2020 as compared to 2005. These are given in Table 1. 2005 is chosen as the reference year because this was the most recent year for which reliable emissions data exist at Member State level for both the EU ETS and for the sectors not covered by the ETS. In particular, 2005 was the first year for which independently verified emission data existed under the ETS¹.

The Decision specifies the trajectory of emission reductions in Article 3(2) defining a set of annual emission allocations.

A certain amount of flexibility is built into the Decision. Member States are allowed to bring forward up to 5 per cent of its annual emission allocation from the following year. In the event of extreme metrological conditions, a Member State is able to request an increase beyond 5 per cent. In addition, if the greenhouse gas emissions in a given year are lower than the annual emission allowance for that year, it may carry over the difference to subsequent years, until 2020.

Member States are also permitted to transfer up to 5 per cent of the annual emission allocation for a given year to another Member State, which could then use it or bank it for use in any year to 2020. Member States can also transfer any unused annual emission allowances in a given year to another Member State. Again the receiving Member State can bank these and use them in any year to 2020.

The European Commission is required to develop guidance on how such transfers should take place with assistance from a Committee under the regulatory procedure with scrutiny.

Energy efficiency

The Decision (Article 4) highlights the importance of energy efficiency in helping Member States achieving their commitments for greenhouse gas emission reductions. The Commission is required to report by 2012 on progress towards the objective of reducing energy consumption by 20 per cent by 2020. If necessary, in order to help Member States achieve their targets under the Decision, the Commission must propose strengthened or new measures to accelerate energy efficiency improvements.

Table 1: Member State greenhouse gas emission limits in 2020 compared to 2005 greenhouse gas emission levels

Member State	Percentage change
Belgium	-15
Bulgaria	20
Czech Republic	9
Denmark	-20
Germany	-14
Estonia	11
Ireland	-20
Greece	-4
Spain	-10
France	-14
Italy	-13
Cyprus	-5
Latvia	17
Lithuania	15
Luxembourg	-20
Hungary	10
Malta	5
Netherlands	-16
Austria	-16
Poland	14
Portugal	1
Romania	19
Slovenia	4
Slovakia	13
Finland	-16
Sweden	-17
United Kingdom	-16

Use of credits from project activities

While recital 11 of the Decision states that significant greenhouse gas emission reductions should be made within the Union, and that the use of credits from project activities should be limited to supplementing domestic action, the Decision (Article 5) still provides significant scope for flexibility for Member States through the use of credits from the project-based flexible mechanisms of the Kyoto Protocol (Clean Development Mechanism and Joint Implementation). The annual use of such credits is limited to 3 per cent of a Member State's 2005 emissions for any given year to 2020. Member States can choose to either bank the 3 per cent if they are not using it in a given year, or to transfer it to another Member State. Twelve Member States (set out in Annex III) with negative targets or with a maximum of up to 5 per cent increase in emissions permitted (and thus comparatively more ambitious targets) are allowed

to use additional credits amounting to 1 per cent of emissions from 2005 from projects specifically in LDS and SIDS, subject to a set of conditions. Finally, Member States are permitted to use credits from Community-level projects without any quantitative limit.

Reporting, evaluation of progress, amendments and review

Article 6 ties reporting on progress on the framework set out in the effort sharing Decision to the reporting obligations set up in relation to the Kyoto Protocol by Decision [280/2004/EC](#). Under this latter Decision, Member States are required to report to the Commission by the 15th of January every year. The effort sharing Decision added a number of items on which Member States are required to report: the annual greenhouse gas emissions in relation to the annual emission allowance; the nature of credits used; projected progress towards meeting their obligations under Decision 406/2009/EC; information on planned additional national policies and measures to limit greenhouse gas emissions beyond Member State commitments under the Decision and in view of implementing an international agreement on climate change. If Member States use credits from project types that are not in conformity with the EU ETS, they must provide a detailed justification.

Decision 280/2004/EC also sets up annual reporting requirements on the Commission, and indeed, it is in part to help the Commission report for the Community as a whole that Member States are required to report to the Commission. Thus, the Commission shall in its reports under Decision 280/2004/EC evaluate whether progress made by Member States is sufficient for them to fulfil their obligations under the effort sharing Decision. From 2013, and on a biannual basis, the report must also include an evaluation of the projected progress of Member States and the Community. The report must also address the overall implementation of the Decision, including the use and quality of CDM credits and the need for further common and coordinated policies and measures in the sectors covered by the Decision.

Corrective action

The Decision (Article 7) provides for a set of corrective measures in the event that a Member State exceeds the annual emission allocation specified on the basis of Article 3(2). If this occurs, the amount of excess emissions in tonnes of carbon dioxide equivalent will be deducted from the following year's allocation but increased by a factor of 1.08. The Member State in question will be required to produce a corrective action plan. The Commission may issue an opinion on the corrective action plan. The Commission can also choose to submit the corrective action plan to the Climate Change Committee (established by Decision 280/2004/EC) for comments. Finally, the Member State will be temporarily suspended from eligibility to transfer part of the Member State's emission allocation and JI/CDM rights to another Member State.

Adjustments applicable upon the approval by the Community of an international agreement on climate change

The Decision was adopted in the run up to COP15 in Copenhagen at the end of 2009 and important purpose of which was to reach an international agreement on the framework for international climate action at the expiry of the first commitment

period of the Kyoto Protocol at the end of 2012. Hence, the Decision (Article 8) builds in the possibility to assess and implement a stricter Community reduction commitment of 30 per cent instead of 20 per cent in the event of a satisfactorily ambitious agreement. The Decision thus provides for the possibility for tightening the Member State targets under the effort sharing Decision (as well as the overall cap of the EU ETS) in light of such an agreement.

The Commission is required to submit, within three months of such an agreement, a report assessing the nature of what was agreed (including commitments to comparable emission reductions by other developed countries, and commitments made by economically more advanced developing countries); the implications of such a commitment, in particular an assessment of what would be required to move to a 30 per cent target; the exposure of the Community's manufacturing industry and agricultural sector to carbon leakage as well as the impact of the agreement on other Community economic sectors; modalities for including emissions and removals related to land use, land use change and forestry in the Community; the report should also include an assessment of afforestation, reforestation, avoided deforestation and forest degradation in the event of the establishment of an internationally recognized system in this context; the need for additional Community policies and measures in light of the commitments made by the Community and Member States through the agreement. The Commission is further required, if appropriate in light of this report, to submit a legislative proposal amending Decision 406/2009/EC.

Emissions and removals relating to land use, land use change and forestry in the Community reduction commitment

Finally (Articles 8 and 9) on the basis of rules agreed as part of an international agreement, the Commission is required to propose the inclusion of emissions and removals related to land use, land use change and forestry in the Community reduction commitment. This should include an assessment of whether the distribution of Member States' efforts should be adjusted. The Decision also takes account of the possibility that there might not be an international agreement approved by the Community by the 31 December 2010. In this event, the Decision still contains provisions for the Community to move forward in respect of land use, land use change and forestry (Article 9). In the event of there being no agreement by the specified date, Member States can specify their intention to include land use, land use change and forestry in the Community reduction commitment. In this case, the Commission is required to assess the modalities of including such activities in the Community reduction commitment and make a legislative proposal for this, with the aim of legislation coming into force from 2013 onwards.

Interaction with Directive 2003/87/EC

The Decision (Article 10) also includes provisions which enabled its adjustments in light of any adjustment in coverage of the EU ETS to ensure that together the two legislative frameworks regulate close to the entirety of Community greenhouse gas emissions.

Registries and Central Administrator

The Decision (Article 11) requires the Commission and Member States' registries established under Decision 280/2004/EC (see section on Monitoring and Limiting Greenhouse Gas Emissions) to ensure the accurate accounting of transactions under the Decision. The Central Administrator designated under Directive [2003/87/EC](#) establishing the EU ETS is required to conduct an automated check on each transaction under Decision 406/2009/EC and where necessary block transactions. Both in respect of registries and of the Central Administrator's activities, the information is required to be made accessible to the public.

Committee procedure (Article 13)

The Decision (Article 13) provides for a number of instances where measures designed to amend non-essential elements of the Decision could be adopted according to regulatory procedure with scrutiny. In these cases, it is the Climate Change Committee, already established under Decision 280/2004/EC referred to above, which is the relevant committee.

Evaluating the implementation of 406/2009/EC

The Commission is required (Article 14) to draw up a report by 31 October 2016 evaluating the implementation of the Decision, including an evaluation of how it has affected competition at national, Community and international level. The report should be accompanied by proposals as appropriate, in particular on whether Member State targets should be differentiated for the period after 2020.

Development of the Decision

In January 2008, the initial legislative proposal was published by the Commission ([COM\(2008\)17](#)). In its impact assessment accompanying the CARE Package, the Commission argued that the choice of one EU-wide cap under the EU ETS implied that the total effort for greenhouse gas emissions had to be divided between the EU ETS and the non-EU ETS sectors. A further consequence, in the Commission's view, was that the sharing of greenhouse gas reduction efforts among Member States would be determined only for those sectors not covered by the EU ETS. The split between the two was in the order of 60 per cent (EU ETS) and 40 per cent (non-EU ETS). While the EU ETS covered mainly greenhouse gas emissions in electricity plants and major industrial installations, the non-EU ETS sectors related to a wider range of sectors covering mostly small scale emitters such as transport (cars, trucks), buildings (in particular heating), services, smaller industrial installations, agriculture and waste ([SEC\(2008\)85](#)). In these sectors, as noted in the impact assessment, Member States held key competences to define and implement policies and measures, at the same time, a number of EU-wide measures such as those relating to energy efficiency standards, the Common Agricultural Policy or waste legislation contribute to emission reductions in the non-ETS sectors.

In June 2008, the draft report brought together by the Committee on the Environment, Public Health and Food Safety's rapporteur, Satu Hassi, was published. On 7 October the Committee adopted the draft report with some changes and proposed some 42 amendments to the Commission's legislative proposal. Between the Committee's report and the vote of Parliamentary Plenary in December, there was intense negotiation

between the Commission, the Parliament and the Council to arrive at a compromise text. This was achieved, and thus the Parliament approved the amended Commission proposal on 17 December 2008, reaching a first reading agreement with the Council under the co-decision procedure. The Decision was formally adopted by the Council in April 2009 and published in the Official Journal in June 2009.

Some of the key issues of contention related to the extent of flexibility accorded to Member states in achieving their annual targets from 2013 to 2020; the scope of the Decision, in particular in relation to the inclusion of emissions and removals from land use, land use change and forestry; how to organize the transition to 30 per cent reduction in greenhouse gas emissions by 2020 compared to 1990 as part of the EU's contribution to a comprehensive agreement for the period beyond 2012; and the introduction of a compliance mechanism on top of regular infringement procedures which deducts 1.08 tonnes from the Member States emission allocation for every tonne of excess in a given year¹.

Implementation of the Decision

The Decision covers greenhouse gas emissions in the period 2013–2020. As it is a Decision it does not require transposition into national law but enters automatically into force on 25 June, 20 days after its publication in the Official Journal. Its implementation is at too early a stage to assess practical application.

Enforcement and court cases

No cases have been concluded by the European Court of Justice concerning Decision 406/2009/EC.

Related legislation

Decision 404/2009/EC on effort sharing is related to the following other items of EU legislation:

- Regulation (EC) No setting emission performance standards for [CO₂ for passenger cars](#).
- EU emissions trading scheme Directive [2009/29/EC](#).
- Decision [280/2004/EC](#) concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol.

Reference

1. Lacasta, N, Oberthur, S, Santos, E and Barata, P (2010) From sharing the burden to sharing the effort: decision 406/2009/EC on member state emission targets for the non-ETS sectors, in Oberthur, S and Pallemarts, M (eds) *The New Climate Policies of the European Union, Internal Legislation and Climate Diplomacy*, Institute for European Studies Series Press. pp 93–92.<AQ: Please provide place of publication.>

