



MALTA RESOURCES AUTHORITY

## ***European Community Greenhouse Gas Emissions Trading Scheme for Stationary Installations Regulations, 2012***

***- Explanatory memorandum for draft legal notice -  
- 14th November 2012 -***

### **INTRODUCTION**

The Malta Resources Authority (MRA) has prepared draft text for a new legal notice to transpose Directive 2003/87/EC<sup>1</sup> in so far as it relates to stationary installations. To this effect, MRA is holding a public consultation on the proposed legal notice.

### **BACKGROUND**

Directive 2003/87/EC establishes a greenhouse gas emissions allowance trading scheme within the European Community (EU ETS Directive). The scheme was originally intended to cover emissions from greenhouse gas emitting stationary installations performing activities listed in Annex I to the Directive, and started operating as from 2005. It was eventually expanded to also include aviation activities (all flights departing from or arriving at an aerodrome situated in the territory of a Member State of the European Union) through Directive 2008/101/EC<sup>2</sup>.

The EU Emissions Trading Scheme (EU ETS) Directive was further amended by Directive 2009/29/EC<sup>3</sup> which was aimed at strengthening the effectiveness of the scheme by introducing important new elements, such as the setting of an EU-wide cap, as opposed to national allocation plans, and harmonized allocation procedures, via common benchmarking in the case of free allocation, and auctioning of those quantities of allowances not allocated for free.

Directive 2003/87/EC was originally transposed by Legal Notice 140 of 2005 (LN 140/2005).

### **SCOPE**

A new legal notice is being proposed, that will repeal LN 140/2005, for the following main reasons:.

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<sup>1</sup> 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.

<sup>2</sup> Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community.

<sup>3</sup> Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community.

(1) to update the local legislative framework with provisions introduced by Directive 2009/29/EC;

(2) to expand on and provide greater legal clarity on a number of matters (e.g. the permitting process);

(3) to update or introduce provisions which are left up to the respective Member States to provide for (e.g. updating of provisions relating to penalties for non-compliances).

The new legal notice would come into force as of 1st January 2013.

## **PROPOSAL**

A number of important changes and additions are being proposed, compared to the provisions originally set out in Legal Notice 140/2005. These include, among others:

- Updating of definitions and the introduction of additional terms in the list of definitions to reflect new elements of the EU ETS Directive (Regulation 2).
- Strengthening the provisions relating to permitting of stationary installations (Regulations 4 to 10);
- Legal basis provided for free allocation of allowances and for the auctioning of general allowances attributed to Malta in accordance with the EU ETS Directive (Regulations 11, 12);
- Introduction of provisions relating to the registry system (i.e. the system used for accounting of emissions) in so far as it relates to operator holding accounts (Regulation 13);
- Enhancing the provisions relating to monitoring, reporting and verification of annual emissions (Regulations 15, 16);
- Introduction of specific reference to acceptance of annual emissions reports by the Authority and related conditions including provisions allowing the competent authority to determine annual emissions where no reports are submitted (Regulation 17);
- New approach to penalties relating to non-submission of annual emissions monitoring and reporting plans and annual reports, as applicable from 1st January 2013. There is a shift towards setting of definite penalties differentiated according to the extent of the non-compliance (in terms of reportable emissions) rather than setting ranges for penalties, as has been the practice to-date (Regulation 18);
- Changes in respect of application of the excess emissions penalty to reflect new approach adopted as per Directive 2009/29/EC (Regulation 19 and other regulations as applicable);
- Provisions on use of international credits updated to reflect revisions introduced by Directive 2009/29/EC (Regulation 20).

The proposed amendments also take into consideration a number of implementing provisions adopted by the Commission pursuant to Directive 2003/87/EC, including, *inter alia*:

- Regulations (EC) No 2216/2004, (EC) No 920/2010 as amended and Regulation (EU) No 1193/2011 (Registries Regulations);

- Regulation (EU) No 1031/2010 (Auctioning Regulation) as amended;
- Regulation (EU) No 600/2012 on the verification of greenhouse gas emission reports and tonne-kilometre reports and the accreditation of verifiers pursuant to Directive 2003/87/EC (Verification and Accreditation Regulation);
- Regulation (EU) No 601/2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC (Monitoring and Reporting Regulation).

## **INSTRUCTIONS TO STAKEHOLDERS**

Attached with this explanatory memo you may find a copy of the draft of the proposed regulations.

To facilitate referencing with Directive 2003/87/EC, a consolidated version of the amended EU ETS Directive is also included. The original text of Legal Notice 140 of 2005 is also being provided. Side notes are included to cross-refer regulations in the draft Maltese legislation with relevant articles in the directive.

The public consultation period runs from **15<sup>th</sup> November 2012 until 7<sup>th</sup> December 2012.**

Written comments should be submitted using the comments (excel) template provided for the purpose. Submissions should be made to:

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In case of any clarifications needed you may also contact Mr. Saviour Vassallo on:

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