

**Act on the introduction of project-based mechanisms in accordance with the
Kyoto Protocol to the United Nations Framework Convention on
Climate Change of 11 December 1997, the implementation of Directive
2004/101/EC¹ and the amendment of the Heat-Power Cogeneration Act**

Dated 2005

The *Bundestag* <Lower House of Parliament> has adopted the following Act:

Article 1

**Act on project-based mechanisms in accordance with the Kyoto Protocol to the
United Nations Framework Convention on Climate Change of 11 December 1997
(Project Mechanisms Act – ProMechG)**

Contents

Part 1

General provisions

Section 1 Scope of application

Section 2 Definitions

Part 2

Joint implementation

Sub-part 1

Project activities outside the territory of the Federal Republic of Germany

Section 3 Approval

Section 4 Review of verification

Sub-part 2

Project activities within the territory of the Federal Republic of Germany

Section 5 Approval and registration

Section 6 Confirmation of the verification report

Sub-part 3

Designated operational entities

Section 7 Designated operational entities

Part 3

Clean development mechanism

Section 8 Approval

Section 9 Review application

Part 4

Common provisions

Section 10 Competent authority; transfer of duties

Section 11 Appointment of an authorised representative

Section 12 Monitoring of quantities

Section 13 Statutory ordinance on approval requirements

Section 14 Charges

Section 15 Provisions on fines

Annex

(The Annex contains the German translation of the Marrakesh Accords: 15/CP.7 – 19/CP.7)

¹ This Act serves to implement Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms (Official Journal of the European Union No. L 338, page 18)

Part 1
General provisions

Section 1
Scope of application

(1) This Act applies to the generation of emission reduction units and certified emission reductions resulting from project activities as defined in Articles 6 and 12 of the Protocol in which the Federal Republic of Germany is involved as an investor country or host country.

(2) This Act does not apply to the generation of emission reduction units and certified emission reductions resulting from project activities involving nuclear installations.

Section 2
Definitions

For the purposes of this Act, the following definitions shall apply:

1. "Convention" means the United Nations Framework Convention on Climate Change of 9 May 1992 (Federal Law Gazette 1993 II, page 1784),
2. "Protocol" means the Kyoto Protocol to the United Nations Framework Convention on Climate Change of 11 December 1997 (Federal Law Gazette 2002 II, page 967),
3. "Emissions Trading Directive" means 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 Directive 96/61/EC of the Council, amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 (OJ EU No. L 338, page 18),
4. "Emission" means the release into the atmosphere of greenhouse gases as listed in Annex A of the Protocol,
5. "Emission reduction" means the reduction of emissions from sources; this shall not

include the increased removal of greenhouse gases by sinks in the areas of land use, changes in land use and forestry,

6. "Additional emission reduction" means an emission reduction which achieves a lower volume of emissions which would have been incurred had the project activity not been undertaken (baseline emissions),
7. "Joint implementation" means a project-based mechanism as defined in Article 6 of the Protocol,
8. "Clean development mechanism" means a project-based mechanism as defined in Article 12 of the Protocol,
9. "Host country" means the country in whose territory or in whose exclusive economic area the project activity is to be undertaken,
10. "Investor country" means the country which, without being the host country, grants its approval pursuant to Article 6, paragraph (1), letter a and Article 12, paragraph (5), letter a of the Protocol,
11. "Project initiator" means the natural or legal person with decision-making authority over a project activity; project initiators may also be several individuals acting jointly,
12. "Project activity" means the development and implementation of a project in accordance with the requirements of Article 6 or Article 12 of the Protocol and decisions 16/CP.7 or 17/CP.7 of the Conference of the Parties to the Convention,
13. "Project documentation" means the documentation by the project initiator outlining the planned implementation of the project activity,
14. "Monitoring plan" means the part of the project documentation specifying the nature and scope of the data to be collated during the course of the project, particularly in order to ascertain the emissions from the project activity,
15. "Monitoring report" means the report by the project initiator on the data collated in accordance with the provisions of the monitoring plan,

16. "Approval" means recognition by the competent authority under this Act that emission reduction units or certified emission reductions may be issued for an emission reduction resulting from a validated project activity on the basis of the assertions made in the project documentation, particularly with regard to specified baseline emissions; this shall include approval pursuant to Article 6, paragraph (1), letter a and Article 12, paragraph (5) letter a of the Protocol and the authorisation of the project initiator pursuant to Article 6, paragraph (3) and Article 12, paragraph (9) of the Protocol,
17. "Registration" means the entry in a national registry of a project activity undertaken within the territory of the Federal Republic of Germany,
18. "Validation report" means the report by a designated operational entity determining whether a particular project meets the decisive requirements of this Act for the purposes of approval,
19. "Verification report" means the report by a designated operational entity certifying the extent to which the emission reduction declared in the monitoring report has occurred as a result of the project activity during the period under review,
20. "Emission reduction unit" means a unit issued pursuant to Article 6 of the Protocol and decision 16/CP.7 of the Conference of the Parties to the Convention which is equal to one metric tonne of carbon dioxide equivalent,
21. "Certified emission reduction" means a unit issued pursuant to Article 12 of the Protocol and decision 17/CP.7 of the Conference of the Parties to the Convention which is equal to one metric tonne of carbon dioxide equivalent,
22. "Executive board" means the supervisory body appointed by the Conference of the Parties to the Convention as defined in Article 12, paragraph (4) of the Protocol,³
23. "Eligibility status list" means the publicly accessible list operated by the Secretariat pursuant to Article 8 of the Convention indicating those Parties to the Protocol that meet the eligibility requirements and those that have been suspended, pursuant to number 27 of section D of the Annex to decision 16/CP. 7 and pursuant to number 34 of section F of the Annex to decision 17/CP.7 of the

Conference of the Parties to the Convention.

Part 2

Joint implementation

Sub-part 1

Project activities outside the territory of the Federal Republic of Germany

Section 3

Approval

(1) Within the context of joint implementation outside the territory of the Federal Republic of Germany, the competent authority shall grant its approval, provided

1. the project documentation conforming to the requirements of paragraph (4) and the objectively and accurately prepared validation report indicate that the project is expected to achieve an additional emission reduction, and
2. the project activity does not cause any severe adverse environmental impacts.

Project activities aimed at the generation of electricity from hydropower with a generation capacity in excess of 20 MW must meet the additional requirement of adherence to the valid international criteria and guidelines listed in Article 11b, paragraph (6) of the Emissions Trading Directive . If a project activity is undertaken in the Member States of the European Union, when calculating the anticipated additional reduction in emissions pursuant to number 1, it is necessary to ensure that the specified baseline emissions at least meet the requirements of Community law, notwithstanding the exceptional provisions contained in the accession treaties.

(2) Approval shall be denied if

1. there are facts to justify the assumption that the project initiator is unable to provide the required guarantee of proper implementation of the project activity, particularly compliance with the obligations under this Act, or
2. a project activity directly or indirectly reduces emissions of greenhouse gases from a installation falling within the scope of the Emissions Trading Directive, and the host country fails to make any provision for a ruling in accordance with section 5, paragraph (1), sentence 3 or a comparable measure to compensate for

the double counting of an emission reduction.

(3) Approval shall be granted for a limited period in accordance with the term applied for by the project initiator. A single term must not exceed a period of ten years. Provided the initial term does not exceed a maximum of seven years, upon application, approval for the same project activity may be renewed up to two times, for no more than seven years in each case. If the term extends beyond 31 December 2012, approval shall be granted subject to the proviso that once the commitment period pursuant to Article 3, paragraph (1) of the Protocol has expired, joint implementation shall continue on the basis of a decision to be adopted by the Conference of the Parties to the Protocol.

(4) Approval shall be granted upon submission of a written application by the project initiator to the competent authority. The project initiator shall enclose the following documents with his application:

1. the project documentation,
2. the validation report, and
3. a letter of endorsement from the host country, if such a letter has been issued.

The project documentation, including the monitoring plan, must be prepared in accordance with the requirements on form and content listed in Appendix B to the Annex to decision 16/ CP. 7 of the Conference of the Parties to the Convention. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety may, by agreement with the Federal Ministry of Economics and Labour, regulate the requirements on form and content for the project documentation, including the monitoring plan, by way of a statutory ordinance which shall not require the consent of the *Bundesrat* <Upper House of Parliament>, with due regard for Appendices B and C to the Annex to decision 17/ CP. 7 and Appendix B to the Annex to decision 16/ CP. 7 of the Conference of the Parties to the Convention. This statutory ordinance may set out simplified requirements for small and medium-sized project activities regarding the application documents and proof of the anticipated additional reduction in emissions. The competent authority shall confirm receipt of the application and the enclosed documents to the project initiator immediately in writing. It will advise the project initiator within two weeks of any additional documents and information it may require in order to reach a decision.

(5) Within two months of receiving the complete application documents, the

competent authority shall reach a final decision regarding the application.

(6) At the request of the project initiator, the competent authority shall aid the development of a project activity by issuing a letter of endorsement, if it believes that approval for the project activity is likely to be granted. This letter of endorsement shall not have any binding legal validity; in particular, it shall in no way be construed as a guarantee that approval will be granted pursuant to paragraph (1).

(7) Paragraphs (1) to (5) shall not apply if the eligibility status list indicates that the Federal Republic of Germany, as a possible investor country and the possible host country, fails to meet the eligibility requirements pursuant to number 21, section D of the Annex to decision 16/CP.7 of the Conference of the Parties to the Convention.

Section 4

Review of verification

Following disclosure of the verification report, if there are grounds to doubt the correctness or completeness of said report which the project initiator is unable to rectify, the competent authority shall submit a review application to the competent authority of the host country without delay. The project initiator shall be notified of this fact immediately.

Sub-part 2

Project activities within the territory of the Federal Republic of Germany

Section 5

Approval and registration

(1) Within the context of joint implementation in the territory of the Federal Republic of Germany, the competent authority shall grant its approval, provided

1. the project documentation conforming to the requirements of paragraph (4) and the objectively and accurately prepared validation report indicate that the project is expected to achieve an additional emission reduction, and
2. the project activity does not cause any severe adverse

environmental impacts.

Section 3, paragraph (1), sentence 2 shall apply *mutatis mutandis*. If a project activity directly or indirectly reduces emissions of greenhouse gases from an installation falling within the scope of the Emissions Trading Directive, then this reduction in emissions shall form part of the baseline emissions when calculating the anticipated additional reduction in emissions pursuant to number 1. If a project activity is in receipt of public funding from the Federal Republic of Germany, the proportion of the reduction in emissions from the project activity attributable to public funding shall form part of the baseline emissions; this shall not apply if the purpose of public funding was to safeguard investments. The remuneration of electricity pursuant to section 5, paragraph (1) of the Renewable Energy Sources Act and the premium payable for electricity from combined heat and power installations as defined in section 5 of the Heat-Power Cogeneration Act shall be considered equivalent to public funding.

(2) Approval shall be denied if

1. there are facts to justify the assumption that the project initiator is unable to offer the required guarantee for proper implementation of the project activity, particularly compliance with the obligations under this Act, or
2. the investor country is unwilling to admit project activities within its national territory under comparable conditions.

(3) Approval shall be granted for a limited period in accordance with the term applied for by the project initiator. The term must not extend beyond 31 December 2012.

(4) Approval shall be granted upon submission of a written application by the project initiator to the competent authority. The project initiator shall enclose the following documents with his application:

1. The project documentation, and
2. the validation report.

Section 3, paragraph (4), sentence 3 shall apply *mutatis mutandis*.

The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety may, by agreement with the Federal Ministry of Economics and Labour, regulate the

requirements on form and content for the project documentation, including the monitoring plan, by way of a statutory ordinance which shall not require the consent of the *Bundesrat* <Upper House of Parliament>, with due regard for Appendices B and C to the Annex to decision 17/ CP. 7 and Appendix B to the Annex to decision 16/ CP. 7 of the Conference of the Parties to the Convention. This statutory ordinance may set out simplified requirements for small and medium-sized project activities regarding the application documents and proof of the anticipated additional reduction in emissions. Section 3, paragraph (4), sentences 6 and 7 shall apply *mutatis mutandis*.

- (5) The applicant shall submit to the competent authority the project documentation and the address of the designated operational entity he has appointed for the purposes of validation as soon as it is ready. The forwarded information shall be published in accordance with section 10 of the Environmental Information Act.
- (6) Approval pursuant to paragraph (1) shall not include any other official decisions also required under public law in order to execute the project activity.
- (7) The approval shall explicitly state that emission reduction units may only be issued for emission reductions achieved on or after 1 January 2008.
- (8) Pursuant to Article 24, paragraph (1), sentence 2 of Commission Regulation (EC) No. 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC and Decision No 280/2004/EC of the European Parliament and of the Council (OJ EU No. L 386, page 1), the competent authority shall operate a national registry of project activities falling under the scope of joint implementation within the territory of the Federal Republic of Germany. The competent authority shall register the project activity as soon as approval pursuant to paragraph (1) has been granted and the approval of the investor country has been given.
- (9) Section 3, paragraph (5) shall apply *mutatis mutandis*.
- (10) This provision shall not apply if the eligibility status list indicates that the Federal Republic of Germany, as a possible investor country and the possible host country, fails to meet the eligibility requirements as outlined in number 21, section D of the Annex to decision 16/CP.7

of the Conference of the Parties to the Convention.

Section 6

Confirmation of the verification report

- (1) The competent authority shall confirm the verification report, provided
1. the project activity was undertaken in accordance with the project documentation on which approval was based, and in particular, the monitoring report complies with the requirements of the validated monitoring plan,
 2. the verification report was prepared accurately and objectively, and
 3. the verification report indicates that double counting on the basis of direct or indirect emission reductions, or double crediting on the basis of public funding pursuant to section 5, paragraph (1), sentences 4 and 5, are excluded.

Before the competent authority rejects confirmation of the verification report, the project initiator and the designated operational entity appointed to conduct verification shall be given an opportunity to voice their opinions on the material facts of the decision.

- (2) Confirmation shall be granted upon submission of a written application to the competent authority by the project initiator. The project initiator shall enclose the following documents with his application:

1. the monitoring report, and
2. the verification report.

The project initiator is required to ensure that the information contained in the monitoring report is correct and complete. Section 3, paragraph (4), sentences 6 and 7 shall apply *mutatis mutandis*.

- (3) Immediately following confirmation of the verification report, the competent authority shall notify the registry administrator pursuant to Article 2, letter q of Regulation (EC) No. 2216/2004. The registry administrator shall transfer the number of emission reduction units, corresponding to the verified quantity of emission reductions in tonnes of carbon dioxide equivalent, to the account designated by the project initiator.

Sub-part 3
Designated operational entities

Section 7
Designated operational entities

(1) Only designated operational entities that have been accredited and published by the executive board are authorized to perform validation and verification. The designated operational entities are appointed by the project initiator. They are required to review the information supplied by the project initiator for correctness and completeness, and to provide correct and complete information in the validation and verification report.

(2) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety may, by agreement with the Federal Ministry of Economics and Labour, determine that agencies other than those specified in paragraph (1) are likewise authorised to perform validation and verification, by way of a statutory ordinance not requiring the consent of the *Bundesrat* <Upper House of Parliament>, taking account of the requirements listed in Annex A to decision 16/CP.7 of the Conference of the Parties to the Convention.

(3) The requirements of section E of the Annex to decision 16/CP.7 and sections E, G and I of the Annex to decision 17/CP.7 of the Conference of the Parties to the Convention shall be observed for the accurate and objective preparation of the validation and verification reports. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety may, by agreement with the Federal Ministry of Economics and Labour, regulate the relevant requirements and procedures, by way of a statutory ordinance which shall not require the consent of the *Bundesrat* <Upper House of Parliament>. In this respect, during the course of verification, it is important to ensure that double counting on the basis of direct or indirect emission reductions and double crediting on the basis of public funding pursuant to section 5, paragraph (1), sentences 4 and 5 are excluded.

Part 3

Clean development mechanism

Section 8

Approval

(1) Within the context of the clean development mechanism, the competent

authority shall grant its approval, provided

1. the project documentation conforming to the requirements of paragraph (3) and the objectively and accurately prepared validation report indicate that the project is expected to achieve an additional emission reduction, and provided the project activity
2. does not cause any serious adverse environmental impacts, and
3. does not oppose the sustainable development of the host country in an economic, social or ecological respect, and in particular, does not contravene any existing national sustainability strategies.

Section 3, paragraph (1), sentence 2 shall apply *mutatis mutandis*.

(2) Approval shall be denied if

1. there are facts to justify the assumption that the project initiator is unable to offer the required guarantee of proper implementation of the project activity, particularly compliance with the obligations under this Act, or
2. the eligibility status list indicates that the Federal Republic of Germany, as a potential investor country, fails to meet the eligibility requirements of number 31, or the potential host country fails to meet the eligibility requirements of number 30, section F of the Annex to decision 17/CP. 7 of the Conference of the Parties to the Convention.

(3) Approval shall be granted upon submission of a written application to the competent authority by the project initiator. The project initiator shall enclose the following documents with his application:

1. the project documentation,
2. the validation report, and
3. a letter of endorsement from the host country, if such a letter has been issued.

The project documentation, including the monitoring plan, must be prepared in accordance with the requirements on form and content contained in Appendix B and section H to the Annex to decision 17/ CP. 7 of the Conference of the Parties to the

Convention. The project documentation must show that public participation pursuant to the requirements in number 40 of section G to the Annex to decision 17/CP.7 of the Conference of the Parties to the Convention has taken place.

(4) The competent authority may obligate the project initiator to carry out an environmental impact assessment proving that the requirement pursuant to number 2 of paragraph (1) has been met, if it estimates, particularly on the basis of the project activity described in the validated project documentation and the environmental impacts outlined therein, that substantial adverse environmental impacts are likely, given the scope, location and consequences of the project activity. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety may, by agreement with the Federal Ministry of Economics and Labour and the Federal Ministry for Economic Cooperation and Development, set out the specific requirements of an environmental impact assessment pursuant to sentence 1 by way of a statutory ordinance not requiring the consent of the *Bundesrat* <Upper House of Parliament>. Existing international standards containing ecological and social implications shall be taken into account in this respect.

(5) Section 3, paragraph (4), sentences 6 and 7, paragraphs (5) and (6) shall apply *mutatis mutandis*.

(6) At the project initiator's application, the competent authority shall authorise a natural or legal person as defined in Article 12, paragraph (9) of the Protocol to participate in a project activity for which approval has been granted pursuant to paragraph (1).

Section 9

Review application

Provided the requirements of number 41 of section G or number 65 of section J of the Annex to decision 17/CP.7 of the Conference of the Parties to the Convention have been met, the competent authority may submit a review application to the executive board. The project initiator shall be notified of this fact immediately.

Part 4

Common provisions

Section 10

Competent authority; transfer of duties

(1) For the purposes of this Act, the competent authority shall be the Federal Environmental Agency.

(2) The competent authority pursuant to paragraph (1) may transfer its duties and authorities, with the exception of competence for the prosecution and punishment of administrative offences under section 15, either partially or in full to a legal person, provided the latter is able to guarantee that the transferred duties will be performed correctly and centrally for the territory of the Federal Republic of Germany. The incumbent shall be subject to the supervision of the competent authority pursuant to paragraph (1).

In the event of a transfer of duties to a legal person under public law, sentence 2 shall apply *mutatis mutandis*.

Section 11

Appointment of an authorised representative

If the project initiator is comprised of several natural or legal persons, one natural person with a postal address in Germany shall be designated to the competent authority as the joint authorised representative.

If the project initiator's company is based abroad and does not have a branch office in the Federal Republic of Germany, he must appoint a person resident within Germany as the authorised recipient for all deliveries.

Section 12

Monitoring of quantities

(1) The competent authority shall report to the Federal Government, for the first time on 31 December 2006 and thereafter annually, the quantity of actual registrations and the number of anticipated registrations for the forthcoming reporting period, as outlined in section 5, paragraph (8) of this Act.

(2) If the report of the competent authority pursuant to paragraph (1) casts doubt on compliance with the commitment period reserve pursuant to number 6 of the Annex to decision 18 /CP. 7 of

the Conference of the Parties to the Convention, the Federal Government may resolve to limit the quantity of emission reduction units generated by project activities within the territory of the Federal Republic of Germany by way of a statutory ordinance which shall not require the consent of the *Bundesrat* <Upper House of Parliament>. At the same time, the Federal Government shall specify the scope of this volume limitation and the date when it shall become effective, and shall publish this information in the Federal Gazette or in the electronic version of the Federal Gazette.

(3) From the date when the Federal Government has resolved the introduction of a quantity limitation pursuant to paragraph (2), registration pursuant to section 5, paragraph (8) shall be subject to preregistration. Preregistration of a project activity within the context of joint implementation in the territory of the Federal Republic of Germany shall be implemented by the competent authority.

(4) The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety is authorised to regulate the preregistration procedure pursuant to paragraph (3) and the measures designed to ensure compliance with the volume limitation by way of a statutory ordinance not requiring the consent of the *Bundesrat* <Upper House of Parliament>. In this respect, measures must be taken to ensure that preregistration is cancelled if the project activity in question fails to become registered within two years of preregistration pursuant to section 5, paragraph (8).

Section 13

Statutory ordinance on approval requirements

The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety may, by agreement with the Federal Ministry of Economics and Labour and the Federal Ministry for Economic Cooperation and Development, with due regard for decisions 16/CP.7 and 17/CP.7 of the Conference of the Parties to the Convention, regulate the requirements governing the individual provisions for approval as outlined in section 3, paragraph (1), 5, paragraph (1) and 8, paragraph (1) as well as the grounds for refusal outlined in section 3, paragraph (2), 5, paragraph (2) and 8, paragraph (2) of this Act, by way of a statutory ordinance which shall not require the consent of the *Bundesrat* <Upper House of Parliament>.

Section 14

Charges

For all official acts under this Act and the statutory ordinances adopted for the purposes of its execution, the competent authority shall levy charges and fees. The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety shall determine, by way of a statutory ordinance not requiring the consent of the *Bundesrat* <Upper House of Parliament>, the cases in which fees are payable, the level of said fees, and the reimbursable expenditure for official acts under this Act and the associated statutory ordinances. The fees shall be calculated in such a way to cover the entire administrative expenses.

Section 15

Provisions on fines

(1) Anyone who wilfully or negligently, in contravention of section 6, paragraph (2), sentence 3 or section 7, paragraph (1), sentence 3, fails to provide correct or complete information

1. in the monitoring report or in the validation report, or
2. in the verification report

shall be deemed to have committed an administrative offence.

(2) In the cases referred to in paragraph (1), no. 2, the administrative offence may be punishable by a fine of up to one hundred thousand Euros, and in other cases by a fine of up to fifty thousand Euros.

Article 2

Amendment to the Greenhouse Gas Emissions Trading Act

(See German version of Act for full contents of Article 2.)

The Act on the introduction of project-based mechanisms comprises two parts. While Article 1 provides the national legal foundations for implementing the project-based Kyoto mechanisms for the generation of emission credits (see English translation of Article 1 above), Article 2 regulates the use of the credits generated from these project activities.

Article 2

Article 2 regulates the use of emissions credits generated from project activities in accordance with the provisions in the Linking Directive, which provide for the linking of the Community emissions trading system with the project-based mechanisms.

This link is made by amending the Greenhouse Gas Emissions Trading Act (TEHG), which provides the legal framework for emissions trading in Germany by implementing the Emissions Trading Directive.

The TEHG prescribes inter alia a provision that obligates the operator of an installation covered by emissions trading to surrender allowances for the CO₂ emissions generated:

"Section 6 paragraph (1)

The responsible party shall, by 30 April each year and for the first time in 2006, surrender a number of allowances to the competent authority corresponding to the emissions generated by its activities in the previous calendar year."

This provision in section 6 paragraph (1) is now supplemented in Article 2 by paragraphs 1 a-c. These prescribe that the operator of an installation subject to emissions trading can in principle also fulfil his obligation to surrender allowances by means of the surrender of ERU or CER from JI and CDM projects. At the same time however, the restrictions in the Linking Directive are also implemented:

"(1a) The responsible party may fulfil the obligation to surrender allowances pursuant to paragraph (1) in the first allocation period through the surrender of certified emission

reductions.

(1b) In the second and subsequent allocation periods the responsible party may also comply with the obligation to surrender allowances pursuant to paragraph (1) through the surrender of emission reduction units or certified emission reductions up to the maximum level specified in the respective Allocation Act.

(1c) The obligation to surrender allowances pursuant to paragraph (1) may not be complied with through the surrender of emission reduction units or certified emission reductions generated from nuclear installations or project activities in which none of the Parties to Annex I of the United Nations Framework Convention on Climate Change of 9 May 1992 (Federal Law Gazette 1993 II p. 1784) participated. Furthermore, the obligation to surrender allowances pursuant to paragraph (1) may not be complied with through the surrender of emission reduction units or certified emissions reductions from the areas of land use, land use changes or forestry."

In accordance with the Directive provisions use may only occur through a corresponding surrender of CER/ERU – **transformation into allowances is not possible**. So far as other provisions in the TEHG are applicable for CER and ERU, this shall occur through an equalisation of CER and ERU with the allowances pursuant to the TEHG.

The necessary amendments to the TEHG concern the scope of application, additional definitions, provisions on the register, the regulation of the transfer and the provision on sanctions.

Article 3

Amendment to the Heat-Power Cogeneration Act

(See German text for full contents of Article 3)