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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.7.2007

COMMISSION DECISION

of 13 July 2007

concerning the amendment to the national allocation plan for the allocation of greenhouse gas emission allowances notified by Latvia in accordance with Article 3(3) of Commission Decision C/2006/5612final of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Latvia in accordance with Directive 2003/87/EC of the European Parliament and of the Council,

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concerning the amendment to the national allocation plan for the allocation of greenhouse gas emission allowances notified by Latvia in accordance with Article 3(3) of Commission Decision C/2006/5612final of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Latvia in accordance with Directive 2003/87/EC of the European Parliament and of the Council,

(Only the Latvian text is authentic)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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/EC¹, and in particular Article 9(3) second sentence thereof,

Whereas:

- (1) Pursuant to Article 3(3) of Commission decision C/2006/5612final, Latvia was allowed to notify any amendments of its national allocation plan for the period 2008-2012 by the deadline of 31 December 2006 referred to in Article 11(2) of Directive 2003/87/EC (hereinafter "the Directive").
- (2) Latvia notified to the Commission by letter dated 29 December 2006 certain information concerning an amendment to its national allocation plan. Latvia submitted additional information on the amendment of the plan by letters dated 25 April 2007, registered on 27 April 2007, in reply to questions from the Commission.
- (3) To the extent that the information submitted by Latvia constitutes an amendment, i.e. a change to the substance of its national allocation plan, it requires prior acceptance by the Commission pursuant to Article 9(3), second sentence, of the Directive. The present Decision is limited to those parts of the information. Other aspects of the information submitted by Latvia, in particular those purely relating to the implementation of Commission decision C/2006/5612final of 29 November 2006 or expressing a different viewpoint on the assessment carried out by the Commission in that decision have not been taken into account for the purposes of the present Decision. Moreover, information in the amendment of the national allocation plan not relevant for the allocation of allowances for the period referred to in Article 11(2) of the Directive has not been taken into account for the purposes of this decision.

¹ OJ L 275, 25.10.2003, p. 32. Directive as amended by Directive 2004/101/EC of 27 October 2004, OJ L 338, 13.11.2004, p. 18.

- (4) The amendment of the national allocation plan has been evaluated against the criteria contained in Annex III to and Article 10 of the Directive, taking into account the Commission's guidance to Member States on the implementation of these criteria². Certain aspects of the amendment of the national allocation plan have been found compatible with those criteria and are therefore accepted, while other aspects of the amendment of the national allocation plan have been found incompatible with those criteria and are therefore rejected.
- (5) The amendment of the national allocation plan is compatible with criteria 1, 2 and 3 of Annex III to the Directive to the extent that the total quantity of allowances intended to be allocated is consistent with assessments of actual and projected progress made pursuant to Decision 280/2004/EC³ and is consistent with the potential, including the technological potential, of activities covered by the Community scheme to reduce emissions. Criteria 2 and 3 provide for a methodology using the most representative emissions figures, taking into account economic growth and carbon intensity improvements. Pursuant to criterion 1, the total quantity of allowances to be allocated shall not be more than is likely to be needed for the strict application of the criteria of Annex III.
- (6) The Commission calculated the total quantity of allowances compatible with criteria 1, 2 and 3 of Annex III to the Directive according to the methodology stated in its decision C/2006/5612final, taking into account verified emissions, GDP growth and carbon-intensity improvements. Latvia has not submitted any information which would justify a change to the calculation method applied by the Commission in its decision C/2006/5612final.
- (7) In particular, the Commission considers that emissions from new entrants having entered in 2006 cannot be added to 2005 verified emissions. Such effects from new entrants are as a matter of principle taken into account by the GDP growth and carbon intensity improvement factors from 2005 and 2010. The Commission has not obtained any information from Latvia or otherwise which would show that exceptional circumstances were at play in 2005. The publication of 2006 verified emissions figures in May 2007 cannot affect the Commission's assessment. The time horizon provided by the Directive for the assessment of national allocation plans is the second half of 2006. The deadline for notifying the plans was 30 June 2006. The final deadline foreseen by the Directive for the total quantity to be fixed by a Member State was 31 December 2006. This deadline determines the end of the relevant time horizon for the use of the relevant emissions data. In addition, the EU ETS is a common system for all Member States. This creates a need to treat all Member States equally for the Commission's assessment of second phase national allocation plans in order to avoid distortions as much as possible. Equal treatment is in particular ensured by using the same time horizon for the assessment of verified emissions figures. Using other data for the few remaining decisions adopted after 15 May 2007 would create unequal treatment with respect to the majority of Member States already decided upon, which

² Commission Communication on guidance to assist Member States in the implementation of the criteria listed in Annex III to The Directive (COM(2003)830 final) and Commission Communication on further guidance on allocation plans for the 2008 to 2012 trading period of the EU Emission Trading Scheme (COM(2005)703 final).

³ Decision 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol, OJ L 49, 19.02.2004, p. 1.

notified and/or completed their plans in better respect of the timelines provided by the Directive. Thus the Commission continues to make use of the 2005 verified emissions figures. Similarly, the Commission considers that 2005 verified emissions cannot be increased by additional emissions in 2006 from installations already in the Community scheme. These effects are equally taken into account in the GDP growth projections applied by the Commission. Furthermore, the Commission considers that Latvia has not provided sufficient grounds to justify the requested up-wards revision of the carbon intensity improvement factor.

- (8) The Commission has examined in detail the figures provided by Latvia to verify that the assumptions made by the PRIMES model correspond as closely as possible to reality. Most assumptions have been found to be an adequate reflection of socio-economic data and therefore do not justify a change. However, Latvia has provided specific data in relation to an exceptionally large new investment in the cement sector, which has justified a refinement of certain assumptions and a re-run of the PRIMES model. Only the net increase in emissions from the new cement plant has hereby been considered to take account of the countervailing effect on emissions from an existing smaller cement plant envisaged to close down. Accordingly, the figure for carbon intensity⁴ have been revised to 535.4 in 2010, being enhanced to 522.0 in 2010 by the rate of further carbon intensity improvement of 2.5% from 2005 to 2010. This results in a relative development factor for carbon intensity between 2005 and 2010 of 0.8006⁵. In order to arrive at the acceptable total quantity of allowances, this factor is multiplied by the verified emissions figure⁶ and the GDP growth factor of 1.5⁷ stated in decision C/2006/5612final. Consequently, the acceptable total quantity of allowances compatible with criteria 1, 2 and 3 of Annex III to the Directive on the basis of the information newly submitted by Latvia is 3.428116 million tonnes, so that the figure for the total quantity stated in decision C/2006/5612final may be increased by 0.144813 million tonnes.
- (9) The following table illustrates the acceptable part of the requested increase and the resulting acceptable total quantity for the period from 2008 to 2012:

Acceptable part of the requested increase and acceptable average annual total quantity for the period from 2008 to 2012
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⁴ Expressed in terms of CO₂ Emissions to GDP (tonne of CO₂/million Euro value year 2000).

⁵ 522.0/652.0. A further refinement of assumptions has resulted in the revised carbon intensity figure of 652.0 in 2005.

⁶ As requested by Latvia, the verified emissions figure of 2.854424 stated in decision C/2006/5612final is increased by the figure of 68 due to late verification of one installation, which gives 2.854492 as a new starting point for the calculation.

⁷ The publication of the spring economic forecasts of its Economic and Financial Affairs Directorate-General on 7 May 2007 shall not affect the Commission's assessment. The time horizon provided by the Directive for the assessment of national allocation plans is the second half of 2006. The deadline for notifying the plans was 30 June 2006. The final deadline foreseen by the Directive for the total quantity to be fixed by a Member State was 31 December 2006. This deadline determines the end of the relevant time horizon for the use of economic growth projections. In addition, the EU ETS is a common system for all Member States. This creates a need to treat all Member States equally for the Commission's assessment of second phase national allocation plans in order to avoid undue distortions as much as possible. Equal treatment is in particular ensured by using the same time horizon for the establishment of GDP growth forecasts. Using this data for the few remaining decisions adopted after 7 May 2007 would create unequal treatment with respect to the majority of Member States already decided upon, which notified and/or completed their plans in better respect of the timelines provided by the Directive. Thus the Commission continues to make use of the GDP growth data released in November 2006.

(all figures in million tonnes CO2 eq.)			
Annual average total quantity from 2008-2012 allowed in Commission decision C/2006/5612final	Annual average total quantity on basis of proposed amendment to the national allocation plan	Acceptable part of the requested increase of the average annual total quantity	Acceptable average annual total quantity
3.283303	6.253146	0.144813	3.428116 ⁸

- (10) On the other hand, given that in the years 2008 to 2012 proposed allocations exceed emissions taking into account GDP growth and carbon-intensity improvements, the Commission finds that the remaining part of the requested increase of 2.825030⁹ million tonnes constitutes the annual average excess allocation by Latvia with respect to the total quantity of 6.253146 million tonnes proposed in the amendment for the period 2008 to 2012, which contravenes criteria 1, 2 and 3 and is therefore rejected.
- (11) The amendment of the national allocation plan to raise from 5% to 10% the overall maximum amount of CERs and ERUs which may be used by operators in the Community scheme as a percentage of the allocation of the allowances to each installation is compatible with criterion 12 of Annex III to the Directive¹⁰ and is therefore accepted.
- (12) The whole procedure comprising the notification to, assessment and possible rejection by the Commission of the national allocation plans and the final allocation decisions to be taken by Member States is foreseen by the Directive in a short schedule and implemented by the decisions taken pursuant to its Article 9(3) so as to ensure that the system operates effectively with a minimum of uncertainty for market participants.
- (13) Accordingly, Latvia is not entitled to propose any further amendments to its national allocation plan, including to the total quantity of allowances stated therein, given that the deadline of 31 December 2006 specified in Article 11(2) of the Directive has expired, other than those made to correct the incompatibilities indicated in the respective Commission decision on a national allocation plan¹¹. The interpretation of the deadline of 31 December 2006 specified in Article 11(2) as a "cut-off deadline" is proportionate in balancing the interest of a Member State to exert its discretion on substantive issues and the interest of the Community to ensure the functioning of the emissions trading scheme,

⁸ 3.283303+0.144813

⁹ 6.253146-3.428116

¹⁰ For the assessment methodology, see Commission Communication of 29 November 2006, COM(2006) 725final.

¹¹ See Court of First Instance, ruling of 23 November 2005 in case T-178/05, OJ C 22, 28.1.2006, p. 14, full text <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005A0178:EN:HTML>; point 7 of the Commission Communication on further guidance on allocation plans for the 2008 to 2012 trading period of the EU Emission Trading Scheme, COM(2005)703 final, published under http://ec.europa.eu/environment/climat/pdf/nap_2_guidance_en.pdf; Commission Decision of 22 February 2006 concerning the proposed amendment to the national allocation plan for the allocation of greenhouse gas emission allowances notified by the United Kingdom in accordance with Directive 2003/87/EC of the European Parliament and of the Council, C (2006) 426 final, published under http://ec.europa.eu/environment/climat/pdf/uk_final_2006_en.pdf.

HAS ADOPTED THIS DECISION:

Article 1

The following aspects of the proposed amendment to the national allocation plan of Latvia for the first five-year period mentioned in Article 11(2) of the Directive are compatible in particular with the respective criteria mentioned below and are therefore accepted:

1. criteria 1, 2 and 3 of Annex III to the Directive: the increase to the total quantity of allowances by an amount of 0.144813 million tonnes CO₂eq per year, that is consistent with assessments made pursuant to Decision 280/2004/EC and consistent with the potential, including the technological potential, of activities to reduce emissions;
2. criterion 12 of Annex III to the Directive: the overall maximum amount of CERs and ERUs which may be used by operators in the Community scheme as a percentage of the allocation of the allowances to each installation is increased to 10%.

Article 2

The following aspect of the proposed amendment to the national allocation plan of Latvia for the first five-year period mentioned in Article 11(2) of the Directive is incompatible with the criteria mentioned below and is therefore rejected: criteria 1, 2 and 3 of Annex III to the Directive: the further increase to the total quantity of allowances by an amount of 2.825030 million tonnes CO₂eq per year, that is not consistent with assessments made pursuant to Decision 280/2004/EC and not consistent with the potential, including the technological potential, of activities to reduce emissions.

Article 3

This Decision is addressed to the Republic of Latvia.

Done at Brussels, 13 July 2007

For the Commission