



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08/III/2005  
COM(2005) 549 final

**COMMISSION DECISION**

**of 08/III/2005**

**concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Poland in accordance with Directive 2003/87/EC of the European Parliament and of the Council**

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### **concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Poland in accordance with Directive 2003/87/EC of the European Parliament and of the Council**

(Only the Polish 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/EC<sup>1</sup>, and in particular Article 9(3) thereof,

Whereas:

- (1) The notification of the national allocation plan of Poland for the period 2005-2007, developed under Article 9(1) of Directive 2003/87/EC, was registered by the Commission on 22 September 2004. Poland submitted additional information completing the notified plan by letter, registered by the Commission on 3 January 2005, in reply to questions from the Commission.
- (2) The Climate Change Committee has considered the national allocation plan and has called on the Commission to compare the proposed allocation to Poland's projections and measures for the non-trading and trading sectors, including in particular assumptions made (on growth rates and carbon intensity trends), and urged the Commission to compare Poland's allocation to recent historic and projected emissions and to examine the justification for deviations from recent historic and projected emissions for the trading sector. The Climate Change Committee urged the Commission to carefully examine the size of and access rules to the new entrant reserve with a view to avoiding the double counting of growth in output and emissions by means of both allocating to installations listed in the plan and building a new entrants reserve. The Climate Change Committee urged the Commission to carefully examine the admissibility of bonuses for early action and co-generation and the criteria for allocating to developing plants on top of projected needs of the trading sector. The Climate Change Committee also called on the Commission to make certain that the potential of the trading sector to reduce emissions is adequately reflected, and urged the Commission to examine whether the Polish plan provides for adequate incentives to reduce emissions and promotes the effective functioning of the European trading scheme. The views of the Climate Change Committee have been taken into account.

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<sup>1</sup> OJ L 275, 25.10.2003, p. 32, as amended by Directive 2004/101/EC, OJ L 338, 13.11.2004, p. 18.

- (3) The national allocation plan, including the total quantity of allowances stated therein, has been evaluated in accordance with the Commission Communication on guidance to assist Member States in the implementation of the criteria listed in Annex III to Directive 2003/87/EC<sup>2</sup>. Certain aspects of the national allocation plan have been found incompatible with those criteria, and in particular with criteria 2, 3, 4, 5, 6 and 10.
- (4) The national allocation plan contravenes criterion 2 because the total quantity of allowances intended to be allocated is more than is consistent with assessments<sup>3</sup> made pursuant to Decision 280/2004/EC<sup>4</sup>. In particular the total quantity, taking into account the existing and additional policies and measures, is inconsistent with the Commission's most recent assessment made pursuant to Decision 280/2004/EC. Additional information submitted by Poland to the Secretariat of the United Nations Framework Convention on Climate Change and to the Commission improves the accuracy of its emissions data and reduces the extent of this inconsistency. This additional information records the actual carbon dioxide emissions of Poland in 2002 as being 308.3 Mt CO<sub>2</sub>eq, the total emissions intensity of gross domestic product (GDP), expressed in units of carbon dioxide emissions per unit of GDP, as decreasing by 4.8% between 2002 and the period 2005-2007, and the total GDP growth in Poland as increasing by 20% between 2002 and the period 2005-2007. Multiplying the 2002 carbon dioxide emissions of Poland by projected GDP growth and projected emissions intensity improvements for each of the years 2005, 2006 and 2007, and then averaging the results, means that the average annual total carbon dioxide emissions of Poland in the period 2005-2007 would be 351.6 Mt CO<sub>2</sub>eq. Applying the share of the trading sector's carbon dioxide emissions in the total carbon dioxide emissions as provided in the plan (68%), the maximum average annual emissions of the trading sector during the same period should be 239.1 Mt CO<sub>2</sub>eq, i.e. 47.1 Mt below the average allocation of 286.2 Mt CO<sub>2</sub>eq per year proposed in the plan.
- (5) The national allocation plan contravenes criterion 3 because the total quantity of allowances intended to be allocated is more than is consistent with the potential, including the technological potential, of activities covered by the Community scheme to reduce emissions. In particular the total quantity, taking into account the existing and additional policies and measures, is in excess of projected emissions. Therefore, even if Poland has incorporated only a minimum possible reduction potential of zero into its projected emissions figures, this cannot lead to an increase in the total quantity of allowances intended to be allocated to a level above projected emissions.
- (6) The intention of Poland to allocate additional allowances to power generators in the event of less wind power generation than expected contravenes criterion 4 because this, by being in addition to its allocation to the power sector based on projected emissions, is inconsistent with Poland's obligations under Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market<sup>5</sup>. Therefore, potential emissions deriving from back-up power generation should be

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<sup>2</sup> COM(2003)830 final.

<sup>3</sup> COM(2003)735 final, COM(2004)818 final.

<sup>4</sup> 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.

<sup>5</sup> OJ L 283, 27.10.2001, p.33.

considered as part of total emissions and renewable energy projections for the power sector and should not be calculated separately.

- (7) The intention of Poland to set aside special reserves of allowances dedicated to existing coke-oven operators in the event of reduced sales of coke oven gas to external users, to unidentified installations, and to cover emissions increasing by more than is projected from the sectors covered by the Community scheme (with particular reference made to district heating operators) contravenes criterion 5, because the emissions related to the allowances contained in these reserves are already covered by the remaining part of the intended total quantity of allowances and because the special reserve covering emissions increasing by more than is projected introduces an unwarranted difference of treatment between such new entrants and other new entrants who will access the new entrants reserve.
- (8) The intention of Poland to potentially make *ex-post* adjustments to the allocation of allowances to new entrants contravenes criterion 5, because the application of such *ex-post* adjustments would unduly favour new entrants compared to the operators of installations that are already listed in the national allocation plan in respect of which no *ex-post* adjustments to the allocations are permitted during the period 2005 to 2007.
- (9) Pursuant to criterion 5, the Commission has also examined compliance of the Polish national allocation plan with the provisions of the Treaty, and in particular 87 and 88 thereof. The Commission considers that the allocation of allowances free of charge to certain activities confers a selective economic advantage to undertakings which has the potential to distort competition and affect intra Community trade. The allocation of allowances for free also appears to be imputable to Poland and to entail the use of State resources to the extent that more than 95% of allowances are given for free and banking of allowances from the first to the second period is allowed. The Commission therefore at this stage cannot exclude that the plan implies state aid pursuant to Article 87(1) of the Treaty. On the basis of information provided by Poland, the Commission at this stage cannot consider with certainty that any potential aid granted under the national allocation plan is consistent with and is necessary to achieve the overall environmental objective of Directive 2003/87/EC. Non-compliance with criterion 2 fundamentally jeopardises the overall environmental objective of the emission trading scheme. The Commission considers that in such a case the environmental benefit of any aid included in the allowances is not sufficient to outweigh the distortion of competition referred to above. The Commission notes in particular that an allocation exceeding projected emissions will not require beneficiaries to deliver an environmental counterpart for the benefit they receive. The Commission at this stage therefore cannot exclude that any aid involved would be found incompatible with the common market should it be assessed in accordance with Article 88(3) of the Treaty.
- (10) The information on the manner in which new entrants will be able to begin participating in the Community scheme contravenes criterion 6 because it is insufficient to assess whether the other criteria of Annex III to Directive 2003/87/EC and Article 10 thereof are respected, in particular because there is insufficient information on the methodology proposed for allocating to new entrants and the eligibility criteria for access to allowances need to be further defined.
- (11) The intention of Poland to allow for *ex-post* adjustments to allocations in the plan contravenes criterion 10, as it is not compatible with this criterion to adjust the allocation of allowances set out in the national allocation plan after the adoption of the

decision referred to in Article 11(1) of Directive 2003/87/EC for the reason that an installation listed in the national allocation plan and still operating in Polish territory sells a quantity of coke oven gas lower than the average annual quantity sold during the 1999-2002 period, increases its production faster than the average for its sector, increases its emissions by more than is projected (with particular reference made to district heating operators), or takes over the production of another installation previously operating in Polish territory which has since closed.

- (12) In order to bring the national allocation plan in conformity with the criteria listed in Annex III to Directive 2003/87/EC, the plan should be amended. The Commission should be notified of the amendments made to the plan in accordance with this Decision by Poland forthwith. Were Poland to amend its national allocation plan in accordance with Article 2 of this decision, the Commission considers that any potential aid is likely to be compatible with the common market should it be assessed in accordance with Article 88(3) of the Treaty.
- (13) The national allocation plan includes intended allocations for installations in respect of which Poland intends to submit an application for temporary exclusion from the Community scheme until 31 December 2007 pursuant to Article 27 of Directive 2003/87/EC. In the event that such an application is approved, a corresponding adjustment to the total quantity will have to be made in respect of the intended allocations to those installations during the period for which they are temporarily excluded from the scheme.
- (14) The reports on the implementation of policies and measures and the use of the Kyoto Protocol's mechanisms submitted by Member States pursuant to Decision No 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<sup>6</sup> are taken into account for evaluation of the national allocation plans pursuant to criterion 2 of Annex III to Directive 2003/87/EC,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The following aspects of the national allocation plan of Poland are incompatible with criteria 2, 3, 4, 5, 6, and 10 of Annex III to Directive 2003/87/EC respectively:

- (a) the part of the intended total quantity of allowances, amounting to 47.1 Mt CO<sub>2</sub>eq per year, that is not consistent with assessments made pursuant to Decision 280/2004/EC, with the potential, including the technological potential, of activities covered by the Community scheme to reduce emissions and with Poland's obligations under Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market;
- (b) the intended special reserves set aside for allowances dedicated to existing coke-oven operators, to unidentified installations, and to cover emissions

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<sup>6</sup> OJ L 49, 19.02.2004, p. 1.

increasing by more than is projected from the sectors covered by the Community scheme (with particular reference made to district heating operators);

- (c) the intended *ex-post* adjustments to the allocation of allowances to new entrants;
- (d) the information on the manner in which new entrants will be able to begin participating in the Community scheme;
- (e) the intended provisions for *ex-post* adjustments, (i) additional allowances being allocated to existing coke oven operators in the event of reduced sales of coke oven gas to external users, (ii) additional allowances being allocated to existing installations which increase their production faster than the average for their sector, (iii) additional allowances being allocated to existing installations which increase their emissions by more than is projected, and (iv) changing the allocations to existing installations which are taking over the production of closed installations.

#### *Article 2*

Provided that the following amendments to the national allocation plan are made and notified to the Commission forthwith, no objections shall be raised to the national allocation plan:

- (a) the total quantity to be allocated for the Community scheme is reduced by 47.1 Mt CO<sub>2</sub>eq of allowances per year;
- (b) no special reserves are set aside for allowances dedicated to existing coke-oven operators, to unidentified installations, and to cover increased emissions from the sectors covered by the Community scheme (with particular reference made to district heating operators);
- (c) the quantity of allowances allocated to a new entrant is not subject to *ex-post* adjustments;
- (d) information is provided on the manner in which new entrants will be able to begin participating in the Community scheme, in a way that complies with the criteria of Annex III to Directive 2003/87/EC and Article 10 thereof.
- (e) after adoption of the decision referred to in Article 11(1) of Directive 2003/87/EC, the quantity of allowances allocated by Poland to an installation listed in the national allocation plan and operating in its territory is not adjusted in respect of the issues listed in Article 1(e).

#### *Article 3*

1. The total quantity of allowances to be allocated by Poland according to its national allocation plan to installations listed therein, taking into account amendments referred to in Article 2, shall not be exceeded, nor shall the total quantity to be allocated to new entrants be exceeded.

2. The national allocation plan may be amended without prior acceptance by the Commission if the amendment consists in modifications of the allocation of allowances to individual installations within the total quantity to be allocated to installations listed therein resulting from improvements to data quality.

*Article 4*

This Decision is addressed to the Republic of Poland.

Done at Brussels, 08/III/2005

*For the Commission*