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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 Luxembourg in accordance with Article 3(3) of Commission Decision C/2006/5614final of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Luxembourg 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 Luxembourg in accordance with Article 3(3) of Commission Decision C/2006/5614final of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Luxembourg in accordance with Directive 2003/87/EC of the European Parliament and of the Council,

(Only the French 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/2006/5614final, Luxembourg 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) Luxembourg notified to the Commission by letter dated 28 December 2006 certain information concerning an amendment to its national allocation plan. Luxembourg submitted additional information on this amendment by letters dated 23 February and 18 June 2007, respectively registered on 12 March and 19 June 2007, in reply to questions from the Commission and in order to specify and complete the requested amendment.
- (3) To the extent that the information submitted by Luxembourg 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 Luxembourg, in particular those purely relating to the implementation of Commission Decision C/2006/5614final 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

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.

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.

- (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. The elements of the requested amendment of the national allocation plan have been found compatible with those criteria and are therefore accepted.
- (5) The amendment of the national allocation plan so as to exclude from the coverage of the plan certain activities of the installations with the CITL numbers 12 and 13 and the entire installation with the CITL number 14 is accepted. Luxembourg has shown that the activities concerned of these installations are not part of the mandatory expansion in the scope of activities covered by the Directive from the first to the second phase to be applied by Luxembourg in line with the Commission's guidance³ or do not reach the relevant thresholds in Annex I to the Directive. Their partial or entire exclusion is therefore compatible with criterion 10 of Annex III to the Directive. As confirmed by Luxembourg, the 2005 verified emissions of the activities to be excluded summing up to 0.196010 million tonnes need to be deducted from the total 2005 verified emissions figures to obtain the starting point for the calculation of the new total quantity of allowances. This gives 2.407339 million tonnes, to be multiplied with the GDP growth and carbon intensity improvement factors indicated in Commission Decision C/2006/5614final, resulting in the new total quantity of allowances of 2.488305 million tonnes, which is compatible with criteria 1, 2 and 3 of Annex III to the Directive.
- (6) The amendment of the national allocation plan so as not to auction any allowances is accepted. The Commission notes that this amendment is consistent within Article 10 of the Directive. In addition, the change of the share of allocation of allowances free of charge is not done in a way as to unduly favour certain undertakings or activities in the light of criterion 5 or contravene any other criteria of Annex III to the Directive.
- (7) 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.
- (8) Accordingly, Luxembourg 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

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 Point 36 of COM(2005)703 final, as clarified by the "co-ordinated definitions" of additional combustion installations contained in the minutes of the Climate Change Committee of 31 May 2006.

in the respective Commission decision on a national allocation plan⁴. 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,

HAS ADOPTED THIS DECISION:

Article 1

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

1. criteria 1, 2, 3 and 10 of Annex III to the Directive: the exclusion from the coverage of the plan of certain activities of the installations with the CITL numbers 12 and 13 and of the entire installation with the CITL number 14, this leading to a reduction of the total quantity of allowances to 2.488305 million tonnes;
2. criterion 5 of Annex III to and Article 10 of the Directive: the decision not to auction any allowances.

Article 2

This Decision is addressed to the Grand-Duchy of Luxembourg.

Done at Brussels, 13 July 2007

For the Commission

⁴ 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.