

Case No: 61721
Event No 457353
Dec. No: 728/07/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 19 December 2007

concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Liechtenstein in accordance with the Act referred to at point 21a) of Annex XX to the Agreement on the European Economic Area (*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*), as adapted to the Agreement by Protocol 1 thereto

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice,

Having regard to the Act referred to at point 21a) of Annex XX to the EEA Agreement,

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,

as adapted to the Agreement by Protocol 1 thereto (hereinafter “the Act”), in particular Article 9(3) thereof,

Whereas the national allocation plan of Liechtenstein for the period 2008-2012, developed under Article 9(1) of the Act, was submitted to the EFTA Surveillance Authority (hereinafter “the Authority”) in its preliminary version on 8 August 2007, and following questions from and discussion with the Authority and submission of additional information on the plan, in its final version by letter dated 5 December 2007, registered by the Authority on the same date,

Whereas Liechtenstein presented its national allocation plan for discussion in the EU Climate Change Committee,

Whereas the EFTA Committee on greenhouse gas emission trading assisting the Authority (hereinafter “the EFTA Committee”) considered the national allocation plan and called on the Authority to assess all national allocation plans on a consistent, coherent and robust basis,

Whereas the EFTA Committee called on the Authority to scrutinise the establishment of the total cap, by ensuring that the cap is determined as much as possible on the basis of independently verified emissions data and projections, and that it is in line with macroeconomic prognoses and the potential to reduce emissions. Furthermore, to the extent that these aspects of climate change policies and measures are relevant to the EEA Agreement and without elaborating on Liechtenstein’s achievement of its international commitments on the reduction of greenhouse gas emissions under the United Nations Framework Convention on Climate Change and the Kyoto Protocol, the EFTA Committee called on the Authority to compare the proposed allocation to Liechtenstein’s projections and measures for the non-trading and trading sectors, to closely scrutinise the substantiation of other policies and measures to reduce greenhouse gases in the non-trading sectors, and to closely examine Liechtenstein’s ability to substantiate its intended use of the Kyoto mechanisms. The EFTA Committee also called on the Authority to scrutinise projections and assumptions outlined in the plan and the proposed allocations to installations so as to ensure that installations are not allocated more allowances than needed. It expressed concern about the growth rates assumed for incumbents and called on the Authority to closely scrutinise whether they are realistic, adequately verified and explained, and sufficient substantiation is provided. Moreover, the EFTA Committee called on the Authority to examine benchmarks used for new entrants. The views of the EFTA Committee have been taken into account,

Whereas the Authority notes that Liechtenstein's annual Kyoto commitment for the period from 2008 to 2012 is 211 124 tonnes CO₂ equivalent (hereinafter "tonnes"), while the most recent available figure for its annual total greenhouse gas emissions is 270 523 tonnes for the year 2005. The remaining gap between these two annual figures to be bridged by Liechtenstein is therefore 59 399 tonnes,

Whereas the national allocation plan, including the total annual average quantity of allowances of 17 943 tonnes stated therein, has been evaluated by the Authority, in close coordination with the Commission, against the criteria in Annex III to the Act, taking into account the relevant provisions of the methodology as set out in the Commission’s guidance documents COM(2003) 830 final, COM(2005) 703 final and COM(2006) 725 final for the assessment of a national allocation plan under Article 9(3) of the Act as applied in the Commission’s Decisions on national allocation plans,

Whereas, pursuant to criterion 5 of Annex III to the Act, the Authority has made a preliminary assessment of the compliance of the national allocation plan of Liechtenstein with Article 61 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement. The Authority 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 trade between Contracting Parties to the EEA Agreement. The allocation of allowances for free appears to be imputable to Liechtenstein State and to entail the use of State resources. The aspects of imputability and State resources are strengthened by the participation in international emissions trading and other flexible mechanisms (i.e. the Joint Implementation and the Clean Development Mechanism) enabling Liechtenstein to take discretionary decisions influencing its budget and the number of allowances granted to industry. In particular, as all allocations must as from the start of the trading period (i.e., as of 1 January 2008) be covered by Assigned Amount Units, which are tradable between contracting parties, any allocation free of charge directly reduces the quantity of Assigned Amount Units that Liechtenstein can sell to other contracting parties or increases the need to buy such Assigned Amount Units,

Whereas the Authority therefore at this stage considers that the plan could potentially imply State aid pursuant to Article 61(1) of the EEA Agreement. On the basis of information provided by Liechtenstein, the Authority at this stage considers that any potential aid is likely to be compatible with the functioning of the EEA Agreement should it be assessed in accordance with Article 61 of the EEA Agreement and Article 1 of Part I of Protocol 3 to the Surveillance and Court Agreement,

Whereas, pursuant to Article 9(3), second sentence, of the Act, the EFTA State shall only take a decision under Article 11(2) of the Act if proposed amendments are accepted by the Authority. The Authority accepts all modifications of the allocation of allowances to individual installations within the total quantity to be allocated to installations listed therein resulting from technical improvements to data quality. No further prior assessment and acceptance by the Authority is necessary because the allocation methodology and the total quantity of allowances remain unchanged. As the modification is limited to mechanically adjusting the result from the use of data of higher quality having become available more recently to the intended allocation, any such modification cannot be conceived to be incompatible with the criteria of Annex III to the Act,

HAS ADOPTED THIS DECISION:

1. No objections shall be raised to the national allocation plan of Liechtenstein for the first five-year period mentioned in Article 11(2) of the Act.
2. The total annual average quantity of allowances of 17 943 tonnes to be allocated by Liechtenstein according to its national allocation plan to installations listed therein and to new entrants shall not be exceeded.
3. The national allocation plan may be amended without prior acceptance by the Authority 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.
4. Any other amendments of the national allocation plan are inadmissible.

5. This Decision shall enter into force once the fulfilment of constitutional requirements according to Article 103 of the EEA Agreement for the entry into force of Decision of the EEA Joint Committee No 146/2007 of 26 October 2007 amending Annex XX (Environment) to the EEA Agreement has been notified by Iceland, Liechtenstein and Norway.
6. This Decision is authentic in the English language.
7. This Decision is addressed to Liechtenstein and shall be notified to that State.

Done at Brussels, 19 December 2007.

For the EFTA Surveillance Authority



Per Sanderud
President



Kurt Jaeger
College Member