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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.07.2004  
C(2004) 2515/3 final

**COMMISSION DECISION**

**of 7 July 2004**

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

(Only the German 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 national allocation plan of Austria for the period 2005-2007, developed under Article 9(1) of Directive 2003/87/EC, was notified to the Commission on 31 March 2004 and registered on 1 April 2004. Austria submitted additional information by a letter registered on 8 June 2004 in reply to questions from the Commission, and completed the notified plan by a letter registered on 16 June, a letter received on 22 June and a letter received on 2 July 2004.
- (2) The Climate Change Committee has considered the national allocation plan and has urged the Commission *inter alia* to make certain that the intended use of the Kyoto Protocol's mechanisms by a government is substantiated through the state of advancement of relevant legislation and implementing provisions in the plan and to closely examine Austria's anticipated path to reaching its target under Decision 2002/358/EC. The views of the Climate Change Committee have been taken into account.
- (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 10.
- (4) The intention of Austria to adjust the allocation of allowances to installations listed in the national allocation plan and operating in its territory in the event that an installation closes within its national territory contravenes criterion 10 which requires

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<sup>1</sup> OJ L 275, 25.10.2003, p. 32.

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

the quantity of allowances to be allocated to each installation to be stated *ex-ante* in the national allocation plan covering the period referred to in Article 11(1) of Directive 2003/87/EC.

- (5) 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 Austria by 30 September 2004 at the latest.
- (6) On the basis of the information provided by the Member State, the Commission therefore 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.
- (7) The Commission considers that in the period of the current allocation plan, the information provided by the Member State on the transfer rule demonstrates that for this period no advantage going beyond what is justified by the environmental benefit of the measure is granted to replacement installations compared to similar investments by other new entrants. For the following period, no difference exists between installations subject to the transfer rule and those to be covered by the reserve for new entrants.
- (8) This decision is without prejudice to the approval of Austria's application for the unilateral inclusion of installations included in the Community scheme in accordance with the procedure referred to in Article 23(2) of Directive 2003/87/EC.
- (9) 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>3</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 Austria are incompatible with criteria 10 of Annex III to Directive 2003/87/EC:

- (a) the intended adjustment to the allocation of allowances to installations operating in its national territory set out in the national allocation plan after adoption of the decision referred to in Article 11(1) of Directive 2003/87/EC as a result of the closure within its territory of other installations listed in that plan.

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<sup>3</sup> OJ L 49, 19.02.2004, p. 1.

## *Article 2*

The allocations specified in the national allocation plan for installations which Austria intends to be unilaterally included in the Community scheme in accordance with Article 24 of Directive 2003/87/EC raise no objections for the purpose of this Decision, subject to the approval of that application and the implementation of the requested unilateral inclusion.

## *Article 3*

Provided that the following amendments to the national allocation plan are made and notified to the Commission by 30 September 2004 at the latest, no objections shall be raised to the national allocation plan:

- (a) no adjustments are made to allocations to installations that are listed in the national allocation plan and operating in its territory as a result of the closure of other installations within that territory.

## *Article 4*

1. The total quantity of allowances to be allocated by Austria according to its national allocation plan including subsequent information notified to the Commission by letter received on 2 July 2004 to installations listed therein and to new entrants for the period referred to in Article 11(1) of Directive 2003/87/EC shall not 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 resulting from improvements to data quality.

3. Any amendments to the national allocation plan other than those referred to in paragraph 2 of this Article and in Article 3 shall be notified to the Commission and accepted in accordance with Article 9(3) of Directive 2003/87/EC.

## *Article 5*

This Decision is addressed to the Republic of Austria.

Done at Brussels, 7 July 2004