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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 Ireland in accordance with Article 3(3) of Commission Decision C/2006/5611final of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Ireland 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 Ireland in accordance with Article 3(3) of Commission Decision C/2006/5611final of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Ireland in accordance with Directive 2003/87/EC of the European Parliament and of the Council,

(Only the English 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/2006/5611final, Ireland 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) Ireland notified to the Commission by letter dated 21 December 2006 certain information concerning an amendment to its national allocation plan. Ireland submitted additional information on this amendment by letter dated 23 April 2007, registered on 3 May 2007, in reply to questions from the Commission.
- (3) To the extent that the information submitted by Ireland 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 Ireland, in particular those purely relating to the implementation of Commission decision C/2006/5611final 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 Commission notes that the total amount with respect to which the intended use of Kyoto credits by Ireland was insufficiently substantiated was 3.607 million tonnes per year during the period referred to in Article 11(2) of the Directive. As Ireland had not demonstrated to the Commission that it could make these increased efforts solely in the sectors not covered by the Directive, the sectors covered by the Directive needed to carry at least a proportionate burden, measured by the relative size of 32.7% of their emissions with respect to overall emissions, which led to a reduction of the total quantity of allowances to be allocated of 1.179489 million tonnes per year to be borne by the sectors covered by the Directive.³ However, Ireland has submitted further information pursuant to which the intended use of Kyoto credits by Ireland is sufficiently substantiated and compatible with criterion 1 of Annex III to the Directive. In this respect, the Commission accepts the amendment of the Irish plan. As a consequence the Commission accepts an increase of the total quantity of allowances by 1.179489 million tonnes per year.
- (6) The Commission accepts the proposed exclusion from the coverage of the plan of installations falling under a *de-minimis* threshold of up to 3 MW envisaged to be introduced in respect of the application of the so-called aggregation rule and at the same time with 2005 verified emissions data of less than 20000 tonnes. This proposed exclusion is compatible with criterion 10 of Annex III to the Directive, in that Ireland proposes to make use of the Commission's guidance in respect of the treatment of the smallest emitters in the second trading phase⁴. Ireland estimates that this rule will result in a smaller number of installations and concern approximately 1% of emissions. As a consequence of the exclusion, Ireland needs to reduce the total quantity of allowances by deducting the sum of allowances intended to be allocated to the installations concerned under the general methodologies of the plan.
- (7) On the other hand, the Commission notes that the amendment of the plan relating to further substantiation of measures in the transport sector is incompatible with criterion 1 of Annex III to the Directive and is therefore rejected. The national allocation plan of Ireland contravenes criterion 1 of Annex III to the Directive because the intended total quantity of allowances to be allocated according to the national allocation plan would be inconsistent with achieving Ireland's commitment under Decision 2002/358/EC⁵ and the Kyoto Protocol. The total quantity of allowances is considered

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 See Commission decision C/2006/5611 final of 29 November 2006.

⁴ Point 40 of COM(2005)703 final.

⁵ Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder, OJ L 130, 15.5.2002, p. 1.

to be more than is likely to be needed for the strict application of criterion 1 because Ireland fails to provide in a sufficient manner for policies and measures to be used in the transport sector, which is outside the Community scheme. Member States must indicate and substantiate intentions to use policies and measures in sectors outside the Community scheme, and the Commission's assessment is based in a cumulative manner in particular on the indication of implemented and additional policies and measures, the approximate level of current greenhouse gas emissions represented by the activity targeted by each policy or measure and quantified emissions reductions, assumptions and methodologies, quantitative indicators to demonstrate effectiveness of implemented policies and measures, how policies and measures are reflected in emissions projections presented in the plan, any developments and trends potentially counteracting the reduction effects, and any overlapping effects and how such double-counting effects have been eliminated in the estimation of quantitative reduction effects⁶.

- (8) In the light of the above, Ireland has not sufficiently substantiated policies and measures in the transport sector. As publicly indicated also by the Irish authorities, emissions from transport will continue to grow significantly in Ireland⁷. Ireland's national allocation plan assumes emissions in the transport sector of 12.295 million tonnes in 2005 and 13.063 million tonnes in 2010⁸. This implies a total growth rate of 6.2%⁹ or an annual growth rate of 1.2%¹⁰ in this period. These growth figures are inconsistent with the data contained in the publication "*European Energy and Transport Trends*" of the Commission's Directorate-General for Transport and Energy¹¹, which the Commission considers as the most accurate and reliable source for estimations of emissions in the transport sector. Baseline assumptions¹² are updated on a regular basis to reflect the most likely future trend and validated with the involvement of experts from Member States. These data indicate that, in the absence of significant additional measures, Ireland's emissions in the transport sector are likely to be 14.4 million tonnes in 2005 and 16.4 million tonnes in 2010¹³. This implies a

⁶ As stated in paragraph 20 and Annex 6 of COM(2005)703 final.

⁷ Environmental Protection Agency, Ireland, "Environment in focus 2006, Environmental indicators for Ireland", p. 56: "*It is clear from present trends that the number of vehicles on Irish roads is set to increase. Levels are predicted to meet the European average by the end of the decade – the number of private cars in the State will reach approximately 2 million, an increase of 0.5 million over 2004. Even if the target of reducing CO₂ emissions to 140 g/km for new cars by 2008-2009 is achieved, as agreed under the Voluntary Agreement negotiated between the automotive industry and the EU Commission, this is unlikely to row back the ever-increasing contribution of the transport sector to Ireland's GHG emissions.*", published on website:

<http://www.epa.ie/OurEnvironment/EnvironmentalIndicators/Transport/FileUpload.10479.en.pdf>;

⁸ Table III on page 32 of the NAP

⁹ 13.063/12.295

¹⁰ (13.063/12.295)↑(1/5)

¹¹ European Energy and Transport, Trends to 2030 – update 2005, European Commission, Directorate-General for Energy and Transport, 2006, prepared by the Institute of Communication and Computer Systems of National Technical University of Athens (ICCS-NTUA), E3M-Lab, Greece, Authors: Dr. L. Mantzos and Prof. P. Capros, published on the Commission's website under the following hyperlink: http://ec.europa.eu/dgs/energy_transport/figures/trends_2030_update_2005/energy_transport_trends_2030_update_2005_en.pdf

¹² Examples for baseline assumptions are future developments in population, fuel prices, etc.

¹³ Figures for CO₂ emissions in the transport sector are published on the Commission's website and more specifically indicated for Ireland on page 108 on the sheet "Summary Energy Balance and Indicators (B)" under the heading "CO₂ emissions (Mt of CO₂)" in the second last row "Transport" under the following hyperlink:

total growth rate of 13.889%¹⁴ or an annual growth rate of 2.635%¹⁵ in this period. The Commission does not see a justification for the claimed moderate growth rate of transport emissions as indicated in the national allocation plan and thus considers this rate as unrealistically low, taking into account also the finding by the Irish authorities mentioned above¹⁶. This assessment has not changed due to the additional information submitted by Ireland in the amendment to its national allocation plan. The Commission takes note of the further policies and measures notified by Ireland to be taken in the transport sector. However, the Commission considers that these measures have mostly not yet been adopted, are not sufficiently concrete or only part of a mere policy strategy so that there is no sufficient certainty that they will lead to emission reductions in this sector tantamount to 2.293 million tonnes CO₂ reduction potential by 2010.¹⁷ Almost none of the policies and measures that Ireland refers to in its additional information are based on already implemented policies and are therefore still lacking substantiation. The only measures that are in parts already implemented are those under the Biofuels Directive which are calculated with a reduction potential of in total 0.1 million tonnes annually. However, no adequate explanation is provided by Ireland on this measure. In particular Ireland has failed to provide sufficient information on assumptions and methodologies used for the quantification of the effects of the indicated policy and references to sources for this information. Moreover, Ireland has failed to submit substantiated information that due to the policies and measures the annual growth rate in the transport sector is lower than 2.635% as assumed by the Commission in its decision C/2006/5611final of 29 November 2006, or that the additional transport emissions are in other ways reliably addressed by the policies and measures indicated by Ireland.

- (9) In addition, the amendment of the national allocation plan to raise from 21.914% to 22.1% 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 incompatible with criterion 12 of Annex III to the Directive¹⁸ and is therefore rejected. Pursuant to criterion 12 of Annex III to the Directive, the Commission has assessed the 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 that is consistent with Ireland's supplementarity obligations under the Kyoto Protocol and decisions adopted pursuant to the UNFCCC or the Kyoto Protocol. Decision 2/CMP.1¹⁹ requires that use of the mechanisms be supplemental to domestic action, with a view to narrowing per capita differences in emissions between developed and developing countries. In order to obtain a quantified figure for supplementarity, the Commission applies a formula which takes into account the effort undertaken by each Member State, which is

http://ec.europa.eu/dgs/energy_transport/figures/trends_2030_update_2005/energy_transport_trends_2030_update_2005_en.pdf.

¹⁴ 16.4/14.4

¹⁵ (16.4/14.4)[†](1/5)

¹⁶ Environmental Protection Agency, Ireland, "Environment in focus 2006, Environmental indicators for Ireland", p. 56, further specified in earlier footnote.

¹⁷ See the National Climate Change Strategy 2007-2012 of the Department of the Environment, Heritage and Local Government, p. 22.

¹⁸ For the assessment methodology, see Commission Communication of 29 November 2006, COM(2006) 725final.

¹⁹ Decision 2/CMP.1 of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol "Principles, nature and scope of the mechanisms pursuant to Articles 6. 12 and 17 of the Kyoto Protocol" of December 2005, FCCC/KP/CMP/2005/8/Add. 1, page 4.

expressed in terms of the difference between actual emissions and the absolute Kyoto commitment, and the intended government purchase of Kyoto units to the extent that it is sufficiently substantiated. The effort undertaken by each Member State is calculated by taking the highest figure out of the following three conceivable alternatives: deducting the absolute Kyoto commitment from, first, total base year greenhouse gas emissions; second, the most recent total greenhouse gas emissions, i.e. the year 2004; or, third, projected 2010 total greenhouse gas emissions, representing the average actual emissions in the first Kyoto commitment period. The Commission holds that the notion of supplementarity implies in any event that use by operators may not lead to a situation where more than half of the effort undertaken by a Member State, taking into account government purchase, is made through Kyoto flexible mechanisms. In order to ensure this, the Commission divides the effort undertaken by each Member State by a factor of two and calculates the permitted maximum absolute amount for use by operators by deducting the volume of substantiated government purchases from this figure. Finally, the respective relative figure is obtained by dividing the permitted maximum absolute amount by the allowed total quantity of allowances.

- (10) In application of this method, the effort undertaken by Ireland is 9.27 million tonnes.²⁰ 50% of the effort undertaken is 4.635 million tonnes. Taking into account that 100% of its intended government purchases are recognised as sufficiently substantiated, 1.028 million tonnes constitutes the maximum absolute amount for use by operators per year permitted for Ireland. The relative maximum figure for use by operators is obtained by dividing the absolute amount by the allowed total quantity of allowances of 21.151244 million tonnes, which gives 4.869%²¹.
- (11) However, the Commission has recognised the general importance of promoting the international carbon market so that every Member State should be entitled to allow its operators at least a certain positive limit in order to facilitate their involvement in international transactions.²² Therefore, the Commission considers that, irrespective of the effort undertaken and the volume of government purchases, every Member State may allow its operators to use CER's and ERU's up to a maximum relative threshold of 10%. Consequently, the maximum amount of CERs and ERUs of 22.1%, as indicated in the amendment to Ireland's national allocation plan, which may be used by operators in the Community scheme as a percentage of the allocation of the allowances to each installation is inconsistent with Ireland's supplementarity obligations under the Kyoto Protocol and decisions adopted pursuant to the UNFCCC or the Kyoto Protocol, to the extent that it exceeds 10%.
- (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

²⁰ See recital 3 of Commission decision C/2006/5611final of 29 November 2006 for further reference. Ireland's Kyoto commitment, expressed in absolute figures, is 63.03 million tonnes. Base year emissions are 55.8 million tonnes, 2004 emissions are 68.5 million tonnes and 2010 projected emissions with existing policies and measures are 72.3 million tonnes according to the Progress Report COM(2006)658 final of 27 October 2006, Tables 1 and 2 in the Annex SEC(2006) 1412 of 27 October 2006. The latter emissions figure being the highest of these three alternatives, the relevant effort with respect to the Kyoto commitment is 9.27 million tonnes. Dividing this effort by two gives 4.635 million tonnes of which the intended amount of government purchase of 3.607 million tonnes need to be deducted which gives 1.028 million tonnes (4.635-3.607 million tonnes) representing the maximum absolute amount, up to which Ireland's operators may use CERs and ERUs.

²¹ 1.028/21.151244.

²² See, COM(2006)725final, 29 November 2006.

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, Ireland 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 plan²³. 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 Ireland 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. criterion 1 of Annex III to the Directive: the further substantiation of the intended use of Kyoto credits and as a consequence the increase of the total quantity of allowances by 1.179489 million tonnes per year;
2. criterion 10 of Annex III to the Directive: the exclusion from the coverage of the plan of installations falling under a *de-minimis* threshold of up to 3 MW in respect of application of the so-called aggregation rule and at the same time with 2005 verified emissions data of less than 20000 tonnes, with the total quantity of allowances being reduced by the sum of allowances intended to be allocated to the installations concerned under the general methodologies of the plan.

Article 2

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

1. criterion 1 of Annex III to the Directive: further information aimed at substantiating other policies and measures in the transport sector that could amount to the

²³ 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.

equivalent of on average 0.307267 million tonnes per year in relation to Ireland achieving its commitment under Decision 2002/358/EC;

2. criterion 12 of Annex III to the Directive: the proposed increase of 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 to 22.1%, with this percentage instead having to be reduced to 10% as a consequence of Article 1(1).

Article 3

This Decision is addressed to Ireland.

Done at Brussels, 13 July 2007

For the Commission