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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.07.2004
C(2004) 2515/2 final

COMMISSION DECISION

of 7 July 2004

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

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(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/EC¹, and in particular Article 9(3) thereof,

Whereas:

- (1) The national allocation plan of Germany 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, supplemented on 7 May. Germany submitted additional information completing the notified plan by letter registered on 17 June 2004 in reply to questions from the Commission.
- (2) The Climate Change Committee has considered the national allocation plan and has called on the Commission *inter alia* to examine the justification for, and admissibility under criterion 10, of the various intended adjustments of allocated amounts after adoption of the decision referred to in Article 11(1) of Directive 2003/87/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/EC². Certain aspects of the national allocation plan have been found incompatible with those criteria, and in particular with criteria 5 and 10.
- (4) The intention of Germany 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.

¹ OJ L 275, 25.10.2003, p. 32.

² COM(2003)830 final

- (5) The intention of Germany to adjust the allocation of allowances to an installation listed in the national allocation plan and operating in its territory in the event that an installation whose operation is related to that installation closes within its national territory contravenes criterion 10 in Annex III to Directive 2003/87/EC which requires 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 that Directive.
- (6) It is furthermore not compatible with criterion 10 in Annex III to Directive 2003/87/EC 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 that Directive for the reason that an installation listed in the national allocation plan and operating in its territory experiences lower capacity utilisation than foreseen, or the installation's annual emissions are less than 40% of its base period emissions, or the installation is benefiting from an additional allocation for combined heat and power and generates a lower amount of power production from combined heat and power than in the base period.
- (7) 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 Germany.
- (8) As implementation of amendments to the plan will not affect the initial allocation of allowances by Germany, Germany should be able to issue allowances during the period referred to in Article 11(1) in advance of the implementation of such amendments.
- (9) 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.
- (10) 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.
- (11) Information in the national allocation plan not relevant to the allocation of allowances for the period referred to in Article 11(1) of Directive 2003/87/EC has not been taken into account for the purposes of this Decision.
- (12) 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 Protocol³ 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 Germany are incompatible with criteria 5 and 10 of Annex III to Directive 2003/87/EC respectively:

- (a) the intended *ex-post* adjustments to the allocation of allowances to new entrants;
- (b) the intended adjustment to the allocation of allowances to an installation listed in the national allocation plan and operating in its territory after adoption of the decision referred to in Article 11(1) of Directive 2003/87/EC as a result of other installations having closed within its national territory;
- (c) the intended adjustment of the allocation of allowances to an installation listed in the national allocation plan and operating in its territory after adoption of the decision referred to in Article 11(1) of Directive 2003/87/EC, in the event that an installation experiences lower capacity utilisation than foreseen, that its annual emissions are less than 40% of its base period emissions, that it generates a lower amount of power production from combined heat and power than in the base period.

Article 2

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

- (a) the quantity of allowances allocated to a new entrant is not subject to *ex-post* adjustments;
- (b) after adoption of the decision referred to in Article 11(1) of Directive 2003/87/EC, the quantity of allowances allocated to an installation that is listed in the national allocation plan and operating in its territory is not subject to adjustments as a result of the closure of other installations listed in that plan within Germany's national territory;
- (c) after adoption of the decision referred to in Article 11(1) of Directive 2003/87/EC, the quantity of allowances allocated 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(c).

³ OJ L 49, 19.02.2004, p. 1.

Article 3

1. The total quantity of allowances to be allocated by Germany according to its national allocation plan 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 2 shall be notified to the Commission and accepted in accordance with Article 9(3) of Directive 2003/87/EC.
4. Germany may issue allowances in advance of the implementation of the amendments referred to in Article 2.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 7 July 2004