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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.10.2004
C(2004) 3982 / 7 final

COMMISSION DECISION

of 20 October 2004

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

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(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) thereof,

Whereas:

- (1) The national allocation plan of France for the period 2005-2007, developed under Article 9(1) of Directive 2003/87/EC, was notified to the Commission on 26 July 2004. France submitted additional information amending and completing the notified plan by letter received on 6 and 9 September 2004 in response to a letter from the Commission, by letter received on 1 October 2004, by letter received on 11 October 2004 and by note received on 18 October 2004.
- (2) The Climate Change Committee has considered the national allocation plan and has called on the Commission to closely examine France's anticipated path to reaching its target under Decision 2002/358/EC, to compare the proposed allocation to France's projections for the non-trading and trading sectors, to compare France's allocation to recent historic and projected emissions, and to examine whether the trading sector is carrying an appropriate burden in view of the measures planned in the updated national climate change plan. In view of the importance of preserving the integrity of the internal market and avoiding undue distortions of competition, the Climate Change Committee welcome's France's decision to extend the scope of the Directive's coverage. In the light of this change, the Climate Change Committee wished the Commission to examine the admissibility under criterion 10 of the coverage of activities in the plan, and called on the Commission to examine admissibility under criterion 10 of the intended ex-post adjustments of allocated amounts via the growth reserve. 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

¹ OJ L 275, 25.10.2003, p. 32.

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 France to allocate allowances to installations already covered by Directive 2003/87/EC from a special reserve for growth in emissions comprising 7.24 million tonnes of CO₂eq per year contravenes criterion 10 of Annex III to that Directive. That criterion requires that the quantity of allowances which are to be allocated to each existing installation must be stated *ex-ante* in the national allocation plan covering the period referred to in Article 11(1) of Directive 2003/87/EC. Furthermore, the intended allocation to the special reserve contravenes criterion 5 as it is based on over-estimated growth figures for industrial activities, that would unduly favour those undertakings and activities through an estimated over-allocation of 1.5 Mt CO₂eq per year. This is due to the use of excessive growth figures, based on the average of industry estimates of approximately 2% per year on average, and of official growth estimates, such as of the Commissariat General du Plan, of approximately 0.5% on average per year. The Commission considers that this difference in treatment has not been duly justified by France and that the measure appears to grant an undue advantage to these industrial activities.
- (5) Pursuant to criterion 5, the Commission has also examined compliance of the French National Plan with the provisions of the Treaty, and in particular Articles 87 and 88 thereof. The Commission 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 intra-Community trade. The allocation of allowances for free also appears to be imputable to the Member State and to entail the use of State resources to the extent that more than 95% of allowances are given for free and allows banking of allowances from the first to the second period. The Commission therefore at this stage cannot exclude that the plan implies state aid pursuant to Article 87(1) of the Treaty. The national allocation plan allocates excessive allowances to industrial activities. The Commission considers that this favourable treatment has not been duly justified by France and that the measure appears to grant an undue advantage to industrial activities, which would allow this activity to dispose of allowances without having to deliver a sufficient environmental counterpart. The Commission at this stage therefore cannot exclude that any aid involved would be found incompatible with the common market should it be assessed in accordance with Article 88(3) of the Treaty.
- (6) The list of installations set out in the national allocation plan is incomplete and therefore contravenes criterion 10 since it does not include combustion installations in general situated within the territory of France, to which Directive 2003/87/EC applies, because a general approach was taken not to list any combustion installation that was not considered by France to be part of the energy supply industry or which does not form part of an installation carrying out other activities listed in Annex I to Directive 2003/87/EC. In its letter of 9 September 2004, France confirmed that installations situated within the territory of France in which a combustion process takes place which have a rated thermal input exceeding 20MW, as specified in Annex I to Directive 2003/87/EC, will be included in the list of installations, and this updated list is yet to be received.

² COM(2003)830 final

- (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 France by 30 November 2004 at the latest. Were France to amend its national allocation plan in accordance with Article 2(a) of this decision, the Commission 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.
- (8) This Decision is without prejudice to France's obligations under Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market³.
- (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 Protocol⁴ 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 France are incompatible with criteria 5 and 10 of Annex III to Directive 2003/87/EC respectively:

- (a) the intended allocation of allowances to a special reserve for growth in emissions from installations listed in the national allocation plan, that is based on over-estimated growth figures for industrial activities;
- (b) the list of installations fails to include combustion installations situated within the territory of France to which Directive 2003/87/EC applies, and which France in its letter of 9 September 2004 confirmed will be included, and the quantities of allowances intended to be allocated to each such installation, because of the general approach taken not to list any combustion installation that is not considered to be part of the energy supply industry or which does not form part of an installation carrying out other activities listed in Annex I to Directive 2003/87/EC.

Article 2

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

³ OJ L 283 , 27.10.2001, p.33.

⁴ OJ L 49, 19.02.2004, p. 1.

- (a) no special reserve is established for growth in emissions from installations listed in the national allocation plan, and the total quantity is reduced 1.5 Mt CO₂eq allowances per year in respect of the intended allocation from this reserve to industrial activities accordingly;
- (b) the list of installations is amended to include installations situated within the territory of France in which a combustion process takes place which have a rated thermal input exceeding 20MW (except hazardous or municipal waste installations), as specified in Annex I to Directive 2003/87/EC, and the quantities of allowances intended to be allocated to them; those quantities being determined in accordance with the general methodologies stated in the national allocation plan and using realistic and substantiated growth figures.

Article 3

1. The total quantity of allowances to be allocated by France according to its national allocation plan to installations listed therein shall not be exceeded, nor shall the total quantity to be allocated to new entrants be exceeded, taking into account the amendments referred to in Article 2.

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 to be allocated to installations listed therein 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.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 20 October 2004