



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.11.2006

COMMISSION DECISION

of 29 November 2006

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

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(Only the Swedish 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 Sweden for the period 2008-2012, developed under Article 9(1) of Directive 2003/87/EC (hereinafter "the Directive"), was notified to the Commission by letter dated 1 September 2006 and registered by the Commission on 13 September 2006. Sweden submitted additional information on the notified plan by letter dated 10 November 2006, registered on 17 November 2006, in reply to questions from the Commission.
- (2) The Climate Change Committee² considered the national allocation plan on 16 October 2006 and called on the Commission to assess all national allocation plans on a consistent, coherent and robust basis. In this context, the Climate Change Committee underlined the importance of using the 2005 verified emissions figures as a significant element for the assessment of second period national allocation plans. The Climate Change Committee also, *inter alia*, stressed the crucial importance of transparent and credible baseline data and projected emissions and urged the Commission to take into account the importance of preserving the integrity of the internal market and to avoid undue distortions of competition. The Climate Change Committee noted with concern

¹ 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, OJ L 275, 25.10.2003, p. 32, as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004, amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms, OJ L 338, 13.11.2004, p. 18.

² Decision 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, OJ L 49, 19.02.2004, p. 1, established under Article 9 thereof.

that the proposed cap exceeds 2005 verified emissions. The Committee called on the Commission to examine the assumptions underlying the calculation of the size of the new entrants' reserve. In this context, the Committee requested the Commission to examine the benchmarks used for new entrants as well as the rules and assumed timing for CHP³ projects. The Committee strongly called on the Commission to closely examine the design and admissibility under criterion (12) of Annex III to the Directive of the intended maximum amount of CERs⁴ and ERUs⁵ which may be used by operators as a percentage of the allocation of allowances to each installation. The views of the Climate Change Committee have been taken into account.

- (3) The national allocation plan, including the total annual average quantity of allowances of 25.2 million tonnes stated therein, 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 criteria⁶. Certain aspects of the national allocation plan have been found incompatible with those criteria, and in particular with criteria 1, 2, 3, 10 and 12 in Annex III to the Directive.
- (4) The national allocation plan contravenes criteria 1, 2 and 3 of Annex III to the Directive because the total quantity of allowances intended to be allocated is more than would be consistent with assessments of actual and projected progress made pursuant to Decision 280/2004/EC and more than would be consistent with the potential, including the technological potential, of activities covered by the Community scheme to reduce emissions. Criteria 2 and 3 provide for a methodology using the most representative emissions figures, taking into account economic growth and carbon intensity improvements. Pursuant to criterion 1, the total quantity of allowances to be allocated shall not be more than is likely to be needed for the strict application of the criteria of Annex III.
- (5) With respect to criterion 2, in the Commission's most recent assessment⁷ made pursuant to Decision 280/2004/EC, the actual greenhouse gas emissions of the sectors covered by the Community Scheme in Sweden in 2005 are reported as being 19.3 million tonnes CO₂ equivalent (hereinafter "million tonnes")⁸. These emission figures are the most reliable and accurate emissions figures for the Commission to use as a starting point for the assessment under criteria 2 and 3 because they have been reported by individual installations in Sweden falling under the Community scheme and have been independently verified pursuant to Article 15 of Directive 2003/87/EC. In addition, the figures correspond precisely to the scope of installations included by Sweden in the Community scheme in the phase 2005 to 2007. Emissions figures given by Sweden in respect of earlier years have not been independently and consistently verified with a comparably high degree of accuracy and it is not clear that they correspond precisely to the scope of installations included by Sweden in the

³ Abbreviation for combined heat and power generation.

⁴ "Certified emission reduction" pursuant to Article 3(n) of the Directive.

⁵ "Emission reduction unit" pursuant to Article 3(m) of the Directive.

⁶ Commission Communication on guidance to assist Member States in the implementation of the criteria listed in Annex III to Directive 2003/87/EC (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).

⁷ COM(2006)658 final of 27 October 2006 and Annex SEC(2006)1412 of 27 October 2006.

⁸ Chapter 3.3. of COM(2006)658 final of 27 October 2006 and Table 5 in the Annex SEC(2006)1412 of 27 October 2006. The exact figure is 19.315482 million tonnes as indicated in the Community Independent Transaction Log on 31 October 2006.

Community scheme, and thus they are less reliable. Therefore, it cannot be excluded that emissions figures reported by Sweden in respect of earlier years overstate actual emissions. A starting point, which would be calculated as the average of independently verified emissions figures from 2005 and other figures proposed by Sweden, would be likely to overstate actual emissions and would not ensure that overall allocation would not be more than is needed. As a matter of fact, the Commission takes into account in its assessment that the expansion in the scope of activities covered by Directive 2003/87/EC from the first to the second phase as applied by Sweden in line with the Commission's guidance⁹ may lead to an increase to the total quantity of allowances.

- (6) The Commission is aware of the opinion brought forward by some Member States, but not endorsed by the Climate Change Committee, in favour of averaging independently verified emissions figures with Member States' estimates of emissions over other years in order to smooth out singular events in one particular year. However, in each year there are several factors, including weather patterns, influencing aggregate emissions that generally balance each other out over one year in their effects on total annual emissions. The Commission has examined the availability and quality of other data concerning emissions and energy use prior to 2005. The Commission does not have sufficient indications that a clear majority of exceptional circumstances manifestly pointed in one direction in 2005 and that therefore 2005 verified emissions figures cannot be regarded as representative. Taking into account that the Swedish electricity generating sector relies in a sizeable manner on hydro-electric power, which is dependent on precipitation, the Commission has closely assessed precipitation patterns over the past several decades¹⁰. The Commission concludes from its analysis that the level of precipitation in the years preceding 2005 has been below a long-term average of 45 years and a short-term average of 5 years, and the level of precipitation in 2005 hardly deviates from the long-term average. Therefore, the Commission does not agree with Sweden's claim that there was considerably more precipitation than usual in 2005 but holds that the year 2005 can be regarded as a representative year with respect to precipitation. Precipitation is the most important determining factor for hydro-power production. Moreover, the Commission has assessed the filling level of Sweden's hydro power reservoirs over the past ten years¹¹ and found that the filling level in 2005 does not deviate significantly from the average during the past ten years. Therefore, the Commission maintains that also hydro-power production in 2005 can be regarded as representative, taking abstraction from other determinants like total production capacities, which have increased over time. Thus, the Commission considers that

⁹ Point 36 of COM(2005)703 final, as clarified by the "co-ordinated definitions" of additional combustion installations contained in the minutes of the Climate Change Committee of 31 May 2006.

¹⁰ Information on Sweden's precipitation levels is contained in: Global Precipitation Climatology Centre (GPCC) 2006: "Monthly data set for the global land areas (excluding Greenland and Antarctica) from 1951 to 2000 is gridded at three different resolutions (0.5° lat/lon, 1.0° lat/lon, 2.5° lat/lon) on the basis of quality controlled station data". See description in Beck, C., J. Grieser and B. Rudolf (2005): "A New Monthly Precipitation Climatology for the Global Land Areas for the Period 1951 to 2000", published in Climate Status Report 2004, pp. 181 - 190, German Weather Service, Offenbach, Germany, which can be downloaded from the following hyperlink: <http://www.dwd.de/en/FundE/Klima/KLIS/int/GPCC/Projects/VASCLimO/Results/Results.htm>. The latter source only contains data until the year 2000. More recent data has also been collected by the Global Precipitation Climatology Centre (GPCC) and has been provided to the Commission by the European Environment Agency.

¹¹ Information on the filling level of Sweden's hydro power reservoirs is contained in: Nordel, Annual Statistics, table S14, published under the following hyperlink: <http://www.nordel.org/Content/Default.asp?PageID=157>

hydro-power production could not significantly replace fossil-fuel based power production and not bring emissions below a representative level in 2005. The Commission underlines that, due to clearly below average precipitation in previous years, it is rather that emissions figures from those years cannot constitute a valid reference point for assessing whether or not 2005 figures are representative. Only the long-term average can constitute a valid reference point. Consequently, the Commission considers that there are no sufficient reasons with respect to Sweden to adjust independently verified emissions figures for 2005.

- (7) The Commission underlines that this approach is also compatible with the Commission's guidance that allocations to individual installations should not be based on changes in the emissions of those installations within the first phase¹². The determination of the total quantity of allowances, on the one hand, and the distribution of the total quantity to individual installations, on the other hand, are separate issues and subject to different considerations. Similarly, the Commission's guidance concerning the reward for early action relates to sector and installation level allocations, but not the total quantity of allowances, as is clear from the heading of the relevant chapter¹³.
- (8) With respect to criterion 3, the Commission notes that for a national allocation plan to be consistent with the potential, including the technological potential, of activities covered by the scheme to reduce emissions requires a rigorous assessment of total allocations in accordance in particular with projections of economic growth and improvements in carbon intensity¹⁴. The Commission has assessed the figures at its disposal, including those in the public domain, with a view to calculating Sweden's projected emissions. In order to derive the total quantity of allowances that is consistent with the potential, including the technological potential, of activities covered by the Community scheme to reduce emissions, the 2005 aggregate independently verified emission figures of installations in the Community scheme have been multiplied with two factors: firstly, the projected gross domestic product (thereafter "GDP") growth rate and, secondly, the rate for carbon intensity improvement, each in the period from those independently 2005 verified figures to 2010. The Commission considers 2010 to constitute a representative average of the relevant five-year period from 2008 to 2012 because 2010 is the year in the middle of this period and, in the Commission's view, it is appropriate from an *ex-ante*-perspective to assume a linear trend over this five-year period. The resulting figures are compared with Sweden's proposed allocation so as to determine to what extent it is in line with criterion 3, taking into account the expansion in the scope of activities covered by Directive 2003/87/EC from the first to the second phase as applied by Sweden in line with the Commission's further guidance¹⁵. Of all data at its disposal, including those in the public domain, the Commission considers the data indicated in the PRIMES model¹⁶ as the most accurate and reliable estimations of both GDP

¹² Chapter 3.7, point 27 of COM(2005)703 final.

¹³ Chapter 3.7, point 28 of COM(2005)703 final.

¹⁴ See in particular point 11 of COM(2005) 703 final.

¹⁵ Point 36 of COM(2005) 703 final, as clarified by the "co-ordinated definitions" of additional combustion installations contained in the minutes of the Climate Change Committee of 31 May 2006.

¹⁶ PRIMES is a modelling system that simulates a market equilibrium solution for energy supply and demand in the EU Member States. The model determines the equilibrium by finding the prices of each energy form such that the quantity producers find best to supply match the quantity consumers wish to use. The equilibrium is static (within each time period) but repeated in a time-forward path, under

growth¹⁷ and carbon intensity improvement rates. The PRIMES model has been used for analysis of energy and climate policy for a long time and the baseline assumptions¹⁸ are updated on a regular basis to reflect the most likely future trend. Furthermore, baseline assumptions are validated with the involvement of experts from Member States. The most recent baseline was published in 2006. There is no other data source at the disposal of the Commission, which offers a comparable degree of consistency and uniform accuracy across all Member States, thus ensuring equal treatment amongst Member States.

- (9) The PRIMES model has been concretely applied on the basis of a coherent set of assumptions and methodologies for the publication "*European Energy and Transport Trends*" of the Commission's Directorate-General for Transport and Energy¹⁹ and for the publication of its Environment Directorate-General containing the calculation of baseline scenarios for the revision of the National Emission Ceilings Directive²⁰. The figures for GDP and 2005 carbon intensity are identical in both publications, while for 2010 the figure for carbon intensity²¹ differs²². Where there is a low carbon constraint instead of an even less stringent one, carbon intensity will improve more over time due to the stronger incentive for operators to reduce emissions.

dynamic relationships. The model is behavioural but also represents in an explicit and detailed way the available energy demand and supply technologies and pollution abatement technologies. The system reflects considerations about market economics, industry structure, energy/environmental policies and regulation. These are conceived so as to influence market behaviour of energy system agents. The modular structure of PRIMES reflects a distribution of decision making among agents that decide individually about their supply, demand, combined supply and demand, and prices. Then the market integrating part of PRIMES simulates market clearing. PRIMES is a general purpose model. It is conceived for forecasting, scenario construction and policy impact analysis. It covers a medium to long-term horizon. It is modular and allows either for a unified model use or for partial use of modules to support specific energy studies. More information can be found on the following website: <http://www.e3mlab.ntua.gr/>.

¹⁷ The GDP growth assumptions are based on the Commission's Economic and Financial Affairs Directorate-General's forecasts of April 2005 for the short term (2004-2006) as well as the long term (2005-2030). More specifically, short terms forecasts are taken from European Commission Economic Forecasts, Spring 2005 (EUROPEAN ECONOMY. No. 2/ 2005. Office for Official Publications of the EC.ISBN92-894-8881-6), also published on the website: http://europa.eu.int/comm/economy_finance/publications/european_economy/2005/ee205en.pdf. Long-term forecasts are taken from European Commission, DG ECFIN "Long Run Labour Productivity and Potential Growth Rate Projections For the EU25 countries up to 2050 (information note for Members of the EPC's working group an ageing populations)", ECFIN/50485/04-EN.

¹⁸ Examples for baseline assumptions are future developments in population, fuel prices, etc.

¹⁹ 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

²⁰ Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants. The baseline scenarios are published on the Commission's website under the following hyperlink: <http://ec.europa.eu/environment/air/baseline.htm>

²¹ "Carbon intensity" can be defined in various ways and is for the purpose of this Decision understood as the relationship between CO₂ emissions and a unit of GDP (see below for precise definition).

²² Due to the effect of the introduction of a low carbon constraint, the carbon intensity in 2010 is improved in the "low carbon constraint"-scenario in the publication containing the calculation of baseline scenarios for the revision of the National Emission Ceilings Directive, whereas the scenario established in the publication "*European Energy and Transport Trends*" is based on an even less stringent carbon constraint.

- (10) The introduction of the Community scheme in 2005 and the strong commitments by the EU and Member States to combat climate change provide a clear and sustained signal to installations covered by the Community scheme that there is an economic cost to emitting greenhouse gases, which will become even more important in the future. This reinforces long-term economic incentives to reduce emissions. As a consequence, carbon intensity will improve over time at least at a rate as indicated in the "low carbon constraint / no CCS"-case²³.
- (11) The Commission considers that this level of carbon intensity improvement does not appropriately reflect most likely future trends because it does not take account of all relevant factors, including recent developments. In addition to the economic incentives created by the Community scheme, operators will be likely to increasingly invest in energy efficient technologies in order to lower their fuel and electricity costs. Moreover, they will increasingly be encouraged by policies and measures of the EU and Member States as well as public opinion to accelerate efforts with regard to innovation in energy saving production methods and thus take effective action against climate change. At EU level, collective efforts to reduce dependency of energy imports as well as measures identified in the new Energy Efficiency Action Plan²⁴ with a view to realising the EU's energy saving potential, will further spur efforts to achieve better energy efficiencies, reducing in general also carbon intensity.
- (12) The Commission considers that the combined effect of reinforced energy efficiency measures identified in the Energy Efficiency Action Plan and the existence of a carbon constraint due to the Community scheme will lead to an annual improvement rate in carbon intensity for each Member State in excess of the rate reflected in the "low carbon constraint"-case. Consequently, the Commission considers it necessary to further improve the absolute value of carbon intensity arising from the "low carbon constraint"-case. While the "low carbon constraint" under the Community scheme leads at EU level to an average annual improvement rate in carbon intensity of 2.37%²⁵, the Commission considers that the magnitude and importance of additional measures identified in the new Energy Efficiency Action Plan justifies in principle assuming a similar quantitative effect for the latter. Recognising however the potential partial overlaps between both policy instruments and also that not all the measures identified in the Energy Efficiency Action Plan may be fully implemented by 2010, the Commission considers that the corresponding additional average annual rate for

²³ Taking into account that carbon capture and sequestration ("CCS") is highly unlikely to already be available to a significant extent during the period 2008-12. The "low carbon constraint / no CCS"-scenario for the respective Member State is published on the Commission's website under the following hyperlink: <http://ec.europa.eu/environment/air/baseline.htm>. Both relevant figures are indicated for the respective Member State on the sheet "Summary Energy Balance and Indicators (B)" under "Main Energy System Indicators". Under this heading, the figures for "GDP (in 000 MEUR'00)" are indicated in the second row, and the figures for "CO2 emissions to GDP (t of CO2/MEUR'00)", which the Commission considers the adequate expression of carbon intensity for its assessment, are indicated in the second last row.

²⁴ Commission Communication on an Action Plan for Energy Efficiency: Realising the Potential (COM(2006)545 final).

²⁵ As indicated in the "low carbon constraint"-case for "EU25" in the baseline scenarios for the revision of the National Emission Ceilings Directive under <http://ec.europa.eu/environment/air/baseline.htm>, the absolute figure for the EU's absolute carbon intensity in 2005 is 391.0 tonnes per million Euro GDP (in year 2000 value). For 2010, the corresponding figure is 346.8 tonnes per million Euro GDP. Therefore, the total improvement in the period from 2005 to 2010 can be calculated as $346.8/391$, which gives 0.887 or 11.3%. The EU's annual average carbon intensity improvement rate is calculated as $(346.8/391)^{(1/5)}$, which gives 0.9763 or 2.37%.

carbon intensity improvements should be adjusted downwards. More specifically, in order to exclude any potential overestimation of the total effects, the Commission takes a conservative estimate of an additional average annual rate of 0.5% for carbon intensity to improve further, which corresponds to a total additional carbon intensity improvement of 2.5%²⁶ over the entire period from 2005 to 2010 compared to the "low carbon constraint"-case. Therefore, in order to appropriately reflect reality, the Commission considers it necessary to base the assessment under criterion 3 in Annex III to the Directive on a rate of carbon intensity improvement exceeding the "low carbon constraint"-case by 2.5% during the five-year period from 2005 to 2010.

- (13) In the light of the above, the following table indicates the data for the developments from 2005 to 2010 of both GDP and carbon intensity in Sweden in absolute terms. The corresponding relative development factors and growth rates from 2005 to 2010 are also indicated:

Calculation element	2005	2010	Relative development factor 2005-2010	Growth rate 2005-2010
GDP ²⁷	289.8	337.7 ²⁸	1.165286 ²⁹	16.5286% ³⁰
Carbon intensity ³¹ under the "low carbon constraint"-case	181.7	169.7		
Carbon intensity with additional improvement of 2.5%		165.457 ³²	0.910608 ³³	-8.9392% ³⁴

On the basis of this, the following table shows the calculation of the annual excess allocation for the period from 2008 to 2012, i.e. the difference between the annual average allocation proposed by Sweden and the allocation resulting from the strict

²⁶ $1.005^5 = 1.02525$, which corresponds to 2.5% (after rounding).

²⁷ This figure is expressed in thousand million Euro value year 2000.

²⁸ The Commission's Economic and Financial Affairs Directorate-General released in November 2006 its "Economic Forecasts Autumn 2006", published in EUROPEAN ECONOMY. No. 5/2006, Office for Official Publications of the EC, ISSN 0379-0991, and on the Commission's website under the following hyperlink: http://ec.europa.eu/economy_finance/publications/european_economy/2006/ee506en.pdf. In order to take into account these most recent figures available to the Commission, the GDP figure for 2010 indicated in the above-mentioned publications "European Energy and Transport Trends" and the one for the calculation of baseline scenarios for the revision of the National Emission Ceilings Directive has been adapted as follows: In a first step, the average annual GDP development factor from 2005 to 2010 is calculated on the basis of the figures contained in the publication "European Energy and Transport Trends", i.e. $(329.1/289.8)^{1/5}$, which gives 1.025760. In a second step, this annual average development factor is replaced by the more recent development factors from the "Economic Forecasts Autumn 2006" for those years, for which they are available (see p. 102 therein), i.e. the years 2006 (factor of 1.04), 2007 (factor of 1.033) and 2008 (1.031). For the years 2009 and 2010, the average annual development factor as calculated in the first step is taken. In a third step, the overall development factor from 2005 to 2010 is calculated by multiplying the indicated annual development factors, i.e. $1.04 * 1.033 * 1.031 * 1.025760 * 1.025760$.

²⁹ $337.7/289.8$

³⁰ $((337.7/289.8) - 1) \%$

³¹ This figure is expressed in terms of CO₂ Emissions to GDP (tonne of CO₂/million Euro value year 2000).

³² $169.7 * (1 - 0.025)$

³³ $169.7 * (1 - 0.025) / 181.7$

³⁴ $((169.7 * (1 - 0.025) / 181.7) - 1) \%$. The negative figure indicates an improvement in carbon intensity, meaning that the amount of CO₂ emitted to produce one unit of GDP decreases over time.

application of criteria 2 and 3. Concretely, the latter is calculated as the product of the total 2005 verified emissions figure (increased by a correction for remaining 21 non-verified installations in 2005³⁵) and the relative development factors of GDP and carbon intensity from 2005 to 2010, as indicated in the above table. In addition, the resulting amount is increased to take into account the effect from the increase in scope from the first to the second trading phase in line with the Commission's guidance, while using the overall figure envisaged by Sweden to be allocated to these additional installations concerned:

Calculation of the annual excess allocation for the period from 2008 to 2012 (all figures in million tonnes CO2 eq.)						
2005 verified emissions	correction taking into account average allocated to remaining non-verified installations in 2005-07	2005 verified emissions multiplied by relative development factors 2005-2010 for GDP and carbon intensity	effect from increase in scope from 1 st to 2 nd phase	Resulting allowed annual average total quantity from 2008-2012	Annual average allocation on basis of proposed national allocation plan	Annual average excess allocation
19.315482	0.28876	20.802439 ³⁶	2	22.802439 ³⁷	25.2	2.397561 ³⁸

Accordingly, given that in the years 2008 to 2012 proposed allocations exceed emissions taking into account GDP growth, carbon-intensity improvements and the effect from the increase in scope as indicated in the table, the Commission finds that the annual average excess allocation by Sweden in the period 2008 to 2012 amounts to 2,397561 million tonnes, which contravenes criteria 1, 2 and 3.

- (14) Sweden has proposed to include 2 million tonnes of allowances in the total quantity in respect of emissions of these additional combustion installations annually, which have not been included in the first period plan. Allocations to these installations need to take place in accordance with the general methodologies stated in the national allocation plan, and only take place to the extent that the emissions of these installations have been substantiated and verified.
- (15) Pursuant to criterion 5 of Annex III to the Directive, the Commission has also examined compliance of the national allocation plan of Sweden 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 appears to be imputable to the Member State and to entail the use of State resources to the extent that more than 90% of allowances are given for free. The aspects of imputability and State resources are further strengthened in the second trading period as the participation as of 2008 in international emissions trading and in the other flexible mechanisms, the Joint Implementation and the Clean Development Mechanism,

³⁵ This correction is approximated by the size of the average annual allocation of these installations during the period from 2005 to 2007.

³⁶ $(19.315482 + 0.288760) * 1,165286 * 0.910608$

³⁷ $(19.315482 + 0.288760) * 1,165286 * 0.910608 + 2$

³⁸ $25.2 - 22,802439$

enables the Member States to take further discretionary decisions influencing their budgets and the number of EU allowances granted to industry. In particular, as all allocations must as from the start of the second trading period be covered by Assigned Amount Units³⁹, which are tradable between contracting parties, any allocation directly reduces the quantity of Assigned Amount Units that the Member State can sell to other contracting parties or increases the need to buy such Assigned Amount Units. The Commission therefore at this stage considers that the plan could potentially imply State aid pursuant to Article 87(1) of the Treaty. On the basis of information provided by Sweden, the Commission at this stage cannot consider with certainty that any potential aid granted under the national allocation plan is consistent with and is necessary to achieve the overall environmental objective of the Directive. Non-compliance with criteria 1, 2 and 3 fundamentally jeopardises the overall environmental objective of the emission trading scheme. The Commission considers that in such a case the environmental benefit of any aid included in the allowances may not be sufficient to outweigh the distortion of competition referred to above. The Commission notes in particular that an allocation exceeding projected emissions will not require beneficiaries to deliver an environmental counterpart for the benefit they receive. 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 Articles 87 and 88 of the Treaty.

- (16) Pursuant to criterion 5 of Annex III to the Directive, the Commission has also examined the methodology by which Sweden intends to allocate allowances at sector and installation level. The Commission notes in particular that allocations are partially based on an assessment of output forecasts pursued by national authorities at installation level. However, the role of independent experts involved in the determination of the final allocation appears to be rather limited and Sweden has not clarified which variables will be taken into account and whether that will be done in a systematic way. Therefore, due to the lack of sufficient safeguards, the proposed allocation methodology may lead to undue and discriminatory advantages to certain sectors or installations. For these reasons, the Commission at this stage and on the basis of the currently available information cannot exclude that State aid involved in the allocations may partially be found incompatible with the common market should it be assessed in accordance with Articles 87 and 88 of the Treaty.
- (17) The list of installations set out in the national allocation plan is incomplete and therefore contravenes criterion 10 since it does not include the quantities of allowances intended to be allocated to each installation situated within the territory of Sweden, to which Directive 2003/87/EC applies, and those combustion installations mentioned in point 36 of the Commission's guidance⁴⁰.
- (18) 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 Sweden's complementarity obligations under the Kyoto Protocol and decisions adopted pursuant to the UNFCCC or the Kyoto

³⁹ Article 45 of the Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council, OJ L 386, 29.12.2004, p. 1.

⁴⁰ COM(2005)703 final.

Protocol. Decision 2/CMP.1⁴¹ 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 the absence of a quantified figure for supplementarity, the Commission applies a formula which takes into account the effort undertaken by each Member State, which is 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.

- (19) In application of this method, Sweden has no effort to undertake⁴² so 50% of the effort undertaken is zero million tonnes, which constitutes the maximum absolute amount for use by operators per year permitted for Sweden. Consequently, the relative maximum figure for use by operators, which is obtained by dividing the absolute amount of zero by the allowed total quantity of allowances of 22.27268 million tonnes, would be 0%. In other words, Sweden would not be entitled to any use by operators of Kyoto units. However, the Commission recognises 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. 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 20%, as indicated in Sweden'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 Sweden's supplementarity obligations under the Kyoto Protocol and decisions adopted pursuant to the UNFCCC or the Kyoto Protocol, only to the extent that it exceeds 10%.

⁴¹ 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.

⁴² Sweden's Kyoto commitment, expressed in absolute figures, is 75.4 million tonnes. Base year emissions are 72.5 million tonnes, 2004 emissions are 69.9 million tonnes and 2010 projected emissions with existing policies and measures are 71.5 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 first emissions figure being the highest of these three alternatives, the relevant effort with respect to the Kyoto commitment is -2.9 million tonnes, i.e. Sweden undertakes no effort.

- (20) 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 Sweden as soon as possible, taking into account the time-scale necessary to carry out the national procedures without undue delay. Were Sweden to amend its national allocation plan in a non-discriminatory manner in accordance with Article 2 of this Decision and duly taking into account the Commission's observations in recital 16, the Commission considers that any potential aid is likely to be compatible with the common market should it be assessed in accordance with Articles 87 and 88 of the Treaty.
- (21) Information in the national allocation plan not relevant for the allocation of allowances for the period referred to in Article 11(2) of Directive 2003/87/EC has not been taken into account for the purposes of this Decision.
- (22) 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 280/2004/EC are important sources of information for the evaluation of the national allocation plans pursuant to criterion 2 of Annex III to Directive 2003/87/EC.
- (23) Pursuant to Article 9(3), second sentence, of the Directive, the Member State shall only take a decision under Article 11(2) of the Directive if proposed amendments are accepted by the Commission. The Commission 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 Commission 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 or Article 10 of the Directive. Similarly, decreasing the share of allocation of allowances free of charge within the limits set in Article 10 of the Directive is accepted, since it requires no prior assessment by the Commission. The Commission considers that such a decrease cannot *per se* be conceived to discriminate between companies or sectors in such a way as to unduly favour certain undertakings or activities in the light of criterion 5 or contravene any other criteria of Annex III to the Directive.
- (24) 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 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.
- (25) Accordingly, Member States are not entitled to propose any amendments to national allocation plans, including to the total quantity of allowances stated therein, after the deadline of 31 December 2006 specified in Article 11(2) of the Directive, other than those foreseen in the respective Commission decision on a national allocation plan⁴³.

⁴³ 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

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 national allocation plan of Sweden for the first five-year period mentioned in Article 11(2) of Directive 2003/87/EC are incompatible respectively with:

1. criteria 1, 2 and 3 of Annex III to the Directive: the part of the intended total quantity of allowances, amounting to 2.397561 million tonnes CO₂eq per year, that is not consistent with assessments made pursuant to Decision 280/2004/EC and not consistent with the potential, including the technological potential, of activities to reduce emissions; in addition, the part of the total quantity potentially amounting to 2 million tonnes of allowances in respect of additional emissions of combustion installations annually to the extent that this is not justified in accordance with the general methodologies stated in the national allocation plan and on the basis of substantiated and verified emission figures;
2. criterion 10 of Annex III to the Directive: the lack of a complete list of all installations with the quantities of allowances intended to be allocated to each installation situated within the territory of Sweden, to which Directive 2003/87/EC applies, and with those combustion installations mentioned in point 36 of the Commission's guidance COM(2005)703 final;
3. criterion 12 of Annex III to the Directive: the maximum overall amount of CERs and ERUs of 20% which may be used by operators in the Community scheme as a percentage of the allocation of the allowances to each installation that is inconsistent with Sweden'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%.

Article 2

No objections shall be raised to the national allocation plan, provided that the following amendments to the national allocation plan are made in a non-discriminatory manner and notified to the Commission as soon as possible, taking into account the time-scale necessary to carry out the national procedures without undue delay:

1. the total quantity to be allocated for the Community scheme is reduced by 2.397561 million tonnes CO₂eq of allowances per year; and the quantities allocated to

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.

additional combustion installations are determined in accordance with the general methodologies stated in the national allocation plan and on the basis of substantiated and verified emission figures, with the total quantity being further reduced by any difference between the allocations to these installations and the 2 million tonnes set aside annually for these installations;

2. a complete list of all installations covered by the Directive in Sweden will be provided with the quantities of allowances intended to be allocated to each installation;
3. 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 reduced to no more than 10%.

Article 3

1. The total annual average quantity of allowances of 22.802439 million tonnes, reduced by any difference between the allocations to additional combustion installations and the 2 million tonnes set aside annually for these installations, to be allocated by Sweden according to its national allocation plan to installations listed therein and to new entrants 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 to be allocated to installations listed therein resulting from improvements to data quality or to reduce the share of the allocation of allowances free of charge within the limits set in Article 10 of the Directive.
3. Any other amendments of the national allocation plan, apart from those made to comply with Article 2 of this Decision, must be notified by the deadline of 31 December 2006 referred to in Article 11(2) of the Directive and require prior acceptance by the Commission pursuant to Article 9(3) of the Directive.

Article 4

This Decision is addressed to Sweden.

Done at Brussels, 29 November 2006

For the Commission