



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 United Kingdom in accordance with Directive 2003/87/EC of the European Parliament and of the Council

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(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) thereof,

Whereas:

- (1) The national allocation plan of the United Kingdom 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 28 August 2006 and registered by the Commission on 30 August 2006. The United Kingdom submitted additional information on the notified plan by letter dated 3 October 2006, registered on 9 October 2006, in reply to questions from the Commission. Furthermore, the United Kingdom submitted additional information amending the notified plan by letter dated 6 November 2006, registered on 13 November 2006.
- (2) The Climate Change Committee² considered the national allocation plan on 22 September 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

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.

Commission to take into account the importance of preserving the integrity of the internal market and to avoid undue distortions of competition. The Committee called on the Commission to scrutinise the establishment of the total cap and the evolution of growth rates assumed in different sectors throughout phase 1 and phase 2, to examine the assumptions underlying the calculation of the size of the new entrants' reserve and to scrutinise its correct application. The views of the Climate Change Committee have been taken into account.

- (3) The national allocation plan, including the total average annual quantity of allowances of 246.2 million tonnes stated therein, as amended by the additional information submitted by letter dated 6 November 2006, has been evaluated against the criteria in Annex III to and Article 10 of the Directive, taking into account the Commission Communication on guidance to assist Member States in the implementation of these criteria³. Certain aspects of the national allocation plan have been found incompatible with those criteria, and in particular with criterion 10 in Annex III to the Directive.
- (4) Pursuant to criterion 5 of Annex III to the Directive, the Commission has examined compliance of the national allocation plan of the United Kingdom 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, 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 Units⁴, 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 the information provided by the United Kingdom, the Commission at this stage cannot consider with certainty that the final allocation pursuant to the methodology notified in the national allocation plan will not unduly favour certain sectors or installations. The Commission notes in particular that the United Kingdom informed the Commission that it intends to correct the notified national allocation plan in respect to new entrants reserve and the overall quantities of allowances allocated to the sectors. The United Kingdom intends also to reduce the new entrants reserve for Combined Heat and Power. The results of the intended changes have not been presented to the Commission and also

³ 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).

⁴ 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.

the analysis and justification for these changes is unknown or insufficient, which contrasts to the elaborate studies used for the original version of the national allocation plan notified to the Commission. For these reasons, the Commission at this stage cannot exclude that any aid involved in the final allocation to installations is incompatible with the common market should it be assessed in accordance with Articles 87 and 88 of the Treaty.

- (5) The list of installations set out in the national allocation plan, as amended by the additional information submitted by letter dated 6 November 2006, is incomplete and therefore contravenes criterion 10 since it does not include installations with the quantities of allowances intended to be allocated to each situated within the territory of Gibraltar, to which the Directive applies.
- (6) In order to bring the national allocation plan in conformity with the criteria listed in Annex III to the Directive, the plan should be amended in accordance with Article 2 of this Decision, duly taking into account also the Commission's observations in recital 4. The Commission should be notified of the amendments made to the plan in accordance with this Decision by the United Kingdom as soon as possible, taking into account the time-scale necessary to carry out the national procedures without undue delay.
- (7) 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 the Directive.
- (8) 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.
- (9) 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 are 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.
- (10) 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 required by the respective Commission decision on a national allocation plan⁵. 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 aspect of the national allocation plan of the United Kingdom for the first five-year period mentioned in Article 11(2) of the Directive is incompatible with criterion 10 of Annex III to the Directive: concerning the listing of installations, the failure to specify installations situated within the territory of Gibraltar and the quantities of allowances intended to be allocated to each such installation.

Article 2

No objections shall be raised to the national allocation plan, provided that the following amendment to the national allocation plan is 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: the installations situated within the territory of Gibraltar and the quantities of allowances intended to be allocated to them are listed; those quantities being determined taking into account independently verified emissions and changes in production and carbon intensity that are reasonably anticipated.

Article 3

1. The total average annual quantity of allowances of 246.2 million tonnes to be allocated by the United Kingdom according to its national allocation plan to installations listed therein and to new entrants in the territory covered therein 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.

⁵ 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.

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 3

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 29 November 2006

For the Commission