COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.1.2007

COMMISSION DECISION

of 16 January 2007

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

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(Only the Dutch 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/EC[1], and in particular Article 9(3) thereof,

Whereas:

(1) The national allocation plan of The Netherlands 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 September 2006, registered on 29 September 2006, and supplemented by letters dated 13 and 19 October 2006, respectively registered by the Commission on 17 and 23 October 2006. The Netherlands submitted additional information on the notified plan by letter dated 15 December 2006, registered on 22 December 2006, in reply to questions from the Commission.

(2) The Climate Change Committee[2] considered the national allocation plan 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

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[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.

distortions of competition. The Climate Change Committee noted with concern that the proposed cap exceeds 2005 verified emissions. *Inter alia*, the Committee called on the Commission to compare the proposed allocation to The Netherlands' projections and measures for the non-trading and trading sectors. The Committee also called on the Commission to examine the proposed approach to small installations, including the application by The Netherlands of the so-called aggregation rule contained in Annex I to the Directive. The Committee asked the Commission to examine the admissibility of reallocating one third of the 15% reduction for electricity producers to other EU ETS installations as to whether this will result in an over-allocation to those installations and whether this could constitute a State aid. The Committee urged the Commission to closely examine The Netherlands' ability to substantiate its intended use of the Kyoto mechanisms to reach its target under Decision 2002/358/EC and to examine the admissibility under criterion (12) of Annex III to the Directive of the intended maximum amount of CERs[3] and ERUs[4] 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 Commission notes that The Netherlands' annual Kyoto commitment for the period from 2008 to 2012 is 201.44 million tonnes CO2 equivalent (hereinafter "million tonnes"), while the most recent available figure for its annual total greenhouse gas emissions is 217.8 million tonnes for the year 2004[5]. The remaining gap between these two annual figures to be bridged by The Netherlands is therefore 16.36 million tonnes.

(4) The national allocation plan, including the total average annual quantity of allowances of 90.4 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 criteria[6]. Certain aspects of the national allocation plan have been found incompatible with those criteria, and in particular with criteria 1, 2, 3, 5, 10 and 12 in Annex III to the Directive.

(5) 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.

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

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

5 Progress Report COM(2006)658 final of 27 October 2006, Table 1 in the Annex SEC(2006) 1412 of 27 October 2006. The annual Kyoto commitment for the period from 2008 to 2012 expressed in absolute figures is obtained by multiplying base year emissions (second column of Table 1) with the relative Kyoto commitment (seventh column of Table 1), i.e. 214.3*(1-0.06)= 201.44. In mathematical terms, The Netherlands's relative commitment of -6% is expressed as a factor of (1-0.06). Annual total greenhouse gas emissions for the year 2004 are indicated in the third column.

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).

(6) With respect to criterion 2, in the Commission's most recent assessment[7] made pursuant to Decision 280/2004/EC, the actual greenhouse gas emissions of the sectors covered by the Community Scheme in The Netherlands in 2005 are reported as being 80.4 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 The Netherlands falling under the Community scheme and have been independently verified pursuant to Article 15 of the Directive. In addition, taking into account adjustments made to reflect changes to the coverage of installations from the first to the second trading phase, the figures correspond to the scope of installations included by The Netherlands in the Community scheme in the phase 2005 to 2007. Emissions figures given by The Netherlands 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 as closely to the scope of installations included by The Netherlands in the Community scheme, and thus they are less reliable. Therefore, it cannot be excluded that emissions figures reported by The Netherlands 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 The Netherlands, would be likely not to truly represent actual emissions and would not ensure overall allocation not to be more than is needed. In this context, the Commission notes that The Netherlands have adjusted the scope of activities covered by the Directive from the first to the second phase in line with the Commission's guidance[9].

(7) 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. Consequently, the Commission considers that there are no sufficient reasons with respect to The Netherlands to adjust independently verified emissions figures for 2005.

(8) 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 phase[10]. 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

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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 80.351292 million tonnes as indicated in the Community Independent Transaction Log on 31 October 2006.

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

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 chapter[11].

(9) 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 intensity[12]. The Commission has assessed the figures at its disposal, including those in the public domain, with a view to calculating The Netherlands' 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 The Netherlands' proposed allocation so as to determine to what extent it is in line with criterion 3, taking into account that The Netherlands have adjusted the scope of activities covered by the Directive from the first to the second phase in line with the Commission's further guidance[13]. Of all data at its disposal, including those in the public domain, the Commission considers the data indicated in the PRIMES model[14] as the most accurate and reliable estimations of both GDP growth[15] and carbon intensity improvement rates. The PRIMES model has been used

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

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

13 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.

14 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 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/.

15 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

for analysis of energy and climate policy for a long time and the baseline assumptions[16] 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 recently updated 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 of Member States.

(10) 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 Energy[17] and for the publication of its Environment Directorate-General containing the calculation of baseline scenarios for the revision of the National Emission Ceilings Directive[18]. The figures for GDP and 2005 carbon intensity are identical in both publications, while for 2010 the figure for carbon intensity[19] differs[20]. 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.

(11) 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"-case[21].

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.

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

17 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, The Netherlands, 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

18 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

19 "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).

20 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.

21 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'OO)", which the Commission considers the adequate expression of carbon intensity for its assessment, are indicated in the second last row.

(12) 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 Plan[22] 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.

(13) 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%[23], 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 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%[24] 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.

(14) 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 The Netherlands in absolute terms. The corresponding relative development factors and growth rates from 2005 to 2010 are also indicated:

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22 Action Plan for Energy Efficiency: Realising the Potential, Communication from the Commission, COM(2006)545 final

23 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%.

24 1.005↑5=1.02525, which corresponds to 2.5% (after rounding).

Calculation element	2005	2010	Relative development factor 2005-2010	Growth rate 2005-2010
GDP[25]	416.6	472.7[26]	1.134662[27]	13.4662%[28]
Carbon intensity[29]	412.2	379.4		
Carbon intensity with additional improvement of 2.5%		369.915[30]	0.897416[31]	-10.2584[32]

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 The Netherlands and the allocation resulting from the strict application of criteria 2 and 3. Concretely, the latter is calculated as the product of the total 2005 verified emissions figure for installations included in the period 2008-2012[33] [34] and the relative development factors of GDP and carbon intensity from 2005 to 2010, as indicated in the above table:

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

26 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. (463.3/416.6)↑(1/5), which gives 1.021477. 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. 87 therein), i.e. the years 2006 (factor of 1.030), 2007 (factor of 1.029) and 2008 (factor of 1.026). 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. 1.030*1.029*1.026*1.021477*1.021477.

27 472.7/416.6

28 ((472.7/416.6)-1)%

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

30 379.4*(1-0.025). The additional improvement of 2.5% is mathematically expressed with the factor of (1-0.025).

31 379.4*(1-0.025)/412.2

32 ((379.4*(1-0.025)/412.2)-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.

33 The figure for verified 2005 emissions of existing installations included in the first phase national allocation plan has, in a first step, been increased by the figure for verified 2005 emissions of installations temporarily excluded pursuant to Article 27 of the Directive ("opted out") in the first phase national allocation plan and included in 2008-2012 and, in a second step, been decreased by the figure for verified 2005 emissions of installations included in the first phase national allocation plan and intended to be excluded in 2008-2012. This gives the figure for 2005 verified emissions of installations included in the period 2008-2012, which is the appropriate starting point for calculating the allocation for the period 2008-2012.

34 As all installations in The Netherlands have been verified in 2005, there is no need for a further correction factor.

Calculation of the annual excess allocation for the period from 2008 to 2012 (all figures in million tonnes CO2 eq.)							
2005 verified emissions of existing installations included in first phase national allocation plan	2005 (verified) emissions of installations opted-out[35] or other-wise not included[36] in first phase national allocation plan and included in 2008-2012	2005 verified emissions of installations included in first phase national allocation plan and intended to be excluded in 2008-2012	2005 verified emissions of installations included in the period 2008-2012	2005 verified emissions multiplied by relative development factors 2005-2010 for GDP and carbon intensity	Resulting allowed annual average total quantity from 2008-2012	Annual average allocation on basis of proposed national allocation plan	Annual average excess allocation
80.351292	6.815	2.892	84.274292[37]	85.813458[38]	85.813458[39]	90.4	4.586542[40]

Accordingly, given that in the years 2008 to 2012 proposed allocations exceed emissions taking into account GDP growth and carbon-intensity improvements, the Commission finds that the annual average excess allocation by The Netherlands in the period 2008 to 2012 amounts to 4.586542 million tonnes, which contravenes criteria 1, 2 and 3.

(15) The Netherlands has proposed to include 0.751 million tonnes of allowances of 74 installations in the total quantity in respect of emissions of additional installations annually, which have not been included in the first phase plan. 2005 emissions of these installations have so far only partially been verified. 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.

(16) The national allocation plan of The Netherlands also contravenes criterion 1 of Annex III to the Directive because the total quantity of allowances to be allocated according to the national allocation plan is inconsistent with achieving The Netherlands' commitment under Decision 2002/358/EC and the Kyoto Protocol. The total quantity of allowances is considered to be more than is likely to be needed for the strict application of criterion 1 because the intended use by The Netherlands of other policies and measures in sectors not covered by the Directive is insufficiently substantiated. Member States must substantiate intentions to use such policies and measures, and the Commission assessment is based in a cumulative manner in particular on the indication of implemented and additional policies and measures, the

35 Concerns 6.064 million tonnes of emissions, which have been verified.
36 Concerns 0.751 million tonnes of emissions, which have only partially been verified, of 74 installations.
37 80.351292+6.815-2.892=84.274292
38 84.274292*1.134662*0.897416
39 84.274292*1.134662*0.897416
40 90.4-[84.274292*1.134662*0.897416]

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 effects[41].

(17) The following table contains specification and quantification of individual policies and measures, which the Commission finds to be insufficiently substantiated, and indicates the reasons:

Policy or measure concerned	Quantification of insufficiently substantiated part (in million tonnes CO2eq., based on figures provided by The Netherlands)	Reasons for insufficient substantiation
Transport: Substitution from conventional fuels through 5.75% bio-fuels and other measures such as purchase tax deduction and The New Driving Force.	2.3 Mt	The Netherlands has not provided sufficient information on assumptions and methodologies used for the quantification of the effects of the increased use of bio-fuels up to 5.75% in 2010, the purchase tax deduction measure and the New Driving Force. But The Netherlands has not demonstrated the effectiveness of these additional measures.
Built environment	0.3 Mt	The Netherlands has not provided sufficient information and assumptions and methodologies used for the quantification of the effects of the additional measures in the built environment.
Total	2.6 Mt	

(18) As indicated in the table and in the preceding recital, the total amount, with respect to which policies and measures are insufficiently substantiated, is the sum of 2.6 million tonnes per year during the period referred to in Article 11(2) of the Directive. By this amount, the Commission lacks sufficient reassurance that The Netherlands will achieve its Kyoto commitment unless increased efforts are made. These increased efforts to be made by The Netherlands need to take place in the sectors covered by the Directive or those not covered. As The Netherlands has not sufficiently demonstrated to the Commission that it can make these increased efforts solely in the sectors not covered by the Directive, the sectors covered by the Directive need to carry at least a proportionate burden, measured by the relative size of 36.915% of their emissions covered by the Directive with respect to overall greenhouse gas emissions[42]. This leads to a necessary reduction of 0.95979[43] million tonnes per year to be borne by the sectors covered by the Directive, by which amount the total quantity of allowances for

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41 As stated in paragraph 20 and Annex 6 of the Commission's guidance COM(2005)703 final.

42 More specifically, the trading sector's share is most accurately calculated as 2005 verified emissions for the trading sector divided by 2004 total greenhouse gas emissions according to the Progress Report COM(2006)658 final of 27 October 2006 and Table 5 in the Annex SEC(2006)1412 of 27 October 2006, i.e. 80.4/217.8.

43 2.6*0.36915

these sectors thus needs to be reduced, as a part of the above-mentioned overall reduction required by criteria 1, 2 and 3.

(19) Pursuant to criterion 5 of Annex III to the Directive, the Commission has also examined compliance of the national allocation plan of The Netherlands 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 Units[44], 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 The Netherlands, 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.

(20) Pursuant to criterion 5 of Annex III to the Directive, the Commission has also examined the methodology by which the Netherlands intends to calculate allowances at installation level. The proposed methodology contravenes this criterion in two ways. The first way relates to the foreseen redistribution of one third of the allowances taken from the allocation to the energy generating sector to installations in other sectors to counter advantages to the former sector stemming from the introduction of the emissions trading scheme. The redistribution is based on electricity purchases, so installations with similar emissions would get different allocations because of different levels of electricity purchases. This favourable treatment of installations with higher electricity purchases must be considered as undue. Electricity purchases are unrelated

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[44] 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.

to the beneficiaries' own emissions. Such favourable treatment does not serve the environmental objective of the Directive. Instead, a redistribution based on electricity purchases provides a bonus for such purchases and rather negative environmental effects can be expected. It is also likely to distort competition between Member States, notably in sectors where electricity purchases form a relatively large part of total production costs. There is no justification for basing the redistribution on this criterion, which could lead to a different assessment.

(21) The second way in which the proposed methodology contravenes criterion 5 stems from the fact that for certain installations, despite the application of a compliance factor, it leads to an allocation beyond expected needs, resulting from three features of the allocation methodology. First, the energy efficiency factor with a maximum of 1.15 can increase the allocations otherwise calculated. Second, historical emissions are calculated on the basis of three years out of a five-year period. The relevant three years are selected by the benefiting companies, which are likely to exclude the two years with 'exceptionally' low emissions and therefore the calculated average is likely to be higher than what is representative for emissions under average operating conditions. Third, installations in the industry receive the above mentioned additional allocation following the redistribution of allowances obtained from the power generating sector. For the installations concerned, this allocation beyond expected needs contravenes criterion 5, since the favourable treatment of installations by means of applying a high energy efficiency factor, of installations with unrepresentative historical emission data and of installations outside the energy sector can be justified only to the extent that the allocations remain at or below expected needs. The allocation beyond expected needs constitutes an undue selective advantage and cannot be justified by the wish to put the responsibility for emission reductions on those installations with the best potential to do so. It is also likely to distort competition. There is no justification for this allocation beyond expected needs as designed in the national allocation plan which could lead to a different assessment. The allocation beyond expected needs could be avoided, for instance, by applying more moderate factors or by auctioning a greater part of the allocation.

(22) According to the Netherlands, the energy efficiency factor would accommodate early action in accordance with criterion 7 of Annex III to the Directive. This argument is, however, irrelevant. First of all, the factor relates to agreements that concern recent and future actions rather than early actions. Second, the wish to accommodate early action does not justify an allocation beyond expected needs.

(23) For these reasons, the Commission considers that the plan discriminates between companies or sectors in such a way as to unduly favour certain undertakings or activities and therefore contravenes criterion 5. Moreover, the Commission at this stage cannot exclude that any aid involved in the redistribution of the allowances obtained by reducing the allocation to the energy sector, may be found incompatible with the common market should it be assessed in accordance with Articles 87 and 88 of the Treaty. Likewise, the Commission comes to the same conclusion with respect to the allocation beyond expected needs resulting from applying the energy efficiency factor, using non-representative historical emissions data and adding the redistribution of allowances obtained from the power generating sector.

(24) The list of installations set out in the national allocation plan is incomplete and therefore contravenes criterion 10 of Annex III to the Directive since it does not include all relevant combustion installations where one operator carries out several

activities, to which the Directive applies, falling under the same subheading on the same site with the quantities of allowances intended to be allocated to each situated within the territory of The Netherlands. Pursuant to point 2, second sentence, of Annex I to the Directive ("aggregation rule"), The Netherlands is required to add together the capacities of activities where one operator carries out several activities falling under the same subheading in the same installation or on the same site. Contrary to that, The Netherlands proposes in the national allocation plan[45] not to include "*installations from non-designated sectors that within their boundaries do not have any combustion unit at all that exceeds 20 MWth but where the 20 MWth is in fact exceeded in total within the installation*"[46]. Furthermore, The Netherlands proposes in its national allocation plan that "*a voluntary opt-in will be offered to a number of installations that fall outside the system as a result of this approach but that nonetheless wish to participate, in so far at least as they have an aggregated thermal input per installation of more than 20 MWth*"[47].

(25) This approach is not in line with the requirements of the Directive, notably the "aggregation rule" in point 2, second sentence, of Annex I to the Directive and the first entry "*Combustion installations with a rated thermal input exceeding 20 MW (except hazardous or municipal waste installations)*" under the heading "*Energy activities*" in the Table in Annex I to the Directive. According to these provisions, The Netherlands is required to add together the capacities of all combustion activities carried out by one operator in the same installation or on the same site in order to establish whether the rated thermal input of 20 MW is exceeded. Where those added capacities exceed the rated thermal input of 20 MW, The Netherlands is required to include all combustion activities carried out in the same installation or on the same site and list the installations concerned in the national allocation plan with the quantities of allowances intended to be allocated to each.

(26) In point 40 of the Commission's further guidance[48], the Commission invited Member States to explore the flexibilities identified in Annex 9 to the guidance in the establishment of their second phase national allocation plans and stated also that, in the context of the review of the Directive, it is considering the possibility that combustion installations below a certain size threshold, such as up to 3 MW, should not be counted for the purposes of the so-called aggregation rule. In the light of this, The Netherlands should amend its plan by including also combustion installations where the capacities of combustion activities of less than 20 MW carried out by one operator in the same installation or on the same site cumulatively exceed 20 MW, which have been proposed not to be included in the national allocation plan contrary to the provisions of the Directive, and by correspondingly increasing the average annual total quantity in respect of emissions of these additional combustion installations. 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.

(27) The intention of The Netherlands to adjust the allocation of allowances to installations listed in the national allocation plan and operating in its territory in the event that other

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45 Part I, section 4.3, and Part II, section 3.2, of the national allocation plan.

46 Page 13/14 of the national allocation plan.

47 Page 14 of the national allocation plan.

48 COM(2005)703 final.

installations close within its national territory ("relocation scheme")[49] contravenes criterion 10 in Annex III to the Directive 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(2) of the Directive and not to adjust the allocation of allowances set out in the national allocation plan after the adoption of the decision referred to in Article 11(2) of the Directive. Following the final allocation decision the number of allowances to be allocated and issued for each installation is fixed and may not be changed, except in the case of full closure and withdrawal of the greenhouse gas permit of that same installation.

(28) Such so-called ex-post adjustments contradict the essential concept of a "cap-and-trade" system as conceived by the Directive. Under the Community scheme, each installation is allocated a certain amount of allowances in the decision referred to in Article 11(2) of the Directive, whose value it can freely dispose of with a view to taking optimal economic decisions. Three major alternatives exist, which are equally legitimate: investing in emissions reductions and selling freed allowances, reducing production volume and selling freed allowances, or maintaining/expanding production volume while buying additional allowances needed.

(29) The Commission considers that there is no administrative need or any other justification for ex-post adjustments. Member States are required to use the best data available when deciding on allocations up-front. As a matter of fact, the use of prognoses always requires to a certain degree an ex-ante estimation of emissions the actual volume thereof may eventually deviate in reality. This is an inherent feature of any "cap-and-trade" scheme and can thus certainly not justify a retroactive change to the allocation already decided upon up-front. Moreover, the reasons for such deviation cannot be reliably identified and may well be the result of emissions reductions due to real investments having been carried out by operators in line with the economic incentives created by the scheme.

(30) The Directive allows only for two adjustments following the decision referred to in its Article 11(2) where such retroactive change does not occur or does not have a detrimental impact on the functioning of the Community scheme: firstly, where an installation is closed during the trading period, that Member States determine that there is no longer an operator of that same installation to whom allowances will be issued; and, secondly, where allocation takes place to new entrants from the reserve, that Member States determine the exact allocation to each new entrant.

(31) 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 The Netherlands' supplementarity obligations under the Kyoto Protocol and decisions adopted pursuant to the UNFCCC or the Kyoto Protocol. Decision 2/CMP.1[50] 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

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[49] Chapter 4.1.1 of the national allocation plan

[50] 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.

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.

(32) In application of this method, the effort undertaken by The Netherlands is 20.26 million tonnes[51]. Taking into account that all of The Netherlands' intended government purchases of Kyoto flexible mechanisms can be recognised as sufficiently substantiated, the total envisaged volume of 20 million tonnes needs to be deducted from 50% of the effort undertaken, i.e. 10.13 million tonnes. This gives the negative figure of -9.87 million tonnes, which would constitute the maximum absolute amount for operators' use per year permitted for The Netherlands so that the maximum level expressed as a percentage of the allocation of the allowances to each installation would be 0%. In other words, The Netherlands 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 12%, as indicated in The Netherlands' 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 The Netherlands' supplementarity obligations under the Kyoto Protocol and decisions adopted pursuant to the UNFCCC or the Kyoto Protocol, to the extent that it exceeds 10%.

(33) 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. The Commission should be notified of the amendments made to the plan in accordance with this Decision by The

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[51] The Netherlands' Kyoto commitment, expressed in absolute figures, is 201.44 million tonnes. Base year emissions are 214.3 million tonnes, 2004 emissions are 217.8 million tonnes and 2010 projected emissions with existing policies and measures are 221.7 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 20.26 million tonnes. Dividing this effort by two gives 10.13 million tonnes, representing the maximum absolute amount, up to which The Netherlands's operators may use CERs and ERUs, unless it is used up by sufficiently substantiated government purchases.

Netherlands as soon as possible, taking into account the time-scale necessary to carry out the national procedures without undue delay. Were The Netherlands to amend its national allocation plan in a non-discriminatory manner in accordance with Article 2 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 Articles 87 and 88 of the Treaty. Such amendments aiming at avoiding allocation beyond expected needs do not have to take into account incidental allocation beyond expected needs in so far as it is inherent to the use of historical emissions and one single value for expected economic growth for all sectors.

(34) Information in 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.

(35) 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.

(36) 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.

(37) 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.

(38) Accordingly, Member States are not entitled to propose any amendments to national allocation plans, 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 plan[52]. The interpretation of

[52] 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 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 The Netherlands for the first five-year period mentioned in Article 11(2) of the Directive 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 4.586542 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, and a part thereof, amounting to 0.95979 million tonnes, insufficiently substantiated in relation to The Netherlands' achieving its target under Decision 2002/358/EC as regards the intended use of other policies and measures in the sectors covered or those not covered by the Emissions Trading Scheme; in addition, the part of the total quantity potentially amounting to 0.751 million tonnes of allowances annually in respect of additional emissions of 74 installations not included in the first phase national allocation plan 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; this being without prejudice to paragraph 2 of this Article;

2. criterion 5 of Annex III to the Directive: the redistribution, based on electricity purchases, of the allowances obtained by reducing the allocation to the power generating sector;

3. criterion 5 of Annex III to the Directive: the methodology by which allowances are determined at installation level to the extent that applying the energy efficiency factor, using non-representative historical emissions data or adding any redistribution of allowances obtained from the power generating sector results in an allocation beyond expected needs;

4. criterion 10 of Annex III to the Directive: the lack of a complete list of installations covered by the Directive in The Netherlands with respect to combustion installations, to which the Directive applies, where the capacities of combustion activities of less than 20 MW carried out by one operator in the same installation or on the same site cumulatively exceed 20 MW, including the quantities of allowances intended to be allocated to each installation concerned; correspondingly, the annual average total quantity of allowances may be increased in respect of emissions of such combustion

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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.

installations, to the extent that this is justified in accordance with the general methodologies stated in the national allocation plan and on the basis of substantiated and verified emissions of these installations;

5. criterion 10 of Annex III to the Directive: the intention of The Netherlands to adjust the allocation of allowances to an installation listed in the national allocation plan and operating in its territory as a result of the closure of other installations within that territory ("relocation scheme");

6. criterion 12 of Annex III to the Directive: the maximum overall amount of CERs and ERUs of 12% 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 The Netherlands' 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 4.586542 million tonnes CO2 equivalent of allowances per year; and the quantities allocated to 74 additional installations not included in the first phase plan 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 0.751 million tonnes set aside annually for these installations; this reduction being without prejudice to paragraph 2 of this Article;

2. the redistribution of allowances obtained by reducing the allocation to the power generating sector is not based on electricity purchases;

3. the methodology applying the energy efficiency factor, using historical emissions data or adding any redistribution of allowances obtained from the power generating sector does not result in an allocation beyond expected needs;

4. a complete list of all installations covered by the Directive in The Netherlands is provided with the quantities of allowances intended to be allocated to each installation; correspondingly, the total quantity of allowances may be increased in respect of emissions of combustion installations where the capacities of combustion activities of less than 20 MW carried out by one operator in the same installation or on the same site cumulatively exceed 20 MW, to the extent that this is justified in accordance with the general methodologies stated in the national allocation plan and on the basis of substantiated and verified emissions of these installations;

5. 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 within that territory;

6. 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 average annual quantity of allowances of 85.813458 million tonnes, reduced by any difference between the allocations to 74 additional installations not included in the first phase plan and the 0.751 million tonnes set aside annually for these installations, and increased by the annual average total quantity in respect of emissions of combustion installations where the capacities of combustion activities of less than 20 MW carried out by one operator in the same installation or on the same site cumulatively exceed 20 MW, to the extent that this is justified in accordance with the general methodologies stated in the national allocation plan and on the basis of substantiated and verified emissions of these installations, to be allocated by The Netherlands 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 amendments of the national allocation plan made to correct the incompatibilities indicated in Article 1 of this Decision but deviating from those referred to in Article 2 must be notified as soon as possible, taking into account the time-scale necessary to carry out the national procedures without undue delay, and require prior acceptance by the Commission pursuant to Article 9(3) of the Directive. Any other amendments of the national allocation plan, apart from those made to comply with Article 2 of this Decision, are inadmissible.

Article 4

This Decision is addressed to The Netherlands.

Done at Brussels, 16 January 2007

For the Commission