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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.7.2007

COMMISSION DECISION

of 13 July 2007

concerning the amendment to the national allocation plan for the allocation of greenhouse gas emission allowances notified by Lithuania in accordance with Article 3(3) of Commission Decision C/2006/5613final of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Lithuania in accordance with Directive 2003/87/EC of the European Parliament and of the Council,

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concerning the amendment to the national allocation plan for the allocation of greenhouse gas emission allowances notified by Lithuania in accordance with Article 3(3) of Commission Decision C/2006/5613final of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Lithuania in accordance with Directive 2003/87/EC of the European Parliament and of the Council,

(Only the Lithuanian 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) second sentence thereof,

Whereas:

- (1) Pursuant to Article 3(3) of Commission Decision C/2006/5613final, Lithuania was allowed to notify any amendments of its national allocation plan for the period 2008-2012 by the deadline of 31 December 2006 referred to in Article 11(2) of Directive 2003/87/EC (hereinafter "the Directive").
- (2) Lithuania notified to the Commission by letter dated 29 December 2006 certain information concerning an amendment to its national allocation plan. Lithuania submitted additional information on this amendment by letter dated 18 April 2007, registered on 23 April 2007, in reply to questions from the Commission.
- (3) To the extent that the information submitted by Lithuania constitutes an amendment, i.e. a change to the substance of its national allocation plan, it requires prior acceptance by the Commission pursuant to Article 9(3), second sentence, of the Directive. The present Decision is limited to those parts of the information. Other aspects of the information submitted by Lithuania, in particular those purely relating to the implementation of Commission Decision C/2006/5613final of 29 November 2006 or expressing a different viewpoint on the assessment carried out by the Commission in that decision have not been taken into account for the purposes of the present Decision. Moreover, information in the amendment of 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.

¹ OJ L 275, 25.10.2003, p. 32. Directive as amended by Directive 2004/101/EC of 27 October 2004, OJ L 338, 13.11.2004, p. 18.

- (4) The amendment of the national allocation plan 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 criteria². Certain aspects of the amendment of the national allocation plan have been found compatible with those criteria and are therefore accepted, while other aspects of the amendment of the national allocation plan have been found incompatible with those criteria and are therefore rejected.
- (5) The amendment of the national allocation plan to raise from 8.9% to 20% 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 compatible with criterion 12 of Annex III to the Directive³ and is therefore accepted.
- (6) On the other hand, the amendment of the national allocation plan is incompatible with criteria 1, 2 and 3 of Annex III to the Directive to the extent that the total quantity of allowances intended to be allocated is inconsistent with assessments of actual and projected progress made pursuant to Decision 280/2004/EC⁴ and is inconsistent with the potential, including the technological potential, of activities covered by the Community scheme to reduce emissions.⁵ 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.
- (7) The Commission calculated the total quantity of allowances compatible with criteria 1, 2 and 3 of Annex III to the Directive according to the methodology stated in its Decision C/2006/5613final, taking into account verified emissions, GDP growth and carbon-intensity improvements. Lithuania has not submitted any information which would justify a change to the calculations applied by the Commission in its Decision C/2006/5613final. The following table indicates the not acceptable increase to the total quantity for the period from 2008 to 2012:

² Commission Communication on guidance to assist Member States in the implementation of the criteria listed in Annex III to The Directive (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).

³ For the assessment methodology, see Commission Communication of 29 November 2006, COM(2006) 725final.

⁴ 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.

⁵ See Commission Decision C/2006/5613final.

Not acceptable increase to the annual average total quantity for the period from 2008 to 2012 (all figures in million tonnes CO2 eq.)		
Annual average total quantity from 2008-2012 allowed in Commission Decision C/2006/5613final	Annual average total quantity on basis of proposed amendment to the national allocation plan	Not acceptable increase of the average annual total quantity
8.851304	11.017	2.165696

Accordingly, given that in the years 2008 to 2012 proposed allocations exceed emissions taking into account GDP growth, carbon-intensity improvements, the Commission finds that the annual average excess allocation by Lithuania with respect to the total quantity of 11.017 million tonnes proposed in the amendment for the period 2008 to 2012 amounts to 2.165696 million tonnes, which contravenes criteria 1, 2 and 3 and is therefore rejected.

- (8) 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.
- (9) Accordingly, Lithuania is not entitled to propose any further amendments to its national allocation plan, 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 plan¹. 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 proposed amendment to the national allocation plan of Lithuania for the first five-year period mentioned in Article 11(2) of the Directive is compatible in particular with the criterion mentioned below and is therefore accepted: criterion 12 of Annex III to the Directive: the increase of 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 to 20%.

¹ 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.

Article 2

The following aspect of the proposed amendment to the national allocation plan of Lithuania for the first five-year period mentioned in Article 11(2) of the Directive is incompatible with the criteria mentioned below and is therefore rejected: criteria 1, 2 and 3 of Annex III to the Directive: the intended increase by 2.165696 million tonnes of the total quantity of allowances from 8.851304 million tonnes year to 11.017 million tonnes per year 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.

Article 3

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 13 July 2007

For the Commission