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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.04.2007

COMMISSION DECISION

of 2 April 2007

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

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(Only the German 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 Austria 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 15 January 2007 and registered by the Commission on 16 January 2007. Austria submitted additional information on the notified plan by letter dated 5 March 2007, registered on 12 March 2007, in reply to questions from the Commission, and by communication of 21 March 2007, registered on 26 March 2007.
- (2) The Climate Change Committee² 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, expressed severe concerns about the unbalanced and disproportionately low contribution by the trading sectors. As Austria relies to a large extent on measures to reduce greenhouse gases in the non-trading sectors to reach its target under Decision 2002/358/EC, the Committee urged the Commission to closely scrutinise the substantiation of these measures to reduce greenhouse gases in the non-trading sectors. The Climate Change Committee strongly called on the Commission to

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.

closely examine Austria's ability to substantiate its intended use of the Kyoto mechanisms to reach its target under Decision 2002/358/EC. The Committee called on the Commission to scrutinise the intended replenishment of the new entrants' reserve with particular regard to the impact on the overall amount of allowances allocated for free. The views of the Climate Change Committee have been taken into account.

- (3) The Commission notes that Austria's annual Kyoto commitment for the period from 2008 to 2012 is 68.68 million tonnes CO₂ equivalent (hereinafter "million tonnes"), while the most recent available figure for its annual total greenhouse gas emissions is 91.3 million tonnes for the year 2004³. The remaining gap between these two annual figures to be bridged by Austria is therefore 22.62 million tonnes.
- (4) The national allocation plan, including the intended total quantity of allowances of 32.8 million tonnes stated therein, has been evaluated against the criteria 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 criteria⁴. Certain aspects of the national allocation plan have been found incompatible with those criteria, and in particular with criteria 1, 5 and 12 in Annex III to the Directive.
- (5) The national allocation plan of Austria contravenes criterion 1 of Annex III to the Directive because the intended total quantity of allowances to be allocated according to the national allocation plan would be inconsistent with achieving Austria's 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 Austria fails to provide in a sufficient manner for policies and measures to be used in the transport sector as well as in the building and residential sector, which are outside the Community scheme. Member States must indicate and substantiate intentions to use policies and measures in sectors outside the Community scheme, and the Commission's assessment is based in a cumulative manner in particular on the indication of implemented and additional policies and measures, the 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-

³ Commission Decision 2006/944/EC of 14 December 2006 determining the respective emission levels allocated to the Community and each of its Member States under the Kyoto Protocol pursuant to Council Decision 2002/358/EC, OJ L 358, 16.12.2006, p. 87; 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 dividing by a factor of five the definitive emission level allocated to Austria equivalent for the first quantified emission limitation and reduction commitment period under the Kyoto Protocol contained in the Annex to Commission Decision 2006/944/EC, which gives 68.681078 million tonnes (=343.405392/5). Annual total greenhouse gas emissions for the year 2004 are indicated in the third column of Table 1 in the Annex SEC(2006) 1412.

⁴ 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).

counting effects have been eliminated in the estimation of quantitative reduction effects⁵.

- (6) In the light of the above, Austria has not sufficiently substantiated policies and measures in the transport sector. Austria's national allocation plan assumes emissions in the transport sector of 22.03 million tonnes in 2005 and 21.6 million tonnes in 2010. This implies a total negative growth rate of 1.95%⁶ or an annual negative growth rate of 0.39%⁷ in this period. These growth figures are inconsistent with the data contained in the publication "European Energy and Transport Trends" of the Commission's Directorate-General for Transport and Energy⁸, which the Commission considers as the most accurate and reliable source for estimations of emissions in the transport sector. Baseline assumptions⁹ are updated on a regular basis to reflect the most likely future trend and validated with the involvement of experts from Member States. These data indicate that, in the absence of significant additional measures, Austria's emissions in the transport sector are likely to be 18.6 million tonnes in 2005 and 19.3 million tonnes in 2010¹⁰. This implies a total positive growth rate of 3.76%¹¹ or an annual positive growth rate of 0.74 %¹² in this period. The Commission does not see a justification for the claimed negative growth rate of transport emissions as indicated in the national allocation plan and thus considers this rate as unrealistically low. 2005 emissions in the transport sector as indicated in the national allocation plan seemingly include, amongst others, road transport and certain bunker fuel emissions, while the data contained in the publication "European Energy and Transport Trends" do not include some of these emissions sources. This difference in scope certainly does not explain the difference in growth rates. By assuming a linear trend from 2004 to 2010, the Commission therefore applies the annual growth rate of 0.74 %, as indicated in the data contained in the publication "European Energy and Transport Trends" from 2005 to 2010, to the 2005 figure of transport emissions indicated in Austria's national allocation plan, resulting in expected transport emissions of 22.859086 million tonnes¹³ in 2010, which exceeds the expected figure for 2010 transport emissions of 21.6 million tonnes indicated in the national allocation plan by 1.259086 million tonnes. In its national allocation plan, Austria fails to sufficiently substantiate policies and measures in the transport sector, which could off-set this gap of 1.259086 million tonnes in 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

⁵ As stated in paragraph 20 and Annex 6 of COM(2005)703 final.

⁶ $(21.6/22.03)-1\%$

⁷ $(21.6/22.03)-1\uparrow(1/5)$

⁸ 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

⁹ Examples for baseline assumptions are future developments in population, fuel prices, etc.

¹⁰ Figures for CO₂ emissions in the transport sector are published on the Commission's website and more specifically indicated for Austria on page 86 on the sheet "Summary Energy Balance and Indicators (B)" under the heading "CO₂ emissions (Mt of CO₂)" in the second last row "Transport" under the following hyperlink: http://ec.europa.eu/dgs/energy_transport/figures/trends_2030_update_2005/energy_transport_trends_2030_update_2005_en.pdf.

¹¹ $19.3/18.6$

¹² $(19.3/18.6)\uparrow(1/5)$

¹³ $22.03*(19.3/18.6)$

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.

- (7) In addition, the Commission has identified further individual policies and measures, which the Commission finds to be insufficiently substantiated. The following table contains specification of these policies and measures and indicates the reasons for insufficient substantiation:

Policy or measure concerned	Intended annual reduction effects (in million tonnes CO ₂ eq., based on figures provided by Austria)	Reasons for insufficient substantiation
Transport:	2.0¹⁴	
Traffic-organisational measures (<i>Verkehrsorganisatorische Maßnahmen</i>)	0.4	No adequate explanation is provided by Austria on the additional emission reduction effect quantified for speed controls. The only concrete measure is an increase in control of existing speed limits and strengthened speed limits. However, no analysis of the effects of these measures was provided by Austria. There is no concrete information on when and how the speed limit controls will be implemented or to which extent the speed limits will be strengthened.
Economic incentives - Reduction of "fuel tourism" driven by price incentives (<i>Reduktion des preisbedingten „Tanktourismus“</i>)	1.9	Austria has not provided sufficient information on assumptions and methodologies used for the quantification of the effects of the indicated policy and references to sources for this information. Austria does not present any quantitative indicators to demonstrate the effectiveness of this measure. Also, the planned increase in fuel tax will not eliminate the price gap to neighbouring countries, so that it is unlikely that fuel tourism will be reduced substantially. The increase of the lorry toll of 4 Cent also seems too low to achieve the substantial emission reduction effect calculated for economic incentives. The emission reduction effect of this small increase in the lorry toll will be reduced by the planned reduction of vehicle tax for Austrian lorries by 50% which was announced together with the increase in lorry toll.
Building and residential sector	2.4¹⁵	

¹⁴ The individual measures indicated in this table under "transport" add up to 2.3 million tonnes, but Austria relies on these measures only at an amount of 2.0 million tonnes. The indicated total amount relied upon by Austria in the transport sector is 2.7 million tonnes, taking into account the effects from the use of biofuels of 0.7 million tonnes, which the Commission considers substantiated. Thus, the amount of 2.0 million tonnes is used as basis for the present decision, i.e. 2.7-0.7 million tonnes.

¹⁵ The individual measures indicated in this table under "Building and residential sector" add up to 3.0 million tonnes, but Austria relies on these measures in its revised climate strategy only at an amount of 2.4 million tonnes. Thus, the amount of 2.4 million tonnes is used as basis for the present decision.

Increase of the renovation rate for buildings to 3% <i>(Steigerung der Sanierungsrate bei Wohngebäuden auf 3% (thermisch-energetisch))</i>	2.0	A Austria has not provided sufficient information on assumptions and methodologies used for the quantification of the effects of the indicated policy and references to sources for this information. The presented quantitative information (an increase of 1% of the modernisation rate achieves 1.5 million tonnes of CO2 reductions after 10 years, if renovation results in energy efficiency standards for new buildings and if 20% of the renovated buildings switch to renewable energies) indicates that there is no evidence that the measures will have the stated impact in 2008 to 2012, also taking into account the most recent adapted climate strategy of 21 March 2007.
Increase of the energy efficiency in the new buildings. <i>(Steigerung der Energieeffizienz im Neubau)</i>	0.2	Austria does not present any quantitative indicators to demonstrate the effectiveness of these measures and has not provided sufficient information on assumptions and methodologies used for the quantification of the effects of the indicated policy and references to sources for this information. Rather, the full effect can only be expected to be realised after 2012, also taking into account the adapted climate strategy, pursuant to which the revision of target values (EKZ) for energy standards of new buildings is only planned until 2010.
Replacement of old heating systems and/or fuel-switch to renewable energies <i>(Ersatz alter Heizungsanlagen durch effizientere Anlagen bzw. fuel-switch zu erneuerbaren Energien)</i>	0.8	On the methodologies and assumptions used for the quantification of the effects of the indicated policy and for references to sources for this information Austria fails to provide sufficient information. Austria does not present any quantitative indicators to demonstrate the effectiveness of these measures. No information on concrete implementation steps and on the calculation method for the target is provided by Austria.
Total	4.4	

- (8) The total amount, with respect to which policies and measures are insufficiently substantiated, is the sum of 4.4 million tonnes, as indicated in the above table, and the 1.259086 million tonnes resulting from the use of inadequate projections in the transport sector, adding up to 5.659086 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 Austria will achieve its Kyoto commitment, unless increased efforts are made. These increased efforts to be made by Austria need to take place in the sectors covered by the Directive or those not covered. As Austria 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 36.58% of their emissions covered by the Directive with respect to overall greenhouse gas emissions¹⁶. This leads to a necessary reduction of 2.070094¹⁷ million tonnes per year to be borne by the sectors covered by the Directive, by which amount the total quantity of allowances for these sectors thus needs to be reduced, which contravenes criterion 1.

¹⁶ More specifically, the trading sector's share is most accurately calculated as 2005 verified emissions for the trading sector divided by 2004 total 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. 33.4/91.3

¹⁷ 5.659086*0.3658

- (9) Pursuant to criterion 5 of Annex III to the Directive, the Commission has also examined compliance of the national allocation plan of Austria 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 Units¹⁸, 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 Austria, 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 criterion 1 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.
- (10) Pursuant to criterion 5 of Annex III to the Directive, the Commission has also examined the methodology by which Austria intends to allocate allowances at sector, branch, and installation level. The Commission notes that the plan distinguishes between different sectors by applying different compliance factors and thereby favours the refinery, integrated steel and district heating sectors as compared to other sectors. According to Austria this differentiation is based on political grounds. This explanation, however, lacks sufficient justification. Neither can the Commission find justification on environmental nor on any other grounds. In this respect, the Commission notes that the installations' potential to reduce emissions is already taken into account by another factor (*Potentialfaktor*) in the allocation methodology. Therefore, the Commission considers such favourable treatment undue and in breach with criterion 5 of Annex III to the Directive. For the same 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

¹⁸ 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.

common market should it be assessed in accordance with Articles 87 and 88 of the Treaty.

- (11) Pursuant to criterion 5 of Annex III to the Directive, the Commission has also examined the application of the *Potentialfaktor*, which takes into account the installations' potential to reduce emissions. For those installations using co-generation and biomass, the factor may actually convert into a bonus, which for industry has been maximised at 4%. The Commission is aware of the application of a compliance factor which could balance out such a bonus. However, it is not entirely excluded that such bonuses lead to an allocation which goes beyond expected needs of operators. Therefore, the Commission at this stage and on the basis of the currently available information, cannot exclude that State aid in allocations which go beyond expected needs will be found incompatible with the common market should it be assessed in accordance with Articles 87 and 88 of the Treaty.
- (12) Pursuant to criterion 5 of Annex III to the Directive, the Commission has also examined the methodology for auctioning of a share of the allowances. Austria intends, as allowed under Article 10 of the Directive, to auction about 1% of the allowances. The Commission notes that Austria did not provide sufficiently substantiated information on the modalities for this intended auction of allowances, in particular as regards ensuring a non-discriminatory procedure. Therefore, the Commission at this stage and on the basis of the currently available information cannot exclude that the auctioning of allowances includes elements of State aid which might be found incompatible with the common market should it be assessed in accordance with Articles 87 and 88 of the Treaty.
- (13) 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 Austria's supplementarity obligations under the Kyoto Protocol and decisions adopted pursuant to the UNFCCC or the Kyoto Protocol. Decision 2/CMP.1¹⁹ 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 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

¹⁹ 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.

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.

- (14) In application of this method, the effort undertaken by Austria is 22.62 million tonnes²⁰. Taking into account that 100% of the intended government purchases is recognised as sufficiently substantiated, 2.31 million tonnes constitutes the maximum absolute amount for use by operators per year permitted for Austria. The relative maximum figure for use by operators is obtained by dividing the absolute amount by the allowed total quantity of allowances of 30.729906 million tonnes, which gives 7.517%²¹. 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 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 Austria'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 Austria'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%.
- (15) 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 Austria as soon as possible, taking into account the time-scale necessary to carry out the national procedures without undue delay. Were Austria to amend its national allocation plan in accordance with Article 2 of this Decision and duly taking into account the Commission's observations in recitals 11 and 12, 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.
- (16) 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.
- (17) 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

²⁰ Austria's Kyoto commitment, expressed in absolute figures, is 68.68 million tonnes. Base year emissions are 78.9 million tonnes, 2004 emissions are 91.3 million tonnes and 2010 projected emissions with existing policies and measures are 89.9 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 2004 emissions figure being the highest of these three alternatives, the relevant effort with respect to the Kyoto commitment is 22.62 million tonnes. Dividing this effort by two ($22.62/2=11.31$ million tonnes) and deducting 9 million tonnes of substantiated government purchase gives 2.31 million tonnes ($=11.31-9$) and represents the maximum absolute amount, up to which Austria's operators may use CERs and ERUs.

²¹ $2.31/30.729906$

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.

- (18) 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, changing the share of allocation of allowances free of charge in a non-discriminatory manner 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 change 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.
- (19) 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.
- (20) 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 plan²². 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,

²²

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.

HAS ADOPTED THIS DECISION:

Article 1

The following aspects of the national allocation plan of Austria for the first five-year period mentioned in Article 11(2) of the Directive are incompatible respectively with:

1. criterion 1 of Annex III to the Directive: the part of the intended total quantity of allowances related to Austria's intended use of policies and measures that is insufficiently substantiated, namely in the transport and building sectors, amounting to the equivalent of on average 2.070094 million tonnes per year;
2. criterion 5 of Annex III to the Directive: the unduly favourable treatment of the refinery, integrated steel and district heating sectors resulting from the differentiated compliance factors;
3. criterion 12 of Annex III to the Directive: the maximum overall 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 inconsistent with Austria'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 2.070094 million tonnes CO₂ equivalent of allowances per year;
2. the compliance factors are adapted in such a way as to eliminate any unduly favourable treatment of the refinery, integrated steel and district heating sectors;
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 quantity of allowances of 30.729906 million tonnes to be allocated by Austria 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 change

the share of the allocation of allowances free of charge in a non-discriminatory manner 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 Republic of Austria.

Done at Brussels, 2 April 2007

For the Commission