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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22/III/2005
C(2005) 866 final

COMMISSION DECISION

of 22/III/2005

concerning the temporary exclusion of certain installations by the Netherlands from the Community emissions trading scheme pursuant to Article 27 of Directive 2003/87/EC of the European Parliament and of the Council

COMMISSION DECISION

of 22 March 2005

concerning the temporary exclusion of certain installations by the Netherlands from the Community emissions trading scheme pursuant to Article 27 of Directive 2003/87/EC of the European Parliament and of the Council

(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/EC¹, and in particular Article 27 thereof,

Whereas:

- (1) The Netherlands applied for 58 installations to be temporarily excluded from the Community emission allowance trading scheme between 1 January 2005 and 31 December 2007, pursuant to Article 27(1) of Directive 2003/87/EC, by two applications sent by letters dated 18 October 2004, registered on 28 October 2004, and 29 October 2004, registered on 15 November 2004. The Netherlands reduced the scope of the application by letter dated 12 January 2005, registered on 24 January 2005².
- (2) The national allocation plan of the Netherlands was notified to the Commission on 22 April 2004, amended and completed by letter received on 23 June 2004, and no objections were raised to it by Commission Decision C(2004) 2515/1 final of 7 July 2004.
- (3) The Commission approved the Netherland's first application for the temporary exclusion of 93 installations from the Community emission allowance trading scheme between 1 January 2005 and 31 December 2007³, by Commission Decision C(2004)4240-3 of 29 October 2004⁴.
- (4) The Netherlands has confirmed that the 57 additional installations contained in its two applications registered on 29 October 2004 and 15 November 2004, as amended by letter registered on 24 January 2005, will limit their emissions as much as would be

¹ OJ L 275, 25.10.2003, p. 32.

² <http://www.novem.nl/default.asp?documentId=114260>

³ <http://www.novem.nl/default.asp?documentId=114260>

⁴ http://www.europa.eu.int/comm/environment/climat/emission_plans.htm

the case if they were subject to the provisions of Directive 2003/87/EC during the relevant period, because they are subject to commitments under long term agreements on energy efficiency, benchmarking covenants and, if these commitments are not met, obligations from the Netherlands' Environmental Management Act.

- (5) The Netherlands has also confirmed that annual monitoring, reporting and verification requirements under the long term agreements on energy efficiency and benchmarking covenants will be applied to these 57 installations which are equivalent to those provided for in Annexes IV and V to Directive 2003/87/EC and Commission Decision 2004/156/EC of 29 January 2004 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council⁵.
- (6) The Netherlands has furthermore confirmed that, through a combination of penalties including fines, custody, confiscation of property, deprivation of unlawfully received advantage, a temporary shut down of the company, publication of breach of requirements, and/or temporary deprivation of certain rights for failure to meet obligations from the Environmental Management Act, these 57 installations will be subject to penalties at least equivalent to those referred to in Article 16(1) and (4) of Directive 2003/87/EC in the case of non-fulfilment of national requirements. In order to ensure equivalence, criminal prosecution may also take place based on the Economical Offences Act.
- (7) As the 49 installations in respect of which one of the applications for temporary exclusion is requested collectively emit around 0.53% of the total emissions from installations in the Netherlands participating in the Community scheme, they constitute only a small proportion of the installations engaged in each activity covered by the Directive in the Netherlands, they have been individually emitting less than 25 000 tons of carbon dioxide per year and their individual emissions are not expected to increase during the period of temporary exclusion, it is considered that their temporary exclusion added to the exclusion of 93 installations by Commission Decision C(2004)4240-3 will not distort the internal market.
- (8) As the installations in respect of the other application for temporary exclusion is requested amount to 8 installations, as these installations collectively emit around 6.43 % of the total emissions from installations in the Netherlands participating in the Community scheme, and because it has been independently verified that similar installations in other Member States have not been included in the Community scheme in respect of the 2005-7 period and operate in the same market, it is considered that their temporary exclusion will not distort the internal market.
- (9) The Netherlands' two applications for 57 installations to be temporarily excluded have thus been evaluated against the criteria set out in Article 27(2), and the temporary exclusion of those installations from the Community scheme between 1 January 2005 and 31 December 2007 should be provided for.
- (10) A reduction of the total quantity of allowances allocated by the Netherlands to installations in the Community scheme equivalent to the intended allocations to the 57 installations must be made.

⁵ OJ L 59, 26.02.2004, p. 1.

- (11) The measures provided for in this Decision are in accordance with the opinion of the Climate Change Committee established by Article 9 of Decision No 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 Protocol⁶,

HAS ADOPTED THIS DECISION:

Article 1

The 57 installations listed in the Netherlands' applications are excluded from the Community emission allowance trading scheme from 1 January 2005 to 31 December 2007 inclusive.

Article 2

The total quantity of allowances allocated by the Netherlands to installations in the Community scheme for the period referred to in Article 11(1) of Directive 2003/87/EC shall be reduced by a number of allowances equal to the intended allocations to the 57 installations listed in the Netherlands' applications for the period from 1 January 2005 to 31 December 2007 inclusive.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 22/III/2005

For the Commission

⁶ OJ L 49 19.02.2004, pg. 1.