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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.12.2007

COMMISSION DECISION

of 07 December 2007

concerning the amendment to the national allocation plan for the allocation of greenhouse gas emission allowances notified by Slovakia in accordance with Article 3(3) of Commission Decision C/2006/5616final of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Slovakia 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 Slovakia in accordance with Article 3(3) of Commission Decision C/2006/5616final of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Slovakia in accordance with Directive 2003/87/EC of the European Parliament and of the Council,

(Only the Slovakian 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/2006/5616final, Slovakia 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) Slovakia notified to the Commission by letter dated 29 December 2006 certain information concerning an amendment to its national allocation plan. Slovakia submitted additional information on the amendment of the plan by letters dated 16 April, 30 May, 2 August and 10 September 2007, the latter registered on 19 September 2007, in reply to questions from the Commission dated 30 March, 10 May and 19 July 2007 respectively.
- (3) To the extent that the information submitted by Slovakia 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 Slovakia, in particular those purely relating to the implementation of Commission Decision C/2006/5616final 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

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.

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.

- (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 is compatible 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 consistent with assessments of actual and projected progress made pursuant to Decision 280/2004/EC³ and is 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.
- (6) 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/2006/5616final, taking into account verified emissions, GDP growth and carbon-intensity improvements. However, new sufficiently substantiated information that could not have been taken into account in the PRIMES model so far justifies a revision of the calculation applied by the Commission in its Decision C/2006/5616final.
- (7) The Commission takes note that whereas for the Decision C/2006/5616final in the PRIMES 2005 baseline scenario, "low carbon constraint/no CCS" run it was assumed that a planned new nuclear power capacity in Slovakia would be fully operating already in 2010, the planned start of operation of the new nuclear power capacity will be delayed at least until the beginning of 2013. Therefore, the Commission has conducted a re-run of the 2005 baseline scenario for Slovakia⁴ in which the beginning of operation of the new nuclear capacity is delayed.
- (8) Accordingly, the figure for carbon intensity⁵ have been revised to 1212.0 in 2010, being enhanced to 1181.7 in 2010 by the rate of further carbon intensity improvement of 2.5% from 2005 to 2010. This results in a relative development factor for carbon

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 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.

⁴ The update to the document "European Energy and Transport Trends to 2030" of the Commission's Directorate-General for Transport and Energy is available at:
<http://ec.europa.eu/environment/pubs/studies.htm>.

⁵ Expressed in terms of CO₂ Emissions to GDP (tonne of CO₂/million Euro value year 2000).

intensity between 2005 and 2010 of 0.922915⁶. In order to arrive at the acceptable total quantity of allowances, this factor is multiplied by the verified emissions figure and the GDP growth factor of 1.323636⁷ stated in Decision C/2006/5616final. In addition, the resulting amount is increased to take into account the effect from the increase in scope from the first to the second trading phase in line with the Commission's guidance, while using the overall figure envisaged by Slovakia to be allocated to these additional installations concerned. Consequently, the acceptable total quantity of allowances compatible with criteria 1, 2 and 3 of Annex III to the Directive on the basis of the information newly submitted by Slovakia is 32.629361 million tonnes, so that the figure for the total quantity stated in Decision C/2006/5616final may be increased by 1.717100 million tonnes.

- (9) In addition, Slovakia has proposed to include 0.076755 million tonnes of allowances in the total annual quantity in respect of emissions of additional combustion installations, which have not been included in the first period plan. 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.
- (10) The following table illustrates the acceptable part of the requested increase and the resulting acceptable total quantity for the period from 2008 to 2012:

Acceptable part of the requested increase and acceptable average annual total quantity for the period from 2008 to 2012				
(all figures in million tonnes CO ₂ eq.)				
Annual average total quantity from 2008-2012 allowed in Commission Decision C/2006/5616final	Annual average total quantity on basis of proposed amendment to the national allocation plan	Effect of additional increase in scope from 1 st to 2 nd phase	Acceptable part of the requested increase of the average annual total quantity	Acceptable average annual total quantity
30.912261	34.889016	0.076755	1.717100	32.629361 ⁸

- (11) On the other hand, 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 remaining part of the requested increase of 2.259655⁹

⁶ 1181.7/1280.4.

⁷ The publication of the spring economic forecasts of its Economic and Financial Affairs Directorate-General on 7 May 2007 shall not affect the Commission's assessment. The time horizon provided by the Directive for the assessment of national allocation plans is the second half of 2006. The deadline for notifying the plans was 30 June 2006. The final deadline foreseen by the Directive for the total quantity to be fixed by a Member State was 31 December 2006. This deadline determines the end of the relevant time horizon for the use of economic growth projections. In addition, the EU ETS is a common system for all Member States. This creates a need to treat all Member States equally for the Commission's assessment of second phase national allocation plans in order to avoid undue distortions as much as possible. Equal treatment is in particular ensured by using the same time horizon for the establishment of GDP growth forecasts. Using this data for the few remaining decisions adopted after 7 May 2007 would create unequal treatment with respect to the majority of Member States already decided upon, which notified and/or completed their plans in better respect of the timelines provided by the Directive. Thus the Commission continues to make use of the GDP growth data released in November 2006.

⁸ 30.912261+1.717100.

⁹ 3.9+0.076755-1.717100.

million tonnes constitutes the annual average excess allocation by Slovakia with respect to the total quantity of 3.976755 million tonnes proposed in the amendment for the period 2008 to 2012, which contravenes criteria 1, 2 and 3 and is therefore rejected.

- (12) 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.
- (13) Accordingly, Slovakia 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 plan¹⁰. 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 Slovakia for the first five-year period mentioned in Article 11(2) of the Directive is compatible in particular with the respective criteria mentioned below and is therefore accepted:

criteria 1, 2 and 3 of Annex III to the Directive: the increase to the total quantity of allowances by an amount of 1.717100 million tonnes CO₂eq per year, that is consistent with assessments made pursuant to Decision 280/2004/EC and consistent with the potential, including the technological potential, of activities to reduce emissions, of which the part of the total annual quantity potentially amounting to 0.076755 million tonnes of allowances in respect of additional emissions of combustion installations will be reduced as far as this part is not justified pursuant to the general methodologies stated in the national allocation plan and on the basis of substantiated and verified emission figures.

¹⁰ 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 Slovakia 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 further increase to the total quantity of allowances by an amount of 2.259655 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; in addition, the part of the total annual quantity potentially amounting to 0.076755 million tonnes of allowances in respect of additional emissions of combustion installations as far as this part is not justified pursuant to the general methodologies stated in the national allocation plan and on the basis of substantiated and verified emission figures.

Article 3

This Decision is addressed to the Republic of Slovakia.

Done at Brussels, 07 December 2007

For the Commission