



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12/IV/2005
C(2005) 1081 final

COMMISSION DECISION

of 12/IV/ 2005

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

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(Only the English 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 the United Kingdom for the period 2005-2007, developed under Article 9(1) of Directive 2003/87/EC, was notified to the Commission on 7 May 2004 and registered on 10 May 2004. The United Kingdom submitted additional information completing the notified plan by letter registered on 15 June 2004 in reply to questions from the Commission. On 7 July 2004, the Commission adopted a decision on the notified national allocation plan, rejecting certain aspects of it because they were found incompatible with the criteria listed in Annex III to the Directive, in particular with criteria 6 and 10 (hereinafter: “the Decision”).
- (2) By letter of 10 November 2004, registered on 16 November 2004, last up-dated by letter of 18 February 2005, registered on 23 February 2005, the United Kingdom notified the Commission of a proposed amendment to its national allocation plan implying an increase in the total quantity of allowances to be allocated in the United Kingdom by 19.8 Mt CO₂eq.
- (3) According to Article 9 (1) of the Directive, the national allocation plan for the three-year period beginning 1 January 2005 was to be notified by the United Kingdom to the Commission by 31 March 2004. Article 9 (1) bars the Member State from submitting only a provisional plan, at least once this deadline has passed as in the case of the United Kingdom, which submitted its national allocation plan to the Commission only on 7 May 2004 and completed it only on 15 June 2004.

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

- (4) Pursuant to Article 9 (3) of the Directive, the Commission was entitled to reject the United Kingdom's national allocation plan within three months of this notification on the basis that it was incompatible with the criteria listed in Annex III or with Article 10. Article 9 (3) of the Directive does not provide for the Commission to take only a provisional decision. It allows to leave room for certain adjustments, the limits of which are however determined by the Decision. Article 3 (2) and (3) of the Decision provide for the possibility of certain adjustments to the allocation of allowances to individual installations but only within the total quantity of allowances, as stipulated by Article 3 (1) of the Decision.
- (5) The Decision identified two aspects of incompatibility. According to its Article 2, no objections shall be raised if certain specified amendments to the plan were made and notified to the Commission by 30 September 2004. The United Kingdom failed to submit the specified amendments by this deadline.
- (6) For the three-year period beginning 1 January 2005, Article 11 (1) of the Directive requires the decision concerning the final allocation to have been taken by 1 October 2004 ("*at least three months before the beginning of the period*"). The United Kingdom failed to take the final decision by this deadline.
- (7) The whole procedure comprising the notification to and possible rejection by the Commission of the national allocation plans and the final allocation decisions to be taken by Member States has been conceived by the Directive in a tight schedule and implemented by the decisions taken pursuant to its Article 9 (3) so as to ensure that the system can start properly on 1 January 2005. Late notification of several national allocation plans and late implementation by some Member States, including by the United Kingdom, cannot put into question the legally binding nature of these deadlines, but constitute infringements of Community law themselves.
- (8) The Directive and the Decision have to be interpreted in the light of these considerations, in particular the term "amendments" in Article 9 (3), 2nd sentence, of the Directive and in Articles 2 and 3 (3) of the Decision. Within the context of the 1st sentence of Article 9 (3) rejections by the Commission necessarily lead to amendments. Once the stage of an Article 9 (3) decision has been reached, Member States can essentially only repair deficiencies of their national allocation plans. They are not allowed to notify "amendments" which are outside the scope of the decision addressed to them, notably, as provided by Article 3 (1), by exceeding the total quantity of emission allowances allocated to installations listed in the national allocation plan and to new entrants unless this is required by amendments pursuant to Article 2 itself. The utmost stability of the total quantity of allowances is of crucial importance for the good functioning of the trading system, also with respect to the existence of a forward market, once a Commission decision has been taken. Therefore, the Commission decision alone determines the room for manoeuvre. Otherwise, the other provisions of the Directive and in particular the tight time schedule could not be respected.
- (9) In this context, the Commission notes that the United Kingdom's proposed amendment implies an increase in the total quantity of allowances to be

allocated to installations listed in the allocation plan and to new entrants, without this being required by amendments pursuant to Article 2, which is explicitly excluded by Article 3 (1) of the Decision. This leads to the inadmissibility of the proposed amendment without creating a need for the Commission to examine the request in substance,

HAS ADOPTED THIS DECISION:

Article 1

The proposed amendment to the national allocation plan notified by the United Kingdom to the Commission on 10 November 2004 and last up-dated on 18 February 2005 implying an increase of the emission allowance allocations by 19.8 Mt. CO₂eq is inadmissible.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 12/IV/2005