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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.10.2007

COMMISSION DECISION

of 26 October 2007

concerning the amendment to the national allocation plan for the allocation of greenhouse gas emission allowances notified by Germany in accordance with Article 3(3) of Commission Decision C/2006/5609final of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Germany 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 Germany in accordance with Article 3(3) of Commission Decision C/2006/5609final of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Germany in accordance with Directive 2003/87/EC of the European Parliament and of the Council,

(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) second sentence thereof,

Whereas:

- (1) Pursuant to Article 3(3) of Commission Decision C/2006/5609final, Germany 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) Germany notified to the Commission by letter dated 21 December 2006 certain information concerning an amendment to its national allocation plan. Germany submitted additional information on this amendment by letter dated 26 January 2007, registered on 7 February 2007, in reply to questions from the Commission and by communication dated 14 August 2007, registered at the same day.
- (3) To the extent that the information submitted by Germany 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 Germany, in particular those purely relating to the implementation of Commission Decision C/2006/5609final 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. All aspects of the amendment of the national allocation plan have been found compatible with those criteria.
- (5) The amendment of the national allocation plan to abolish long term allocation guarantees referred to in Article 1(2) of Commission Decision C/2006/5609final of 29 November 2006 and to introduce a benchmarking system for the allocation of allowances for energy generating installations and certain other installations falling within the scope of application of the Directive is consistent with the Annex III to the Directive, in particular its criterion 5 and is therefore accepted. There are no indications that such an allocation methodology is likely to unduly favour certain installations or sectors.
- (6) The amendment of the national allocation plan to provide for an allocation of allowances to installations which produce blast furnace gases is consistent with the provisions of the Directive, in particular its criterion 5 of Annex III to the Directive, and is therefore accepted. There are no indications that such an allocation methodology is likely to unduly favour certain installations or sectors. In addition, Germany has ensured that operators receiving the blast furnace gas will need to monitor and report emissions as well as surrender allowances. Moreover, it is ensured that all emissions originating from the combustion of blast furnace gas will take place in installations with a capacity above the threshold as set out in Annex I to the Directive.
- (7) The amendment of the national allocation plan to introduce a special hardship rule for small and medium enterprises is consistent with the provisions of the Directive, in particular with criterion 5 of Annex III to the Directive and is therefore accepted. There are no indications that such an allocation methodology is likely to unduly favour certain installations or sectors.
- (8) The amendment to its national allocation plan notified to the Commission by Germany before the 31 December 2006 specified that the maximum total 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 20% of 453.070175 million tonnes. Subsequently, in 2007 Germany notified a limit of 22%, relating only to the part of allowances that is allocated free of charge. The amendment of the national allocation plan to set 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 at 22% is compatible with criterion 12 of Annex III to the Directive³ and is accepted, provided that the maximum amount of CERs and ERUs

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.

which may be used by all operators in the Community scheme does not exceed a figure equal to 20% of 453.070175 million tonnes.

- (9) 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.
- (10) Accordingly, Germany 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 plan⁴. 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 aspects of the proposed amendment to the national allocation plan of Germany for the first five-year period mentioned in Article 11(2) of the Directive are compatible in particular with the respective criteria mentioned below and are therefore accepted:

1. criterion 5 of Annex III to the Directive: The amendment of the national allocation plan to abolish long term allocation guarantees referred to in Article 1(2) of Commission Decision C/2006/5609final of 29 November 2006 and to introduce a benchmarking system for the allocation of allowances for energy generating installations and certain other installations falling within the scope of application of the Directive;
2. criterion 5 of Annex III to the Directive: The amendment of the national allocation plan to provide for an allocation of allowances to installations which produce blast furnace gases;
3. criterion 5 of Annex III to the Directive: The amendment of the national allocation plan to provide for a special hardship rule for small and medium enterprises;

⁴ 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.

4. criterion 12 of Annex III to the Directive: the proposed increase to 22% 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, provided that the maximum amount of CERs and ERUs which may be used by all operators in the Community scheme does not exceed a figure equal to 20% of 453.070175 million tonnes.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 26 October 2007

For the Commission