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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.10.2007

COMMISSION DECISION

of 18 October 2007

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

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(Only the Portuguese 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 Portugal 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 30 October 2006, registered on the same day. Portugal submitted additional information in order to complete the notified plan by letter dated 8 February 2007, registered on 15 February 2007, in reply to questions from the Commission, by letters dated 4 May 2007, registered on 16 May 2007, and by letter dated 1 August 2007, registered on 6 August 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*, stressed the crucial importance of transparent and credible baseline data and projected emissions and urged the Commission to take into account the importance of preserving the integrity of the internal market and to avoid undue distortions of competition. The Committee, amongst others, expressed concern that the proposed cap exceeds 2005 verified emissions and that Portugal relies to a large extent

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.

on measures to reduce greenhouse gases in the non-trading sectors and urged the Commission to closely scrutinise the substantiation of these measures. The Committee called on the Commission to closely examine Portugal's ability to substantiate its intended use of the Kyoto mechanisms to reach its target under Decision 2002/358/EC. The Committee also called on the Commission to examine the envisaged exemptions from the proposed general allocation methodologies for certain installations, including those involved in the production of ferrous metals, so as to ensure that these installations are not allocated more allowances than needed or otherwise unduly favoured. The Committee urged the Commission to scrutinise the proposed size and management of the new entrants' reserve, in particular the amount intended to accommodate additional growth and the carbon fund programme put in place in that respect. The Committee further called on the Commission to examine the admissibility under criterion 12 of Annex III to the Directive of the intended maximum amount of CERs³ and ERUs⁴ which may be used by operators as a percentage of the allocation of allowances to each installation. The views of the Climate Change Committee have been taken into account.

- (3) The Commission notes that Portugal's annual Kyoto commitment for the period from 2008 to 2012 is 77.39 million tonnes CO₂ equivalent (hereinafter "million tonnes"), while the most recent available figure for its annual total greenhouse gas emissions is 84.5 million tonnes for the year 2004⁵. The remaining gap between these two annual figures to be bridged by Portugal is therefore 7.11 million tonnes.
- (4) The national allocation plan, including the total average annual quantity of allowances of 37.9 million tonnes stated therein, reduced to 35.9 million tonnes by letter dated 4 May 2007, registered 16 May 2007, 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 criteria⁶. Certain aspects of the national allocation plan have been found incompatible with those criteria, and in particular with criteria 1, 6 and 12 of Annex III to the Directive.
- (5) The national allocation plan of Portugal contravenes criterion 1 of Annex III to the Directive because the total quantity of allowances to be allocated according to the national allocation plan is inconsistent with achieving Portugal'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

³ "Certified emission reduction" pursuant to Article 3(n) of the Directive.

⁴ "Emission reduction unit" pursuant to Article 3(m) of the Directive.

⁵ 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 Portugal 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 77.39 million tonnes (=386.956503/5). Annual total greenhouse gas emissions for the year 2004 are indicated in the third column of Table 1 in the Annex to the Progress Report SEC(2006) 1412 of 27 October 2006.

⁶ 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).

1 because the intended use by Portugal of other policies and measures in sectors not covered by the Directive is insufficiently substantiated. Member States must substantiate intentions to use such policies and measures, 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 the 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-counting effects have been eliminated in the estimation of quantitative reduction effects⁷.

- (6) The following table contains specification and quantification of individual policies and measures, which the Commission finds to be insufficiently substantiated, and indicates the reasons:

Policy or measure concerned	Quantification of insufficiently substantiated part (in million tonnes CO ₂ eq., based on figures provided by Portugal)	Reasons for insufficient substantiation
Reductions from afforestation and reforestation (Article 3.3 of the Kyoto Protocol)	3.36 Mt/2 = 1.68 Mt	<p>In the reply to a question letter from the Commission dated 12 January 2007 Portugal explains that it intends to plant an estimated additional 492 thousand ha of new forest in order to increase the amount of new forestry areas and thereby remove an average of 3.36 Mt CO₂/yr between 2008-12. This is in accordance with the National Inventory Report of Portugal, which states that the target increase for conversion of land into forestry by 2010 is 600 thousand ha, while by 2004 only 108 thousand ha were planted, leaving a gap of 492 thousand ha to reach by 2010. However, historic figures in the National Inventory Report show that the yearly amount of new forested land in Portugal between 1995 and 2004 was only 9810 ha/yr which is substantially lower than the required increment of 60.000 ha/yr. Furthermore, throughout the entire greenhouse gas inventory time series Portugal reports higher emissions from deforestation than removals from afforestation, resulting in a net emission of 0.3 Mt CO₂ eq. For the year 2010 the NAP projects total net removals of 3.355 Mt CO₂eq. The projected net removals from afforestation/reforestation (excluding deforestation of 0.388 Mt) in 2010 (3.743 Mt CO₂eq) are even 6.5 times higher than the current net removals from these activities. There may well be a large potential for afforestation and reforestation in Portugal. However, the fact that 90% of Portuguese forests are privately owned combined with the lack of long-term contracts between the major forest owners renders the objective of 2% annual growth of forest area overly ambitious.</p> <p>Portugal also periodically faces large impacts of forest fires. In 2003 8.5% of the total forest area was burned. Net emissions from land use change and forestry (LULUCF) in 2003 were 8.2 Mt CO₂ eq, whereas Portugal reported net removals of 3.9 Mt in 1998 (the year with the highest net removals in the period 1990-2004). The "<i> Direcção general dos recursos florestais</i>" published in the October 2006 time series collects data on the occurrence of Forest fires. Since 1990 the average annual area of land burnt increased steadily, from 100807 ha</p>

⁷ As stated in paragraph 20 and Annex 6 of the Commission's guidance COM(2005)703 final.

		<p>between 1990 and 1994, to 190284 ha between 2000 and 2004, and further to 325226 ha between 2005 and 2006. Therefore the impact of forest fires puts high uncertainty on the future contribution from LULUCF activities to the achievement of the Kyoto target. Furthermore, Portugal assumes that only 50% of the trees are affected by fires and only 10% of the total biomass of the affected trees is consumed by fires. These values seem unrealistically low taken into account that recent fires in Portugal have been very intense and large. Thus it is assumed that the Portuguese actual Greenhouse gas (GHG) inventory underestimates the emissions from forest fires and therefore accounts for unrealistically high net removals from the total LULUCF sector.</p> <p>In view of the above the Commission considers the expected emission reductions of 3.36 Mt from afforestation and reforestation as insufficiently substantiated. Therefore, in the absence of detailed information from Portugal, the Commission assumes as an approximation that Portugal will be able to realise at most 50% of the envisaged effects, i.e. 1.68 million tonnes.</p>
Forest management under art 3.4 of the Kyoto Protocol	0.8 Mt CO ₂ eq/2 = 0.4 Mt	<p>The Portuguese projections of net removals from forest management amount to a total of 0.8 Mt CO₂ eq. with the highest report of net removals of -3.9 Mt CO₂ eq. in the year 1998. However, Portugal faces high impacts of forest fires, for example, in 2003 the impacts of forest fires amounted to 8.2 Mt of net emissions. Forest fires in single years can thus be much higher than the effects of carbon sequestration activities in other years and therefore put a high uncertainty on the future contribution from forestry management activities to achieve Portugal's Kyoto target. Furthermore, as the most recent UNFCCC review report indicates the way emissions from forest fires are accounted for is not convincing in that Portugal assumed that in forest wildfires all biomass burnt was removed through harvesting as salvaged wood, and accordingly included in CO₂ emissions from wildfires as emissions from harvesting. Accordingly, it is likely that this assumption underestimated CO₂ emissions from wildfires, since not all biomass burnt is harvested.</p> <p>Against this background and in the absence of detailed information from Portugal, the Commission considers that the expected sequestration from better forest management is insufficiently substantiated and assumes as an approximation that Portugal will be able to realise at most 50% of the envisaged effects, i.e. 0.4 million tonnes.</p>
Waste sector: reductions due to the Directive on Packaging and Packaging Waste 94/62/EC	0.9 Mt CO ₂ eq/2 = 0.45 Mt	<p>The effect of the Directive on Packaging and Packaging Waste 94/62/EC to reduce 0.9 Mt CO₂ eq. of mainly methane (CH₄) emissions seems overestimated. Because only biodegradable waste causes CH₄ emissions in landfills, from the waste types addressed in the directive mainly paper is relevant. The recycling of the other waste types doesn't influence CH₄ emissions from landfills. In addition, the only relevant share of waste in Portugal is paper (27.1%), since the effect from wood is negligible (0.3% share). To this end the rate of CH₄ recovery at landfills as reported in the GHG inventory with 38.2% appears unrealistically high. No other country has estimated similar high emission reductions from the Directive on packaging and packaging waste. In addition, recovery may technically only be possible until a rate of 50%. There is, however, no substantiated indication that recovery will grow as expected by Portugal. Therefore emission reduction effects in the future can mainly only be achieved by changes in the consumption patterns of waste and a reduction of consumption which is not addressed in the National Inventory Report. However, since 2000 the production of municipal solid waste was fluctuating at a level of 3000-3500 kt waste and Portugal has not yet reduced the landfilling of biodegradable waste. Against this background and in the absence of further substantiated information from Portugal, the Commission considers the projected significant decrease of CH₄ emissions in the waste sector too high and assumes as an approximation that Portugal will be able to realise at most 50% of the envisaged effects, i.e. 0.45</p>

		million tonnes.
Total	2.53 Mt	

- (7) As indicated in the table and in the preceding recital, the total amount, with respect to which policies and measures are insufficiently substantiated, is 2.53 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 Portugal will achieve its Kyoto commitment unless increased efforts are made. These increased efforts to be made by Portugal need to take place in the sectors covered by the Directive or those not covered. As Portugal 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 43.07% of their emissions with respect to overall greenhouse gas emissions⁸. This leads to a necessary reduction of 1.089671⁹ 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.
- (8) Pursuant to criterion 5 of Annex III to the Directive, the Commission has also examined compliance of the national allocation plan of Portugal 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 Units¹⁰, 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 Portugal, 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

⁸ More specifically, the trading sector's share is most accurately calculated as 2005 verified emissions for the trading sector divided by 2004 total greenhouse gas emissions of Portugal according to the Progress Report COM(2006)658 final of 27 October 2006 and the most recent figure for Portugal's 2005 verified emissions, i.e. 36.4/84.5.

⁹ 2.53 Mt *0.4307

¹⁰ 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.

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.

- (9) Pursuant to criterion 5 of Annex III to the Directive, the Commission has also examined the methodology by which Portugal intends to allocate allowances at sector and installation level. Further to some uncertainties in the methodology applied, Portugal does not demonstrate that information provided by companies has been verified by independent experts. Therefore, due to the lack of sufficient safeguards, the proposed allocation methodology may lead to undue and discriminatory advantages to certain sectors or installations. For these 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 incompatible with the common market should it be assessed in accordance with Articles 87 and 88 of the Treaty.
- (10) Pursuant to criterion 6 of Annex III to the Directive, the plan shall contain information on the manner in which new entrants will be able to begin participating in the Community scheme. The Commission notes, in particular, that Portugal, instead of specifying the necessary information in the plan, still intends to issue a regulation defining the detailed procedures for new entrants and closures. This contravenes criterion 6 because the information contained is insufficient to assess whether the other criteria of Annex III to the Directive and Article 10 thereof are respected.
- (11) 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 Portugal's complementarity obligations under the Kyoto Protocol and decisions adopted pursuant to the UNFCCC or the Kyoto Protocol. Decision 2/CMP.1¹¹ 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 complementarity, 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 complementarity implies in any event that use by operators may not lead to a situation where more than half of

¹¹ 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.

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 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.

- (12) In application of this method, the effort undertaken by Portugal is 10.61 million tonnes¹². Taking into account that all of Portugal's intended government purchases of Kyoto flexible mechanisms can be recognised as sufficiently substantiated, which is 5.96 million tonnes that needs to be deducted from 50% of the effort undertaken, i.e. 5.305 million tonnes, -0.655 million tonnes would constitute the maximum absolute amount for operators' use per year permitted for Portugal so that the maximum level expressed as a percentage of the allocation of the allowances to each installation would be 0%. In other words, Portugal would not be entitled to any use by operators of Kyoto units. 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 positive 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 more than 10% on average, as implied by Portugal's national allocation plan¹³, 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 Portugal's complementarity obligations under the Kyoto Protocol and decisions adopted pursuant to the UNFCCC or the Kyoto Protocol, to the extent that it exceeds 10%.
- (13) 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 Portugal as soon as possible, taking into account the time-scale necessary to carry out the national procedures without undue delay. Were Portugal to amend its national allocation plan in a non-discriminatory manner in accordance with Article 2 of this Decision and duly taking into account the Commission's observations in recital 8 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.

¹² Portugal's Kyoto commitment, expressed in absolute figures, is 77.39 million tonnes. Base year emissions are 60 million tonnes, 2004 emissions are 84.5 million tonnes and 2010 projected emissions with existing policies and measures are 88 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 latter emissions figure being the highest of these three alternatives, the relevant effort with respect to the Kyoto commitment is 10.61 million tonnes. Dividing this effort by two gives 5.305 million tonnes, representing the maximum absolute amount of which the amount of 5.96 million tonnes sufficiently substantiated government purchases needs to be deducted.

¹³ Portugal proposes a general JI/CDM-limit for all installations of 10% but envisages applying a higher limit of 50% to combined cycle natural gas power stations. This increases the average JI/CDM-limit above 10%. A precise average figure for the JI/CDM-limit is not specified in the plan. The Commission notes that it is the JI/CDM-limit itself, and not the expected average use by operators of JI/CDM-credits, which matters for assessing complementarity.

- (14) 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.
- (15) 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 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.
- (16) 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.
- (17) 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.
- (18) 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 plan¹⁴. 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,

¹⁴ 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 Portugal 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 Portugal's intended use of policies and measures that is insufficiently substantiated in relation to Portugal achieving its commitment under Decision 2002/358/EC, amounting to the equivalent of on average 1.089671 million tonnes per year;
2. criterion 6 of Annex III to the Directive: the information on the manner in which new entrants will be able to begin participating in the Community scheme;
3. criterion 12 of Annex III to the Directive: the maximum overall amount of CERs and ERUs of on average more than 10% 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 Portugal's complementarity 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 1.089671 million tonnes CO₂ equivalent of allowances per year;
2. information is provided on the manner in which new entrants will be able to begin participating in the Community scheme, in a way that complies with the criteria of Annex III to the Directive and Article 10 thereof;
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 limited to no more than 10%.

Article 3

1. The total average annual quantity of allowances of 34.810329 million tonnes, to be allocated by Portugal 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 Portuguese Republic.

Done at Brussels, 18 October 2007

For the Commission