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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.7.2007

COMMISSION DECISION

of 13 July 2007

concerning the amendment to the national allocation plan for the allocation of greenhouse gas emission allowances notified by Sweden in accordance with Article 3(3) of Commission Decision C/2006/5617final of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Sweden 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 Sweden in accordance with Article 3(3) of Commission Decision C/2006/5617final of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Sweden in accordance with Directive 2003/87/EC of the European Parliament and of the Council,

(Only the Swedish 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/2006/5617final, Sweden 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) Sweden notified to the Commission by letter dated 21 December 2006 certain information concerning an amendment to its national allocation plan. Sweden submitted additional information on this amendment by letter dated 30 May 2007, registered on 20 June 2007, in reply to questions from the Commission.
- (3) To the extent that the information submitted by Sweden 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 Sweden, in particular those purely relating to the implementation of Commission Decision C/2006/5617final 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 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.

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.

- (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. The amendment of the national allocation plan has been found incompatible with those criteria and is therefore rejected.
- (5) The amendment of the national allocation plan is incompatible with criteria 1, 2 and 3 of Annex III to the Directive in that the total quantity of allowances intended to be allocated is inconsistent with assessments of actual and projected progress made pursuant to Decision 280/2004/EC³ and is inconsistent with the potential, including the technological potential, of activities covered by the Community scheme to reduce emissions.⁴ 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) With respect to criterion 2 of Annex III to the Directive, in the Commission's most recent assessment⁵ made pursuant to Decision 280/2004/EC, the actual greenhouse gas emissions of the sectors covered by the Community Scheme in Sweden in 2005 are reported as being 19.3 million tonnes CO₂ equivalent (hereinafter "million tonnes")⁶. As reasoned in Commission Decision C/2006/5617final the Commission considers these emission figures are the most reliable and accurate emissions figures to use as a starting point for the assessment under criteria 2 and 3 because they have been reported by individual installations in Sweden falling under the Community scheme and have been independently verified pursuant to Article 15 of Directive 2003/87/EC⁷. The Commission considered that there are no indications in the Swedish national allocation plan that a clear majority of exceptional circumstances manifestly pointed in one direction in 2005 so that the 2005 verified emissions figures cannot be regarded as

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 See Commission Decision C/2006/5617final.

⁵ COM(2006)658 final of 27 October 2006 and Annex SEC(2006)1412 of 27 October 2006.

⁶ Chapter 3.3. of COM(2006)658 final of 27 October 2006 and Table 5 in the Annex SEC(2006)1412 of 27 October 2006. The exact figure is 19.315482 million tonnes as indicated in the Community Independent Transaction Log on 31 October 2006. The publication of 2006 verified emissions figures in May 2007 cannot 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 the relevant emissions data. 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 assessment of verified emissions figures. Using other data for the few remaining decisions adopted after 15 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 2005 verified emissions figures.

⁷ See Commission Decision C/2006/5617final.

representative.⁸ The Commission has examined the additional data concerning emissions and energy use submitted by Sweden in the amendment to its national allocation plan.

- (7) The Commission notes that Sweden claims that higher than average hydropower production in Sweden and the integrated Nordel electricity market reduced 2005 verified emissions by 0.6 Mt, as hydropower replaced both Swedish fossil fired power production and fossil fired industrial boilers. A regression analysis of the statistical relationship between total hydro power production in the integrated Nordel electricity market and Swedish fossil fired power emissions in the period 1990-2005⁹ indicates that an increase in hydro power production in the integrated Nordel electricity market by 1 TWh would normally lead to a decrease of Swedish condensing power emissions of 0.0361 million tonnes^{10 11}. The Nordel hydro power production based on normal precipitation in 2005 would have been 197.8 TWh¹², whereas the actual hydro power production was 222.2 TWh. Inserting the "normal" hydro power production in the regression formula provides "normal" Swedish condensing power emissions of 3.512312 million tonnes for 2005¹³. The actual emissions from fossil fired power stations in Sweden were 3.5 million tonnes – and the difference between "normal" and actual emissions is 0.012312 million tonnes. This does not constitute a significant deviation from 2005 verified emissions in Sweden, and the Commission does not deem this to be due to exceptional circumstances.
- (8) A similar regression analysis of the statistical relationship between total hydro power production in the integrated Nordel electricity market and the annual use of electricity in industrial boilers in Sweden in the period 1990-2005¹⁴ indicates that an increase in hydro power production in the integrated Nordel electricity market by 1 TWh would normally lead to an increase of electric boilers of 0.0202 TWh¹⁵¹⁶. However, inserting the "normal" hydro power production of 197.8 TWh in the regression formula provides "normal" use of electric boilers in Sweden of 1.51 TWh. The actual use of electric boilers in Sweden in 2005 was 1.51 TWh. On this basis the Commission does not deem the use of electric boilers in 2005 to constitute exceptional circumstances. Consequently, Swedish 2005 verified emissions figures should not be adjusted due to higher than average hydro power production in the integrated Nordel electricity market as no exceptional circumstances as regards verified CO2 emissions in Sweden due to that factor have been documented.

⁸ See Commission Decision C/2006/5617final.

⁹ Hydro-production in the Nordel area, see Nordel Annual Statistics table S 11 at: <http://www.nordel.org/Content/Default.asp?PageID=157>. Swedish fossil fired power emissions: Information submitted by Sweden in a letter to the Commission dated 30 May 2007.

¹⁰ The regression formula is $Y = -0.0361X + 10.653$, where Y = CO2 emissions from Swedish fossil fired power stations, and X = hydro power production in the integrated Nordel electricity market.

¹¹ The correlation factor - R^2 – at 0.3629 indicates a relatively weak statistical relationship between the two factors.

¹² The Nordel organisation publishes each year a figure for "normal year hydro power production", see Nordel Annual Statistics table S 2 at: <http://www.nordel.org/Content/Default.asp?PageID=157>

¹³ "Normal" year emissions from Swedish fossil fired power plants 2005 = $10.653 - 0.0361 \cdot 197.803 = 3.512312$ Mt

¹⁴ Information on the use of electric boilers provided by Sweden in letter to the Commission dated 26 April

¹⁵ The regression formula is $Y = 0.0202X - 2.4853$, where Y = Annual use of electricity in industrial boilers in Sweden (TWh), and X = hydro power production in the integrated Nordel electricity market.

¹⁶ The correlation factor - R^2 – at 0.2894 indicates a relatively weak statistical relationship between the two factors

- (9) Moreover, the Commission takes note that Sweden submitted further information in the amendment to its national allocation plan pursuant to which there was an usual year with higher than average outside temperatures in Sweden. However, Sweden has not provided a sufficiently substantiated quantified analysis to sustain this claim. Furthermore, the claim by Sweden that a delay of the commissioning of a new installation in 2006 has led to lower 2005 emissions is a single event that will be balanced out by other factors, such as installations that come into operation earlier as planned and can therefore in no way be taken into account as an "exceptional circumstance" that may merit adjustment of 2005 emissions figures.¹⁷
- (10) Against this background, the Commission assessment is that there are no indications in the Swedish national allocation plan that a clear majority of exceptional circumstances manifestly pointed in one direction in 2005 so that the 2005 verified emissions figures cannot be regarded as representative¹⁸. Accordingly, the amendment to the national allocation plan is incompatible with criterion 2 of Annex III to the Directive and therefore rejected.
- (11) 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/2006/5617final, taking into account verified emissions, GDP growth and carbon-intensity improvements. Sweden has not submitted any information which would justify a change to the calculations applied by the Commission in its Decision C/2006/5617final. The following table indicates the unacceptable increase to the total quantity for the period from 2008 to 2012:

Unacceptable increase to the annual average total quantity for the period from 2008 to 2012 (all figures in million tonnes CO2 eq.)		
Annual average total quantity from 2008-2012 allowed in Commission Decision C/2006/5617final	Annual average total quantity on basis of proposed amendment to the national allocation plan	Not acceptable part of the average annual total quantity
22.802439 ¹⁹	24.940741	2.138302

Accordingly, given that in the years 2008 to 2012 proposed allocations exceed emissions taking into account GDP growth, carbon-intensity improvements, the Commission finds that the annual average excess allocation by Sweden with respect to the total quantity of 24.940741 million tonnes proposed in the amendment for the period 2008 to 2012 amounts to 2.138302 million tonnes, 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

¹⁷ See Commission Decision C/2006/5617final.

¹⁸ See Commission Decision C/2006/5617final.

¹⁹ The maximum allowed cap in the Commission decision of 29 November 2006 included emissions equal to 2 million tonnes for additional installations from the expanded scope as notified in the Swedish NAP subject to verification. In the Swedish NAP amendment this amount was reduced to an estimated 1.740741 Mt which is also reflected in the new cap proposed in the Swedish amendment.

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, Sweden 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 plan²⁰. 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 Sweden 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 intended increase by 2.138302 million tonnes of the total quantity of allowances from 22.802439 million tonnes year to 24.940741 million tonnes per year 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.

Article 2

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 13 July 2007

For the Commission

²⁰

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.