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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND TO THE
EUROPEAN PARLIAMENT**

**on the assessment of national allocation plans for the allocation of greenhouse gas
emission allowances in the second period of the EU Emissions Trading Scheme**

**accompanying Commission Decisions of 29 November 2006 on the national allocation
plans of Germany, Greece, Ireland, Latvia, Lithuania, Luxembourg, Malta, Slovakia,
Sweden and the United Kingdom in accordance with Directive 2003/87/EC**

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1. INTRODUCTION

Combating climate change is a key objective of the European Union. The EU Emissions Trading Scheme (EU ETS), established by Directive 2003/87/EC, is the EU's central instrument for achieving its Kyoto Protocol targets during the period 2008 to 2012 in a cost-effective manner. The EU ETS will continue to be central to the EU's efforts to achieve greater greenhouse gas emission reductions over the medium to long-term.

To date, the first phase of the EU ETS running from 2005 to 2007 has delivered valuable lessons. These lessons are informing the review process¹, which is aimed at strengthening the scheme by looking at its functioning and its scope, in particular expanding it to other sectors and gases, beyond the second trading period, running from 2008 to 2012. However, the first set of independently verified emissions reports for the year 2005 was of particular importance. This indicated that aggregate 2005 emissions, at just over 2 billion tonnes, were significantly below the annual average allocation for the first period of close to 2.2 billion tonnes².

The first period was always intended to be the learning phase. At the same time the latest report³ by the European Environment Agency underlines the immediate need for more effort to be undertaken in a number of Member States in order to respect Europe's commitments under the Kyoto Protocol. Hence, if more allowances were to be issued by Member States than the likely quantity of actual emissions in 2008 to 2012 from the installations covered, meeting the Kyoto commitments would be severely compromised and little or no environmental benefit would be provided by the EU ETS. The development and deployment of existing and new clean technologies would stall, and the evolution of a dynamic and liquid global market would be seriously undermined.

Therefore, the Commission assesses the second period plans in a manner which ensures a correct and consistent application of the criteria in the Directive and sufficient scarcity of allowances in the EU ETS, thereby in turn ensuring that emissions reductions are delivered and that the emerging carbon market is strengthened. This will allow the EU ETS to unfold its full environmental and economic potential in terms of environmental and economic benefits.

¹ COM(2006) 676 – Building a Global Carbon Market.

² This figure includes allowances allocated to new entrant reserves and expected to be brought into the EU-wide allowance market by means of auctioning.

³ Greenhouse gas emission trends and projections in Europe 2006, EEA Report No 9/2006. See http://reports.eea.europa.eu/eea_report_2006_9/en/eea_report_9_2006.pdf

This Communication sets out the Commission's approach to the assessment of second period plans and is accompanied by a first package of decisions addressed to 10 Member States.

2. ASSESSMENT OF NATIONAL ALLOCATION PLANS

For each trading period, each Member State is obliged to notify a national allocation plan to the Commission. The Directive requires the Commission to assess each plan according to the same criteria set out in Annex III⁴ to and Article 10 of the Directive. The Commission adopts a separate decision within three months of a complete plan being notified⁵.

By 29 November 2006, 19 Member States had notified a national allocation plan to the Commission. Of these, 10 were sufficiently complete to allow the Commission to take a decision on their compatibility with the Directive. These plans represent about half of the overall quantity of allowances allocated in the first trading period. On 12 October 2006, the Commission launched infringement proceedings on all outstanding plans. It will continue to exert legal pressure so as to ensure that outstanding plans are notified as soon as possible.

The Commission has placed particular emphasis on assessing the second period plans in a consistent, fair and transparent manner. In so doing, the Commission has identified several issues that have been scrutinised in detail for compatibility with the Annex III criteria. These fall under the following main headings:

- setting a cap consistent with each Member State's Kyoto Protocol commitment, emissions development and reduction potential,
- ex-post adjustments,
- consistency with complementarity obligations (Joint Implementation/Clean Development Mechanism project credit limit),
- other issues specific to individual plans with a view to avoiding undue distortions of competition and of the internal market.

Each of these issues is explained in greater detail in the following sections. These sections reflect the common elements of the Commission's assessment incorporated into the decisions and constitute additional motivations of the latter.

Table 1 summarises the Commission's assessment, indicating where criteria have been contravened.

2.1. Caps consistent with the Kyoto commitments, emissions development and reduction potential

The total quantity of allowances (cap) has to be assessed in accordance with criteria (1), (2) and (3), respectively on meeting the relevant Kyoto commitment, emissions development and reduction potential, in Annex III to Directive 2003/87/EC. At the same time undue distortions

⁴ See Annex 1.

⁵ Where necessary, the Commission requests further information from the Member State before concluding its assessment.

of competition and of the internal market must be avoided. Annex III mandates the Commission as a general principle to ensure a strict application of all criteria⁶.

The Commission's assessment is based upon the best information that is available. The emissions data is of high quality and has been verified independently. In addition to this data, robust figures are used on expected economic growth and carbon intensity improvements. These are two key factors which are important for respecting the EU's Kyoto commitments in the period 2008 to 2012. The Commission is also taking into account verified and substantiated additional emissions that come under the coverage of the EU ETS in the second period plan, once a Member State has included additional combustion installations in sectors which were not included in the first period plan. The Commission is assessing in particular the independent verification of these additional emissions.

When using verified emissions data for the first year of operation of the EU ETS, the Commission has paid attention as to whether the first year of operation was a representative year and a justified reference point for the assessment. While no total greenhouse gas emissions figures are available at this stage to compare 2005 total greenhouse gas emissions figures with averages over recent years, Eurostat⁷ has reported energy consumption in the EU-25 as having been stable between 2004 and 2005 (1 637,6 million tonnes of oil equivalent in 2004 versus 1 627,2 million tonnes of oil equivalent in 2005). For the years prior to 2005, and therefore before the introduction of the EU ETS, no comparable figures for installations covered by the scheme are available systematically due to the absence of independent verification on the basis of the Directive.

The Commission considers that in each year there are several factors at play, including weather patterns, which influence emissions from EU ETS installations and which generally balance each other out in their effects on total annual emissions. Where appropriate, the Commission examines the availability and quality of other data concerning emissions and energy use prior to 2005. In general, the Commission does not have indications that a clear majority of exceptional circumstances manifestly pointed in one direction in 2005. It considers therefore that 2005 verified emissions figures can, as a rule, be regarded as representative. In case there are exceptional circumstances, however, the Commission closely examines to what extent it is justified to adjust independently verified emissions for 2005 by an appropriate correction factor.

In order to assess whether criteria (2) on emissions development and (3) on reduction potential are respected, the Commission has taken into account expected economic growth and carbon intensity developments between 2005 and 2010⁸. In order to ensure a consistent assessment of all plans the Commission is applying economic growth⁹ and carbon intensity

⁶ 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 this Annex. (See second sentence in criterion 1).

⁷ Statistical aspects of the EU energy economy in 2005, Eurostat, Environment and Energy, 13/2006.

⁸ 2010 is chosen as the average year of the 2008 to 2012 period.

⁹ The economic growth trend developments for the first set of assessed plans are listed in Annex 2. The economic growth data reflect the latest Commission forecasts for the years 2006, 2007 and 2008. See http://ec.europa.eu/economy_finance/publications/european_economy/2006/ee506en.pdf

trends based on a single and coherent methodology and set of assumptions as presented in "European Energy and Transport Trends to 2030 – update 2005"¹⁰.

For the assessment of criterion (3) on the potential to reduce greenhouse gas emissions it is important to reflect the fact that the EU ETS introduced an allowance price as of 2005 which will positively affect carbon intensity trend developments.

The strong commitments by the EU and Member States to combat climate change provide a clear and sustained signal to ETS installations that there is an economic cost to emitting greenhouse gases, which will become even more important in the future. This reinforces long-term economic incentives to reduce emissions. In consequence, carbon intensity will improve over time at least at a rate as indicated in the "low carbon constraint / no CCS"-case¹¹.

The Commission considers that this level of carbon intensity improvement does not appropriately reflect most likely future trends because it does not take account of all relevant factors. In addition to the economic incentives created by the EU ETS, operators will be likely to increasingly invest in energy efficient technologies in order to lower their fuel and electricity costs. Moreover, they will increasingly be encouraged by Member States' policies and measures as well as public opinion to accelerate efforts with regard to innovation in energy saving production methods and thus take effective action against climate change. At EU level, the Energy Efficiency Action Plan¹² as well as collective efforts to reduce dependency on energy imports will further spur efforts to achieve better energy efficiency levels, reducing in general also carbon intensity. Therefore, in order to appropriately reflect reality, the Commission considers it necessary to base the assessment under criterion (3) on a rate of carbon intensity improvement exceeding the "low carbon constraint" case by 0.5% per annum, which is equivalent to 2.5% during the five-year period from 2005 to 2010.

In practical terms the Commission is assessing the compatibility of a plan against criteria (2) and (3) based on the following formula:

Maximum allowed annual average cap = (CIVE * GTD * CITD) + ADD

Where: CIVE = corrected independently verified emissions for 2005

GTD = growth trend development 2005 to 2010

CITD = carbon intensity trend development 2005 to 2010

ADD = additional emissions covered by an extended scope of combustion installations¹³

¹⁰

http://ec.europa.eu/dgs/energy_transport/figures/trends_2030_update_2005/energy_transport_trends_2030_update_2005_en.pdf

¹¹ This scenario was prepared as an input to the review of Directive 2001/81/EC (the National Emissions Ceilings Directive). It uses an identical methodology and set of assumptions to "European Energy and Transport Trends to 2030 – update 2005" but contains expected carbon intensity improvements on the basis of an allowance price of 12 Euro in 2010 increasing to 20 Euro in 2020. See <http://ec.europa.eu/environment/air/baseline.htm>.

¹² Action Plan on Energy Efficiency: Realising the Potential - COM(2006) 545.

¹³ See paragraph 36 of COM(2005) 703.

$$\text{CIVE} = \text{IVE} + \text{AWIVE} + \text{EOPT}$$

Where: IVE = independently verified emissions for 2005

AWIVE = annual average allocation to installations without an independently verified emissions report

EOPT = emissions for 2005 of installations opted out¹⁴

In assessing consistency of a plan with the Kyoto commitment against criterion (1), the Commission has taken into account:

- the progress towards the Kyoto commitment and, if relevant, the remaining gap to be closed;
- the reliance on and state of preparation and implementation of measures for the government purchase of Kyoto units;
- the reliance on and state of preparation and implementation of measures in non-trading sectors;
- the robustness of projections for the transport sector¹⁵ underlying the national allocation plan.

Progress to Kyoto and remaining gap

Based on the progress report the starting point for the assessment of criterion (1) on the Kyoto commitment is the progress the Member State has made and the remaining gap to be closed in 2008 to 2012 in relation to the 2004 total greenhouse gas emissions, as reported in the progress report. As stated in its further guidance on national allocation plans¹⁶, the Commission considers it necessary for a Member State with a gap to close to use the second period allocation plan to achieve at least a fair proportion of the outstanding effort, i.e. a part reflecting the share of EU ETS installations in total greenhouse gas emissions.

Intended government purchase of Kyoto units

In accordance with the two guidance documents¹⁷ the Commission assesses whether the intended government purchase of Kyoto units is sufficiently substantiated, basing its assessment on the elements listed in Annex 5 of the further guidance.

The Commission finds that the intended government purchase of Kyoto units is only sufficiently substantiated where a Member State has an operational programme in place, has

¹⁴ Where no emissions figures of sufficient quality are available the assessment is based on the annual average allocation the installations opted out would have received.

¹⁵ EU carbon dioxide emissions in the transport sector have grown significantly over the last decade and reduction measures in the transport sector take considerable time for the intended effects to be achieved.

¹⁶ For the second guidance document, see Commission Communication on further guidance on allocation plans for the 2008 to 2012 trading period of the EU Emission Trading Scheme - COM(2005) 703.

¹⁷ For the first guidance document, see 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.

signed contracts or initiated carbon purchase tenders, and has committed more than a minor share of necessary budgetary resources.

Where a Member State with a remaining gap to close between its actual emissions and allowed emissions according to the Kyoto target does not substantiate or insufficiently substantiates the intended government purchase of Kyoto units this contravenes criterion (1) and as a consequence the intended total quantity of allowances is reduced proportionally. To determine the required reduction, the proportion of overall emissions that the trading scheme represents is relevant in comparison with emissions from sources not covered by the Directive.

In practical terms the Commission determines the required reduction based on the following formula:

$$\text{Required annual average reduction} = (\text{UNSUB GP}) * \text{TSS}$$

Where: UNSUB GP = unsubstantiated annual average intended government purchase of Kyoto units

TSS = trading sector share

$$\text{TSS} = \text{CIVE} / \text{GHG}$$

Where: GHG = total greenhouse gas emissions in 2004¹⁸

Degree of reliance on and substantiation of other policies and measures

In accordance with the further guidance document the Commission assesses the degree of reliance on other policies and measures. Where this degree is significant it closely examines whether the intended implementation of other policies and measures is sufficiently substantiated, basing its assessment on the elements listed in Annex 6 of the further guidance.

The Commission finds a policy and measure is substantiated in particular where the intended reduction potential is demonstrated to be realistic and achievable in the period 2008 to 2012, where there are sufficient assurances that the policy or measure will be implemented following the Commission decision on the national allocation plan, and where it is demonstrated that the measure would not have significant overlapping effects to reduce emissions in installations covered by the EU ETS.

Where a Member State with a remaining gap to close between its actual emissions and allowed emissions according to the Kyoto target does not substantiate or insufficiently substantiates another policy or measure this contravenes criterion (1) and as a consequence the intended total quantity of allowances is reduced proportionally. To determine the required reduction, the proportion of overall emissions that the trading scheme represents is relevant in comparison with emissions from sources not covered by the Directive.

In practical terms the Commission determines the required reduction based on the following formula:

¹⁸ As indicated in the Progress Report COM(2006) 658, 27.10.2006, Table 1 in the Annex SEC(2006) 1412, 27.10.2006.

Required annual average reduction = (UNSUB PM) * TSS

Where: UNSUB PM = unsubstantiated policy or measure

Projections of carbon dioxide emissions in the transport sector

Carbon dioxide emissions in the transport sector have grown significantly and reduction measures in the transport sector take considerable time for the intended effects to be achieved. For the assessment of criterion (1) it is therefore vital to examine the robustness of expected trends in transport sector carbon dioxide emissions.

The Commission has compared the trend in transport sector carbon dioxide emissions as presented by the Member State in the national allocation plan with the trend development in the "European Energy and Transport Trends to 2030 – update 2005".

Where a Member State with a remaining gap to close between its actual emissions and allowed emissions according to the Kyoto target and the trend development assumed in its national allocation plan is substantially below the one in the "European Energy and Transport Trends to 2030 – update 2005" the Commission finds the plan contravenes criterion (1) and as a consequence the intended total quantity of allowances is reduced proportionally. To determine the required reduction, the proportion of overall emissions that the trading scheme represents is relevant in comparison with emissions from sources not covered by the Directive.

In practical terms the Commission determines the required reduction based on the following formula:

Required annual average reduction = [TRANS EM * (ETT - NAPT)] * TSS

Where: TRANS EM = transport carbon dioxide emissions in 2005

ETT = trend development 2005 to 2010 in the "European Energy and Transport Trends to 2030 – update 2005"

NAPT = trend development 2005 to 2010 in the national allocation plan

2.2. Ex-post adjustments

The Directive foresees in Article 11 and Annex III, criterion (10), that a Member State has to decide up-front (before the trading period starts) the absolute quantity of allowances allocated in total and to each installation's operator. This decision may not be re-visited and no allowances may be re-allocated by means of adding to or subtracting from the quantity determined for each operator on the basis of a government decision or a pre-determined rule.

Such ex-post adjustments contradict the essential concept of a "cap-and-trade" system as conceived by the Directive. Each installation is allocated a certain amount of allowances in the decision referred to in Article 11(2) of the Directive, whose value it can freely dispose of with a view to taking optimal economic decisions. Three major alternatives exist, which are equally legitimate: investing in emissions reductions and selling freed allowances, reducing production volume and selling freed allowances, or maintaining/expanding production volume while buying additional allowances needed.

The Commission considers that there is no administrative need or any other justification for ex-post adjustments. Member States are required to use the best data available when deciding on allocations up-front. As a matter of fact, the use of prognoses always requires to a certain degree an ex-ante estimation of emissions the actual volume thereof may eventually deviate in reality. But this is an inherent feature of any "cap-and-trade" scheme and can thus certainly not justify a retroactive change to the allocation already decided upon up-front. Moreover, the reasons for such a deviation cannot be reliably identified and may well be the result of emissions reductions due to real investments having been carried out by operators in line with the economic incentives created by the scheme.

As in the first period the Commission Decisions allow modifications to be made to intended allocations in the plan in respect of improvement in data quality at any time before the decision on allocation under Article 11(2) is taken.

Only in the following cases are adjustments allowed following the final national allocation decision:

- where an installation is closed during the period, that Member States determine that there is no longer an operator to whom allowances will be issued; and
- where allocation takes place to new entrants from the reserve, that has been fixed upfront, that the exact allocation to each new entrant will be decided upon after the decision on allocation under Article 11(2) is taken.

The Commission rejects any other adjustments as contravening criterion (10) in accordance with the assessment of first period plans.

2.3. Consistency with supplementary obligations (JI/CDM limit)

In addition to domestic action by Member States to reduce their greenhouse gas emissions, the Kyoto Protocol allows Member States to invest in Joint Implementation (JI) and Clean Development Mechanism (CDM) projects in other countries and use credits from these for compliance purposes towards part of their emission reduction commitments. Member States are required to ensure that the use of the Kyoto flexible mechanisms is supplemental to domestic action, with a view to narrowing per capita differences in emissions between developed and developing countries¹⁹.

On top of this use by Member States, the Directive allows operators of EU ETS installations to use JI and CDM credits towards fulfilling a proportion of their commitments under the Directive. This proportion must be consistent with Member State commitments to supplementarity and has to be fixed in the national allocation plan.

Therefore, the Commission has to assess whether the limit is consistent with Member States' commitments to supplementarity. The supplementary obligations comprise both government purchase as well as private sector use of JI and CDM credits, while the Commission's assessment under the Directive is limited to private sector use.

¹⁹ 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, p. 4.

The Commission takes the following approach to assessing the compatibility of the proposed JI/CDM limits against Annex III to the Directive:

The level of effort to reduce greenhouse gases a Member State is required to undertake is determined by assessing the amount of reduction it is required to undertake in relation to

- base year emissions,
- greenhouse gas emissions in 2004,
- and projected emissions in 2010²⁰.

In the next step, half of the figure representing the highest effort is calculated. This figure is considered to be the maximum overall amount of JI/CDM credits that a Member State can make use of in addition to domestic action, while respecting its commitments to ensure that the use of the Kyoto mechanisms is supplemental to domestic action.

In respect of Member States which do not intend to purchase any Kyoto units with government funds, a Member State may allow its operators covered by the Community scheme to make use of CDM/JI credits to the full amount of this limit. This limit is to be understood as a percentage figure specified as a share of the approved cap for the trading sector. If Member States allowed a higher level of usage, criterion (12) is considered to be violated.

In respect of Member States which intend to purchase Kyoto units with government funds, these purchases are taken into account. The amount of JI/CDM credits that can be used by installations in the Community scheme in that Member State is reduced by the annual average amount of intended or substantiated government purchases.

Where assessment in accordance with these approaches would result in a situation that EU ETS installations in that Member State would only be able to use JI/CDM credits up to a level of less than 10%, the Commission considers that as a minimum threshold installations should be allowed to use JI/CDM credits up to a level of 10%. This reflects a reasonable balance between domestic reductions and giving operators of installations an incentive to invest in projects in developing countries.

In practical terms the Commission assesses consistency with supplementary obligations based on the following formulae:

A = base year emissions – emissions allowed under Kyoto target

B = greenhouse gas emissions in 2004 – emissions allowed under Kyoto target

C = projected emissions in 2010 – emissions allowed under Kyoto target

D = 50 % of Max (A, B, C) – annual average government purchase of Kyoto units

Maximum allowed limit (in %) = (D / annual average cap) or 10 %

²⁰ All figures are based on the Commission's 2006 Progress Report, tables 1 and 2 in the Annex SEC(2006) 1412, 27.10.2006.

2.4. Issues specific to individual plans

Allocation guarantees beyond the trading period

The Commission notes that Directive 2003/87/EC provides for a national allocation plan to cover the respective trading period. Consequently, the Commission's assessment of a plan is restricted to aspects related to the respective trading period. For this reason in all cases where allocation plans for first trading period (2005 to 2007) contained provisions, in particular related to allocation guarantees²¹, referring to the period after 2007 the Commission has reserved its opinion.

The Commission is assessing for the first time the concrete application of allocation guarantees from the first period to the extent that they are intended to be applied in second period plans. It considers that these guarantees contravene criterion (5) and discriminate between companies in such a way as to unduly favour certain undertakings or activities contrary to the requirements of the Treaty, in particular Articles 87 and 88 thereof. In such cases guarantees would result in a preferential free allocation of allowances for benefiting installations compared to the degree of free allocation given to other existing installations under the general allocation methodology. Such favourable treatment to one group of existing installations distorts or threatens to distort competition with another group of existing installations and also has cross-border effects given EU-wide trade in all sectors covered by Directive 2003/87/EC.

The Commission considers at this stage that any State aid involved would likely be found incompatible with the internal market should it be assessed in accordance with Article 87 and 88 of the Treaty.

In addition, from the environmental point of view the Commission is concerned about guarantees providing for a high degree of free allocation for carbon-intensive production modes stretching far into the future. Such guarantees may create incentives to invest in carbon-intensive production modes thereby limiting the options for the needed further reductions in greenhouse gas emissions post-2012. At the same time any type of allocation guarantee beyond 2012 limits the scope for further harmonisation of the allocation methodology across the internal market in the context of the EU ETS review.

Banking

Banking²² of allowances is in principle a sound design element of an emission trading scheme and has to be allowed by Member States from the second trading period onwards. From the first to the second trading period banking was at each Member State's discretion and 23 out of 25 Member States have decided not to allow for it.

Discretionary banking from the first to the second trading period involves State aid, because the Member State would issue allowances for free where it could otherwise have sold them in

²¹ An example of an allocation guarantee is the provision that a new entrant starting operation in 2006 would be guaranteed by the Member State a full and free allocation of allowances for 14 years into the future, i.e. until 2020, which extends into the fourth trading period under the EU ETS.

²² Banking is to be understood as the possibility to carry forward unused allowances into the subsequent trading period in case the operator does not need the allowance to cover emissions or has not sold it in the market. See Article 13(2) and (3) of Directive 2003/87/EC.

the form of "Assigned Amount Units". At the same time banking by a Member State into the second trading period is only compatible with the criterion to reflect the reduction potential, if banked allowances are deducted from the cap found compatible with the Directive's allocation criteria²³.

The Commission takes the view that any national provisions related to the intended use of discretionary banking between the first and second trading periods must be notified to the Commission pursuant to Article 88(3) of the Treaty. The Commission at this stage considers that any issuance of banked allowances in the second trading period which is not based on an environmental counterpart by beneficiaries in terms of proven real emission reductions during the first trading period could constitute State aid which would likely be found incompatible with the internal market should it be assessed in accordance with Article 87 and 88 of the Treaty.

Auctioning

Directive 2003/87/EC allows the auctioning or sale of up to 10% of the allowances allocated by the Member State in the second trading period.

As noted by the High-Level Group on Competitiveness, Energy and the Environment²⁴ insufficient maturity of energy markets is alleged to have led to insufficient competitive pressure to reduce the pass-through of the value of allowances in electricity prices and hence to so-called windfall profits for electricity producers. The Group has furthermore recommended that Member States consider differentiated allocation between sectors in the second allocation period of the EU ETS, with a view to taking into account the external aspects of competitiveness.

Several Member States intend to increase the share of auctioning in combination with a more demanding allocation to power generators. In some Member States auctioning is still under consideration. Therefore, the decisions on second period plans allow Member States to increase the share of auctioning within the limits defined in Article 10 of Directive 2003/87/EC following the Commission's assessment but prior to the final national allocation decision under Article 11(2).

Furthermore, the Commission considers that the participation in any auction should be open without restrictions to all persons in the Community.

Combustion installations

Where a Member State does not apply the scope of combustion installations in accordance with paragraph 36 of the further guidance, as clarified by the "co-ordinated definitions" of additional combustion installations contained in the minutes of the Climate Change Committee of 31 May 2006, the Commission rejects the plan as contravening criterion (10).

Where a Member State proposes to allocate additional allowances in respect of additional emissions of such combustion installations, which have not been included in the first period plan, the Commission examines whether the intended allocation to these installations has been

²³ See criterion 3 of Annex III to the Directive.

²⁴ See http://ec.europa.eu/enterprise/environment/hlg/doc_06/first_report_02_06_06.pdf

determined in accordance with the general methodologies stated in the national allocation plan and on the basis of substantiated and verified emission figures.

If the calculation of the allocation for these additional emissions in application of the general methodology and on the basis of substantiated and verified emission figures were to result in a lower amount of allowances, the Commission requires the cap indicated in the Commission Decision to be reduced by an amount reflecting this difference.

3. CONCLUSIONS

A successful EU ETS is of vital importance to sustaining the EU's credibility in relation to the post-2012 climate regime. At the same time greater use of the EU ETS is crucial to respecting the EU's Kyoto commitments during the period 2008 to 2012. A number of national allocation plans proposed to the Commission would not only endanger the achievement of Europe's Kyoto commitments, but would at the same time create undue distortions in the internal market.

With the objective and transparent assessment of the second period plans, as presented in this Communication, the Commission is safeguarding the achievement of the Kyoto commitments and a successful and growing carbon market into the future.

Table 1: Overview of contravened criteria²⁵

	Germany	Greece	Ireland	Latvia	Lithuania	Luxembourg	Malta
(1) Kyoto target	X	X	X				
(2) Emissions development	X	X		X	X	X	X
(3) Reduction potential	X	X		X	X	X	X
(4) Other legislation							
(5) Non-discrimination	X		X				
(6) New entrants		X	X		X		
(7) Early action							
(8) Clean technologies							
(9) Public consultation							
(10) List of installations with quantity for each one	X	X	X		X		X
(11) Outside competition							
(12) JI/CDM limit			X				X
Article 10							

²⁵ In line with the principle established in the second sentence of criterion (1) the plans of Latvia, Lithuania, Luxembourg, Malta, the Slovak Republic and Sweden also contravene Annex III, criterion (1), for the absence of a strict application of all criteria.

Table 1 continued: Overview of contravened criteria

	Slovak Republic	Sweden	United Kingdom
(1) Kyoto target			
(2) Emissions development	x	x	
(3) Reduction potential	x	x	
(4) Other legislation			
(5) Non-discrimination	x		
(6) New entrants	x		
(7) Early action			
(8) Clean technologies			
(9) Public consultation			
(10) List of installations with quantity for each one		x	x
(11) Outside competition			
(12) JI/CDM limit		x	
Article 10			

ANNEX I

Criteria for national allocation plans listed in Annex III of Directive 2003/87/EC

<p>1. The total quantity of allowances to be allocated for the relevant period shall be consistent with the Member State's obligation to limit its emissions pursuant to Decision 2002/358/EC and the Kyoto Protocol, taking into account, on the one hand, the proportion of overall emissions that these allowances represent in comparison with emissions from sources not covered by this Directive and, on the other hand, national energy policies, and should be consistent with the national climate change programme. 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 this Annex. Prior to 2008, the quantity shall be consistent with a path towards achieving or over-achieving each Member State's target under Decision 2002/358/EC and the Kyoto Protocol.</p>
<p>2. The total quantity of allowances to be allocated shall be consistent with assessments of actual and projected progress towards fulfilling the Member States' contributions to the Community's commitments made pursuant to Decision 93/389/EEC.</p>
<p>3. Quantities of allowances to be allocated shall be consistent with the potential, including the technological potential, of activities covered by this scheme to reduce emissions. Member States may base their distribution of allowances on average emissions of greenhouse gases by product in each activity and achievable progress in each activity.</p>
<p>4. The plan shall be consistent with other Community legislative and policy instruments. Account should be taken of unavoidable increases in emissions resulting from new legislative requirements.</p>
<p>5. The plan shall not discriminate between companies or sectors in such a way as to unduly favour certain undertakings or activities in accordance with the requirements of the Treaty, in particular Articles 87 and 88 thereof.</p>
<p>6. The plan shall contain information on the manner in which new entrants will be able to begin participating in the Community scheme in the Member State concerned.</p>
<p>7. The plan may accommodate early action and shall contain information on the manner in which early action is taken into account. Benchmarks derived from reference documents concerning the best available technologies may be employed by Member States in developing their National Allocation Plans, and these benchmarks can incorporate an element of accommodating early action.</p>
<p>8. The plan shall contain information on the manner in which clean technology, including energy efficient technologies, are taken into account.</p>
<p>9. The plan shall include provisions for comments to be expressed by the public, and contain information on the arrangements by which due account will be taken of these comments before a decision on the allocation of allowances is taken.</p>

10. The plan shall contain a list of the installations covered by this Directive with the quantities of allowances intended to be allocated to each.

11. The plan may contain information on the manner in which the existence of competition from countries or entities outside the Union will be taken into account.

12. The plan shall specify 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. The percentage shall be consistent with the Member State's complementarity obligations under the Kyoto Protocol and decisions adopted pursuant to the UNFCCC or the Kyoto Protocol.

ANNEX 2
Economic growth trend developments 2005 to 2010

Member State	Growth from 2005 to 2010
Germany	9.6 %
Greece	19.9 %
Ireland	27.2 %
Latvia	50.0 %
Lithuania	37.4 %
Luxembourg	27.2 %
Malta	11.9 %
Slovak Republic	32.4 %
Sweden	16.6 %
UK	14.3 %

Source: DG TREN "Energy and Transport Trends to 2030 - Update 2005" and DG ECFIN Economic forecasts autumn 2006.