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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.10.2004
C(2004)4240-3

COMMISSION DECISION

of 29 October 2004

concerning the temporary exclusion of certain installations by the Netherlands from the Community emissions trading scheme pursuant to Article 27 of Directive 2003/87/EC of the European Parliament and of the Council

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(Only the Dutch 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 27 thereof,

Whereas:

- (1) The Netherlands has applied for 93 installations to be temporarily excluded from the Community emission allowance trading scheme between 1 January 2005 and 31 December 2007 by an application registered on 26 April 2004 pursuant to Article 27(1) of Directive 2003/87/EC², and submitted extra information completing this application on 29 June 2004.
- (2) The national allocation plan of the Netherlands was notified to the Commission on 22 April 2004, amended and completed by letter received on 23 June 2004, and no objections were raised to it by Commission Decision C(2004) 2515/1 final of 7 July 2004.
- (3) The Netherlands has confirmed that these installations which it requests to be temporarily excluded will limit their emissions as much as would be the case if they were subject to the provisions of Directive 2003/87/EC during the relevant period, because they are subject to commitments under long term agreements on energy efficiency, benchmarking covenants and, if these commitments are not met, obligations from the Netherlands' Environmental Management Act.
- (4) The Netherlands has also confirmed that annual monitoring, reporting and verification requirements under the long term agreements on energy efficiency and benchmarking covenants will be applied to these installations which are equivalent to those provided for in Annexes IV and V to Directive 2003/87/EC and Commission Decision 2004/156/EC of 29 January 2004 establishing guidelines for the monitoring and

¹ OJ L 275, 25.10.2003, p. 32.

² <http://www.novem.nl/default.asp?documentId=114260>

reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council³.

- (5) The Netherlands has furthermore confirmed that, through a combination of penalties including fines, custody, confiscation of property, deprivation of unlawfully received advantage, a temporary shut down of the company, publication of breach of requirements, and/or temporary deprivation of certain rights for failure to meet obligations from the Environmental Management Act, these installations will be subject to penalties at least equivalent to those referred to in Article 16(1) and (4) of Directive 2003/87/EC in the case of non-fulfilment of national requirements. In order to ensure equivalence, criminal prosecution may also take place based on the Economical Offences Act.
- (6) As the 93 installations in respect of which temporary exclusion is requested collectively emit around 1% of the total emissions from installations in the Netherlands participating in the Community scheme, they constitute only a small proportion of the installations engaged in each activity covered by the Directive in the Netherlands, they have been individually emitting less than 25.000 tons of carbon dioxide per year and their individual emissions are not expected to increase during the period of temporary exclusion, it is considered that their temporary exclusion will not distort the internal market.
- (7) The Netherlands' application for certain installations to be temporarily excluded has been evaluated against the criteria set out in Article 27(2), and the temporary exclusion of those installations from the Community scheme between 1 January 2005 and 31 December 2007 should be provided for.
- (8) The national allocation plan of the Netherlands did not include intended allocations to the 93 installations listed in its application for temporary exclusion pursuant to Article 27 of Directive 2003/87/EC.
- (9) The measures provided for in this Decision are in accordance with the opinion of the Climate Change Committee established by Article 9 of Decision No 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 Protocol⁴,

HAS ADOPTED THIS DECISION:

Article 1

The 93 installations listed in the Netherlands' application are excluded from the Community emission allowance trading scheme from 1 January 2005 to 31 December 2007 inclusive.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

³ OJ L 59, 26.02.2004, pg.1.

⁴ OJ L 49 19.02.2004, pg.1.

Done at Brussels, 29 October 2004