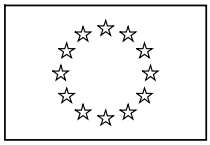

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 7.1.2004
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COMMUNICATION FROM THE COMMISSION

on guidance to assist Member States in the implementation of the criteria listed in Annex III to Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, and on the circumstances under which force majeure is demonstrated

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1. INTRODUCTION

1. Directive 2003/87/EC[1] provides for the establishment of a Community-wide greenhouse gas emission allowance trading scheme as of 2005. Pursuant to Article 9 of the Directive, each Member State periodically has to develop a national allocation plan. These plans have to be based on objective and transparent criteria, including those listed in Annex III to the Directive. The first national allocation plans have to be published and notified to the Commission and the other Member States by 31 March 2004. For those Member States joining the Union as of 1 May 2004, the obligation to publish and notify the national allocation plan arises only with the date of accession. The Commission encourages these future Member States to publish and notify national allocation plans also by 31 March 2004.

2. Article 9 mandates the Commission to develop guidance on the implementation of the criteria listed in Annex III by 31 December 2003. Article 29 mandates the Commission to develop guidance to describe the circumstances under which force majeure is demonstrated by the same date. The purpose of this guidance document is three-fold:

   – First, to assist Member States in drawing up their national allocation plans, by indicating the scope of interpretation of the Annex III criteria that the Commission deems acceptable;

   – Second, to support the Commission assessment of notified national allocation plans, pursuant to Article 9(3);

   – Third, to describe the circumstances under which *force majeure* is demonstrated.

3. The Directive is a key element of the Community's climate change policy and its objective is to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner. It is therefore important to ensure that the emissions trading scheme has a positive environmental outcome. The national allocation plans are the means to achieve this goal. This fact is reflected in the guidance developed in this document.

4. The Commission will monitor the application of this guidance, and amend it as and when it deems necessary, in particular following any amendments to Annex III pursuant to Articles 22 and/or 30(2)(c) of the Directive.

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[1] OJ L 275, 25.10.2003, p. 32.

2. GUIDANCE ON THE IMPLEMENTATION OF THE ANNEX III CRITERIA

5. Annex III to Directive 2003/87/EC contains 11 criteria relating to the national allocation plans. The relationships between these criteria can be revealed by categorising them in various ways.

Table 1: Categorisation of the criteria

	Mandatory (M)/ Optional (O)	Total level	Activity/ Sector	Installation level
(1) Kyoto commitments	(M)/(O)	+		
(2) Assessments of emissions development	(M)	+		
(3) Potential to reduce emissions	(M)/(O)	+	+	
(4) Consistency with other legislation	(M)/(O)	+	+	
(5) Non-discrimination between companies or sectors	(M)	+	+	+
(6) New entrants	(O)			+
(7) Early action	(O)			+
(8) Clean technology	(O)			+
(9) Involvement of the public	(M)			
(10) List of installations	(M)			+
(11) Competition from outside the Union	(O)		+	

6. One way of categorising the criteria is on the basis of whether their implementation is mandatory or optional. A Member State has an obligation to apply all elements of criteria (2), (5), (9) and (10), and some elements of the criteria (1), (3) and (4). It can, therefore, choose whether it wants to take specific action with respect to some elements of criteria (1), (3) and (4), and the criteria (6), (7), (8) and (11). The Commission will not reject a plan if all mandatory criteria and mandatory elements of criteria are applied in a correct manner. The Commission will not reject a plan if optional criteria or optional elements of criteria are not applied. However, if these optional criteria or optional elements of criteria or additional transparent and objective criteria are applied, the Commission will assess their application. In all cases, the Commission does require information from a Member State with respect to criteria (7) and (8), even if this is only to state that a criterion has not been applied. In respect of criterion (6) a Member State must state the manner in which new entrants will be able to begin participating in the Community scheme in that Member State.

7. A second way of categorising the criteria is to distinguish between them depending on whether they are applicable to allowance allocation at the level of all covered installations, at activity or sector level, or at installation level. The Commission's interpretation is presented in Table 1.

8. The attached common format reflects the fact that criteria apply at different levels, but also that they deal with different aspects, such as technical aspects and Community legislation or policy. For the sake of clarity and in order to facilitate its use by Member States, a recommended common format for establishing and notifying the national allocation plans is attached. The common format will further assist a Member State in drawing up the plan, and, in addition, it will significantly facilitate Member States' scrutiny of each other's plans and increase the accessibility of the plans to stakeholders.

2.1. Guidance on individual criteria

9. In the following, the Commission sets out guidance on the implementation of the individual criteria. The criteria are treated individually and in the order in which they are listed in Annex III to the Directive. Cross-references are made in order to highlight relationships between different criteria. The guidance contains an introductory and an analytical section.

2.1.1. Criterion (1) – Kyoto commitments

> *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.*

2.1.1.1. Introduction

10. Criterion (1) makes the link between the total quantity of allowances and the Member State's individual target either under Council Decision 2002/358/EC[2] on the joint fulfilment of commitments under the Kyoto Protocol, or under the Kyoto Protocol itself. For new Member States not referred to in the Decision, their respective targets under the Kyoto Protocol is the reference point under this criterion. While the commitments established for each Member State must be met, the criterion enables a Member State to go *beyond* the "Kyoto" target. . Distributing the effort to meet these targets is a "zero-sum" exercise, whereby the same result must be achieved however the effort is distributed between covered and non-covered installations and activities, as well as between covered installations.

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2 OJ L 130, 15.5.2002, p. 1.

11. Within the scope of the climate change commitment of each Member State, a Member State applying effective policies and measures to sources outside the trading scheme will necessarily be in a position to allocate more allowances to covered installations. National energy policies may also lead to adjustments of the relative contributions to the climate change commitment. If a Member State has committed itself to gradually phase-out nuclear installations on its territory, measures will have to be taken to provide the required levels of electricity. A nuclear phase-out might lead to an increase in greenhouse gas emissions, but would not justify that a Member State does not fulfil its obligations under Decision 2002/358/EC.

12. The concept of the "path" reflects the fact that, before the period 2008 to 2012, Member States do not have quantitative targets but are instead required under Article 3(2) of the Kyoto Protocol to make demonstrable progress by 2005 towards meeting their quantitative commitments for 2008 to 2012. Allocations for the period 2005 to 2007 have to be mindful of the targets that will apply from 2008 to 2012. Consequently, it is understood that Member States should be making progress towards their commitments for 2008 to 2012 already in the first trading period of 2005 to 2007. The path is intended to be a trend line, not necessarily a straight one, but one that is leading towards or goes beyond the reductions and limitations called for by the Kyoto Protocol and Decision 2002/358/EC.

2.1.1.2. Analysis

13. Criterion (1) is largely of a mandatory nature and has to be applied in determining the total quantity of allowances.

14. While the Directive covers part of a Member State's greenhouse gas emissions, the Kyoto target applies to the total greenhouse gas emissions of a Member State. Hence, a Member State has to decide in the plan what contribution should be made by covered installations to reaching or going beyond the overall commitment in the period 2008 to 2012 and what path it will follow in the period 2005 to 2007.

15. A Member State has to demonstrate how the chosen total quantity of allowances is consistent with reaching or over-achieving the Kyoto target, 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. A Member State has to present the chosen path towards reaching or over-achieving the target under Decision 2002/358/EC and the Kyoto Protocol and explain how consistency is ensured between the intended allocation and the path.

16. In deciding the total quantity, the proportion of overall emissions of covered installations in relation to total emissions is a first element to be taken into account. A Member State should use the most recent data available to determine the proportion. In case a Member State deviates substantially from this proportion, it should give reasons for such deviations. Such reasons may include, *inter alia*, expected structural change in the economy and national energy policy. Consistency with national energy policy may be a reason for an increase or a decrease in the proportion. A Member State phasing-out nuclear installations over the covered period may increase the proportion, if replacement is not expected to be through carbon-free alternatives. A Member State intending to increase the share of renewable energy or combined heat and power production or other forms of low-

carbon or carbon-free power and heat production should decrease the proportion. The Commission recalls that under the provisions of Directive 2001/77/EC[3] on the promotion of electricity produced from renewable energy sources in the internal electricity market all Member States, including the future Member States, have committed themselves to increase the share of electricity from renewable energy sources.

17. The quantity of allowances potentially available for installations covered by the trading scheme needs to be consistent with the forecasted increases or decreases in non-covered activities. Therefore, a Member State should include clear, realistic and substantiated projections of the effectiveness of the policies aimed at non-covered activities in the national allocation plan. Furthermore, a Member State should introduce additional policies and measures to control emissions of non-covered activities in order for all relevant sectors to contribute to the achievement of the target under Decision 2002/358/EC and the Kyoto Protocol.

18. The Commission understands "*likely to be needed*" as forward-looking and linked to the projected emissions of covered installations as a whole, given that this criterion refers to the total quantity of allowances to be allocated. The Commission understands the "strict application of the criteria in this annex" to comprise the criteria with a mandatory character or containing mandatory elements – i.e. criteria (1), (2), (3), (4), and (5)[4]. In order to satisfy this requirement and fulfil all mandatory criteria and elements, a Member State should not allocate more than is needed, or warranted, by the most constraining of these criteria. It follows that any application of the optional elements of Annex III may not lead to an increase in the total quantity of allowances.

19. The chosen proportion, taking into account criteria (1), (2), (3), (4) and (5), should be multiplied by the annual average emissions allowed under Decision 2002/358/EC and, for new Member States, the Kyoto Protocol in the period 2008 to 2012. This figure could be scaled downwards by an appropriate factor if the Member State intends to go beyond the Kyoto target in 2008 to 2012. In order to determine the total quantity for the period 2005 to 2007 the Member State should scale this amount to the path chosen and multiply the figure by three.

20. As a Party to the Kyoto Protocol, a Member State may use the mechanisms under Articles 6, 12, and 17 (Joint Implementation, Clean Development Mechanism, and International Emission Trading) to contribute to compliance with its commitments under the Protocol in the period 2008 to 2012. If a Member State intends to use these mechanisms it may adapt annual average emissions allowed under Decision 2002/358/EC and the Kyoto Protocol in the period 2008 to 2012. In the national allocation plan, a Member State must substantiate any such intentions to use the Kyoto mechanisms. The Commission will base its assessment notably on the state of advancement of relevant legislation or implementing provisions at the national level.

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3 OJ L 283, 27.10.2001, p. 33.

4 Criteria (9) and (10) do not relate to the determination of allocated quantities and are therefore not relevant in this context.

A Member State has to determine the total quantity of allowances based on the proportion of overall emissions of covered installations in relation to total emissions. A Member State should use the most recent data available to determine the proportion. In case a Member State deviates substantially from the current proportion, it should give reasons for such deviations.

A Member State must substantiate the intention to use the Kyoto mechanisms.

2.1.2. Criterion (2) – Assessments of emissions development

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.

2.1.2.1. Introduction

21. Pursuant to Decision 93/389/EEC establishing a monitoring mechanism of Community carbon dioxide (CO_2) and other greenhouse gas emissions[5], the Commission undertakes an annual assessment of actual and projected emissions of Member States, in total and by sector and by gas. These assessments are prepared in close cooperation with Member States. Criterion (2) is intended to ensure that the total allocation is consistent with pre-existing, publicly available and objective assessments of actual and projected emissions. The relevant reports that summarise these assessments are COM(2000)749, COM(2001)708, COM(2002)702 and COM(2003)735. The 2000 and 2001 reports cover only the existing Member States, and so are not relevant to new Member States. The 2002 and 2003 reports also cover the new Member States.

22. Decision 93/389/EEC will be repealed and replaced in early 2004 by Decision 2004/xx/EC on the monitoring of greenhouse gas emissions and the implementation of the Kyoto Protocol[6].

2.1.2.2. Analysis

23. Criterion (2) is of a mandatory nature and has to be applied in determining the total quantity of allowances.

24. The Commission conducts assessments under Decision 93/389/EEC, in co-operation with Member States. These assessments cover recent developments of actual emissions of Member States and projected emissions during the period 2008 to 2012, in total and per sector and gas.

25. Consistency with assessments pursuant to Decision 93/389/EEC will be deemed as ensured if the total quantity of allowances to be allocated to covered installations is not more than would be necessary taking into account actual emissions and projected

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5 OJ L 167, 9.7.1993, p.31. Decision as amended by Decision 1999/296/EC (OJ L 117, 5.5.1999, p. 35).

6 This Decision, based on the Commission proposal COM(2003)51, is the subject of a first reading agreement based on the amendments adopted by the European Parliament on 21 October 2003, and is expected to enter into force early in 2004.

emissions contained in those assessments. Consistency would not be ensured if a Member State intended to allocate a total quantity of allowances in excess of actual or projected emissions of covered installations as reported in the assessment for the relevant period.

Consistency with assessments pursuant to Decision 93/389/EEC will be deemed as ensured if the total quantity of allowances to be allocated to covered installations is not more than actual emissions and projected emissions contained in those assessments.

2.1.3. Criterion (3) – Potential to reduce emissions

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.

2.1.3.1. Introduction

26. No definition or further determination of the term "potential" has been established, and potential should therefore not be limited to technological potential but may include, *inter alia*, economic potential. As the technical options available to reduce emissions by a tonne of carbon dioxide as well as the costs of doing so vary between activities, an allocation may be made to reflect that in some cases a reduction can be achieved at lower cost, and in other cases an equivalent reduction may be more costly. The implication is that more might be asked of activities that can make cheaper reductions, and less might be asked of activities whose reductions are expensive.

27. The second sentence of the criterion makes explicit the possibility for Member States to use benchmarks by product in each activity and achievable progress in each activity. Under a benchmarking approach, an average of emissions per unit of output would be established, and allocations made on the basis of historic, current or expected output quantities. An installation that had lower emissions per unit of output would be given more allowances in relation to current emissions than installations whose emissions were higher per unit of output.

28. Criterion (3) refers to the product in each activity, without defining product. It is implicitly recognised that a given activity could cover several products, so that each activity does not have to be treated as a whole. For example, achievable progress with coal-fired electricity generation is an acceptable basis for the determination of benchmarks. What is achievable by different coal-fired technologies is more limited than what may be achievable in the case of fuel-switching from coal to natural gas. However, the incentive for fuel switching to less carbon intensive fuels would not be affected.

29. Pursuant to Article 30(2) of the Directive, the Commission shall consider in a future review the *practicality of developing Community wide benchmarks as a basis for allocation*. The Commission notes that the legislators do not consider the application of Community-wide benchmarks to be practicable for the first national allocation plan.

2.1.3.2. Analysis

30. Criterion (3) is mandatory in part. It has to be applied in determining the total quantity of allowances and it may be applied in determining the quantity per activity.

31. A Member State should determine the total quantity of allowances resulting from the application of this criterion by comparing the potential of activities covered by the scheme to reduce emissions with the potential of activities not covered. The criterion will be deemed as fulfilled if the allocation reflects the relative differences in the potential between the total covered and total non-covered activities.

32. A Member State may apply the criterion to determine separate quantities per activity. It should compare the potentials of individual activities covered by the scheme to reduce emissions against each other. If a Member State applies the criterion to determine separate quantities per activity, the criterion will be deemed as fulfilled if the allocation reflects the relative differences in the potential amongst individual covered activities.

33. A Member State may use the relevant average emissions of covered greenhouse gases by generic product type and achievable progress in each activity to determine the quantity per activity. If a Member State chooses to do so, it should determine the actual average emissions by product using national data, and assess the average emissions by product that could be attained in the relevant period taking into account achievable progress. A Member State should indicate the applied average in the national allocation plan and justify why it considers the chosen average to be an appropriate estimate to incorporate achievable progress. The quantity of allowances per activity should be based on expected output per activity over the relevant period. A Member State should indicate the forecast used and justify why it considers the chosen forecast as the most likely development. In doing so it should also take into account recent output developments in the relevant activities.

34. In contrast to criterion (7), in which benchmarks may be applied to determine the quantity of allowances by installation, under this criterion the benchmark would be applied to determine the quantity of allowances by activity.

35. A distinction is made between technological and other potential of activities to reduce emissions. The realisation of the technological potential to reduce emissions within a trading period is limited by factors such as timing, economic viability and legal provisions.

36. Member States should consider that some measures can be implemented and will have an effect on emissions in the short term, while others may have longer lead-times and depend on investment cycles. Considering the potential of measures with a lead-time extending beyond the duration of a trading period will create an incentive for operators to act early.

37. The economic potential of activities to reduce CO2 emissions should be based on an assessment of abatement costs per tonne of CO2equivalent, and not on the economic viability of individual companies or installations belonging to the activity or activities concerned.

38. A Member State may make use of best available techniques reference documents (BREFs) when assessing the potential of activities. A "best" available technique is defined as a technique, which is "most effective in achieving a high general level of protection of the environment as a whole". Therefore, there is not necessarily full coherence between the use of a best available technique and the performance of an installation in terms of covered emissions.

39. In the national allocation plan, a Member State should describe the methodology it has used to assess the potential to reduce emissions. It should preferably base the assessment of the potential on a study made for the purpose of the national allocation plan. In case circumstances and timing do not allow for such a study in the process of elaborating the national allocation plan, recent existing assessments and secondary sources may be used (e.g. peer-reviewed studies). A Member State should indicate sources used and summarise the applied methodology (including major assumptions made) and results.

A Member State has to apply the criterion to determine the total quantity of allowances. A Member State may apply the criterion to determine the quantities per activity.

2.1.4. Criterion (4) – Consistency with other legislation

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.

2.1.4.1. Introduction

40. Criterion (4) concerns the relationship between allocations under Directive 2003/87/EC and other Community legislative and policy instruments. Consistency between allowance allocations and other legislation is introduced as a requirement in order to ensure that allocation does not contravene the provisions of other legislation. In principle, no allowances should be allocated in cases where other legislation implies that covered emissions had or will have to be reduced even without the introduction of the emission trading scheme. Similarly, consistency implies that if other legislation results in increased emissions or limits the scope for decreasing emissions covered by the Directive account should be taken of this increase.

2.1.4.2. Analysis

41. The first sentence of the criterion is mandatory in nature, while the second one is optional.

42. The first sentence of criterion (4) has to be applied in determining the total quantity, if the Community legislative and policy instruments affect all covered installations, or in determining the quantities for affected installations in other cases.

43. Pursuant to the first sentence in the criterion, consistency with other Community legislative and policy instruments has to be applied in a symmetrical manner. Not only an unavoidable increase in covered greenhouse gas emissions resulting from new Community legislative and policy instruments should be taken into account, but also a decrease in covered emissions resulting from such instruments.

44. A Member State should list all Community legislative and policy instruments it has considered and indicate which ones have been taken into account.

45. "New" legislative requirements should be understood as legislation and policy instruments that were adopted before the date of submission of the national allocation plan, and will impose relevant obligations on installations covered by the scheme after that date and before the end of the period covered by the national allocation plan. This includes the implementation of relevant parts of the *acquis communautaire* by new Member States following their accession in May 2004.

46. In order to take an unavoidable change in emissions into account, a Member State should consider, firstly, if a change in greenhouse gas emissions from covered installations is in fact due to new requirements, and, secondly, if such a change is unavoidable.

> In order to simplify administrative tasks the Commission recommends a Member State to consider a Community legislative or policy instrument only insofar as it is expected to result, per activity or in total, in a substantial increase or decrease (e.g. 10 %) of covered emissions.

2.1.5. Criterion (5) – Non-discrimination between companies or sectors

> *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.*

47. Normal state aid rules will apply.

2.1.6. Criterion (6) – New entrants

> *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.*

2.1.6.1. Introduction

48. The treatment of new entrants, i.e. installations starting operation in the course of a trading period, is one of the important design choices in any emission trading scheme. The options differ depending on the allocation method chosen for existing installations. If all allowances are sold by a government, no specific decisions are

needed for new entrants. If (the majority of) allowances are, however, allocated free of charge, several options are available to integrate new entrants into the scheme.

49. The definition of new entrants in Article 3 of the Directive[7] puts new installations on an equal footing with existing installations extending capacity. The definition in relation to an updated permit applies only to the extension of an installation, and not to the entire installation, nor to the increased capacity utilisation at an existing installation.

50. The criterion foresees an informational obligation to state how new entrants will be able to begin participating in the Community scheme. The guidance outlines three options to implement the criterion against the backdrop of relevant Treaty provisions. However, the Commission will also assess any other option notified in a national allocation plan.

2.1.6.2. Analysis

51. The obligation arising under criterion (6) will be deemed as fulfilled if a Member State explains in the national allocation plan how it intends to ensure access to allowances for new entrants. Thus the criterion will be fulfilled if a Member State indicates that it has decided to have new entrants buy all allowances on the market. There are also other options to treat new entrants. In all cases, the guiding principle is equality of treatment.

52. The EC Treaty's provisions on the right of establishment in the internal market have to be respected. It is crucial that new entrants have access to allowances, as without such access operators would be prevented from establishing a business in sectors carrying out covered activities. Guaranteeing this freedom is the essence of the second sentence of Article 11(3) of the Directive. Moreover, EU competition law would be applicable in the event that uncompetitive practices with respect to allowances were to be used to erect market entry barriers.

53. It is important to keep in mind that the new entrants issue is of a temporary nature. In principle, an installation defined as a new entrant in one trading period should no longer fall within this definition when the national allocation plan for the subsequent period is notified.

54. It follows from the definition that a new entrant is an installation for which no greenhouse gas emission permit has been issued or updated by the date the national allocation plan is notified to the Commission. A Member State may issue or update greenhouse gas emission permits with respect to installations which will start or extend operations with considerable certainty during the relevant trading period. Before issuing or updating a greenhouse gas emission permit, a Member State is recommended to require an operator to demonstrate that it has already obtained the construction permit and any other relevant permits. Once an installation that is expected to start or extend operations during the trading period has obtained a greenhouse gas emission permit or an updated permit, it can be included in the national allocation plan and be allocated allowances in the same manner as an existing installation. The number of allowances allocated to an installation expected

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[7] See Article 3(h) in Directive 2003/87/EC.

to operate only during part of the trading period should be proportionate to the expected duration of (extended) operations at the installation as a share of the duration of the trading period. The Member State may not withhold foreseen allowances, in case the installation does not, or not at the time intended, start or extend operations, unless it withdraws the greenhouse gas emissions permit.

55. A Member State has at least three options to enable participation of new entrants: it may have any new entrants buy all allowances on the market, it may make use of the possibility to set aside some allowances for periodic auctioning, or it may foresee a reserve in the national allocation plan to issue allowances to new entrants free of charge.

Having new entrants buy all allowances on the market

56. A Member State may decide to implement this criterion by having new entrants buy all allowances on the market, as any person (incl. operators) in the Community with or without covered installations may do. The Commission notes that having new entrants buy allowances on the market is in accordance with the principle of equal treatment for the following reasons. Firstly, the Commission notes that the size of the EU-wide allowance market sets the correct conditions for liquidity, which ensures that new entrants will have access to allowances. Secondly, incumbents have made their investments without having been able to take the cost of carbon into account, in contrast to new entrants, who can minimise their carbon costs through investment choices. Thirdly, new installations only fulfil the definition of a new entrant for a limited period of time, i.e. part of a trading period, and the cost of allowances for this limited period (probably less than two years in the first period) can be taken into account in the investment and timing decisions. The Directive guarantees that as of a certain point in time the new entrant will be allocated allowances in the same manner as all other existing installations for the remainder of the lifetime of the installation.

Auctioning

57. A Member State may enable new entrants to begin participating in the Community scheme and provide access to allowances on the basis of a periodic auction procedure. In accordance with internal market rules a Member State has to allow any person in the Community to participate in such an auction procedure. A Member State has to respect Article 10 of the Directive, pursuant to which a Member State may not auction more than 5% of the total quantity of allowances allocated during the first trading period and 10 % in the second trading period.

58. A Member State should specify what use will be made of any allowances offered in the auction procedure but not purchased. A Member State may cancel remaining allowances and re-issue a corresponding quantity of allowances for auctioning in the subsequent period. The Commission notes that at the end of the first period this option is only available, if a Member State's national legislation provides for such re-issue (i.e. banking) of allowances in accordance with Article 13(2) second subparagraph.

59. The Commission notes that having new entrants buy allowances in an auction is in accordance with the principle of equal treatment for the same reasons as indicated above with respect to having new entrants buy on the market.

Setting aside a reserve

60. A Member State may provide access to allowances free of charge out of a reserve. If a reserve is set aside a Member State should indicate in the national allocation plan the size of the reserve by stating the absolute quantity of allowances out of the total quantity of allowances. The Member State should justify the size of the reserve with reference to an informed estimate of the expected number of new entrants during the trading period. Up to the quantity in the reserve, new entrants would be issued allowances free of charge according to transparent and objective rules and procedures determined in the national allocation plan. A Member State should describe the methodology by which allowances would be granted to new entrants. If such a method is used, the Commission recommends a Member State to give applicants in possession of a recently granted or updated greenhouse gas emission permit access to allowances on a first-come first-served basis.

61. In order to respect the principle of equal treatment, the methodology that a Member State uses in order to allocate allowances to new entrants should as far as possible be the same as the one used for comparable incumbents. However, adaptations may be made for justified reasons (cf. guidance criterion (5)). Similarly, all new entrants should be treated in the same way. For instance, the Commission recommends a Member State not to create several reserves dedicated to separate activities, technologies or specific purposes, since they could result in unequal treatment between new entrants.

62. A Member State should further specify what use will be made of any allowances remaining in the reserve until the end of the period. A Member State may auction any remaining allowances, while respecting Article 10 of the Directive. As in the case of allowances offered for auctioning but not purchased, a Member State may cancel remaining allowances and re-issue a corresponding quantity of allowances into a reserve for the subsequent period. Again, the Commission notes that at the end of the first period this option is only available, if a Member State's national legislation provides for such re-issue (i.e. banking) of allowances in accordance with Article 13(2) second subparagraph.

63. A Member State should also state in the national allocation plan what transparent procedure it will follow, if new entrants apply for allowances and the reserve set aside for the period is already exhausted.

64. The Commission notes that the operation of a reserve for new entrants increases the complexity and administrative costs of the emissions trading scheme.

In case a Member State decides to set aside a reserve from which to grant allowances free of charge, the Commission recommends a Member State not to create dedicated reserves for specific activities, technologies or purposes.

2.1.7. Criterion (7) – Early action

> *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.*

2.1.7.1. Introduction

65. The accommodation of early action is considered as desirable from a fairness point of view. Those installations that have already reduced greenhouse gas emissions in the absence of or beyond legal mandates should not be disadvantaged vis-à-vis other installations that have not undertaken such efforts. The application of this criterion necessarily implies fewer allowances available for installations that have not undertaken early action.

66. Neither the criterion nor the Directive contains a definition of early action and in which way it may be accommodated. Therefore, a Member State has a degree of freedom how to define, and whether and how to accommodate early action. This freedom is only limited by other Annex III criteria and provisions derived from the Treaty. The guidance on this criterion outlines limitations imposed by these other criteria and provisions, and contains options how to accommodate early action, if a Member State decides to do so.

67. The second sentence of the criterion builds on the reference to benchmarks in criterion (3). It repeats the possibility for Member States to use benchmarks and points out that such benchmarks are one possible option to accommodate early action. Furthermore, the reference documents developed under Directive 96/61/EC concerning integrated pollution prevention and control[8] are inferred as a potential source for developing benchmarks.

2.1.7.2. Analysis

68. Criterion (7) is optional and should, if applied, be used to determine the quantity of allowances allocated to individual installations.

69. "Early action" is to be understood as actions undertaken in covered installations to reduce covered emissions before the national allocation plan is published and notified to the Commission. In line with criterion (4), only measures that operators undertook beyond requirements arising from Community legislation can qualify as early action. More stringent national legislation, applying to all covered installations in total or carrying out an activity, will be reflected in the potential to reduce emissions (cf. criterion (3)). Thus, early action is limited to reductions of covered emissions beyond reductions made pursuant to Community or national legislation, or to actions undertaken in the absence of any such legislation. A parallel can also be drawn to the Community guidelines on State aid for environmental protection, which

[8] OJ L 257, 10.10.1996, p. 26.

prohibit public investment aid with respect to investments that merely bring companies into line with Community standards already adopted but not yet in force.

70. Member States have several options to accommodate early action that operators have undertaken in existing installations. Three possible methods are elaborated below, but the Commission will also assess other methods.

Choosing an early base period

71. The first option to accommodate early action is to base the allocation on historical emissions by applying a relatively early base period. If operators are allocated allowances corresponding to a proportion of the historical emissions from installations, those operators who have invested to reduce emissions since the base period will receive an allocation which covers a larger share of current emissions than an operator who has not made such investments. A Member State using this approach would have to verify that the difference in emission levels over time was not due to installations having implemented legal requirements.

72. The drawback of this approach is that reliable and comparable data for emissions in an early base period may not be available, and the number of operator changes since the base period will increase with time, making it more difficult to establish reliable and complete records.

73. An alternative is to use a recent multi-year base period and then allow an operator to choose one early year when it had higher emissions. Emissions data from one of the years in the recent period would then be replaced by data from the early year. This would increase the average annual emissions on which the allocation was based. In line with the restrictions described above, a Member State wanting to substitute data in this way would have to verify that the difference in emission levels over time was not due to installations implementing legal requirements.

Making a two-round allocation at installation level

74. After determining the total quantity of allowances, a share of the available allowances is set aside. The allowances set aside would be used in a second round, after an initial distribution to all installations, to give a bonus to those installations in which operators have undertaken early action. Operators would have to apply to be taken into account in the second round and would have to demonstrate that the measures they propose to be accepted as early action comply with a pre-established definition of early action. A Member State should indicate in the national allocation plan the list of measures recognised as early action, and should specify for the relevant installations which measures have been accommodated as early action and the corresponding number of allowances allocated.

Using benchmarks

75. A Member State may accommodate early action by using benchmarks derived from reference documents concerning the best available techniques. Benchmarks accommodate early action because they imply that a more carbon efficient installation receives more allowances than a less carbon efficient one, which is not necessarily the case with a base period driven allocation formula.

76. In contrast to criterion (3), in which benchmarks (average emissions by product incorporating achievable progress) may be applied to determine the quantity of allowances by activity, under this criterion the benchmark would be applied to determine the quantity of allowances by installation.

77. In order to apply the benchmarking approach, a Member State should first group homogenous installations and then apply a benchmark to each of these groups. Installations in a group should be sufficiently homogenous with respect to their input or output characteristics, such that it is feasible to apply the same type of benchmark to them. If benchmarking is used to determine allocations per installation carrying out energy activities, the Commission recommends to group installations by input fuels and to apply separate input-derived benchmarks. It should be described in the national allocation plan on what basis the grouping of installations was carried out and the respective benchmarks chosen (cf. criterion. (3)).

78. In order to determine the allocation to an installation, the benchmark needs to be multiplied by an output value. A Member State should indicate in the national allocation plan the output values applied and justify why it considers them appropriate. A Member State may use the most recent actual output data or a forecast for the trading period, which should be clearly substantiated in the national allocation plan.

79. Due to the ex-ante nature of the allocation decision pursuant to Article 11(1) a Member State may not base the allocation to an installation on actual output data in the trading period, i.e. data unknown at the time the national allocation plan is established but known during the course of the trading period.

80. A benchmarking approach should not result in an allocation to installations in an activity of more allowances than determined per activity in accordance with criterion (3). A Member State would also have to verify that the installations whose emissions are lower than the benchmark have not arrived at their particular level of emissions, as a result of the implementation of legal requirements.

81. Alternatively, a Member State may use benchmarks in a simplified way to accommodate early action. If a Member State determines allocations at installation level with a base period approach, it may use benchmarks in order to determine and apply an installation-specific correction factor to a base period driven formula. In this way the allocation to installations performing better than average is increased, while the allocation to installations performing below average is decreased. Such corrections should result in a net balance of zero across all installations concerned.

If a Member State applies this criterion, it should be used in determining the quantity of allowances allocated to individual installations. A Member State should not include measures as early action if they were taken in order to comply with legislative requirements.

If benchmarks are used to determine allocations per installation for energy activities, the Commission recommends to group installations by input fuels and to apply separate input-derived benchmarks.

2.1.8. Criterion (8) – Clean technology

> *The plan shall contain information on the manner in which clean technology, including energy efficient technologies, are taken into account.*

2.1.8.1. Introduction

82. This criterion enables a Member State to take account of clean technologies in setting allocations, but does not define what constitutes such clean technology.

83. While emission trading will promote and reward the application of low-carbon technologies, this criterion is related to the criteria on potential and early action. This guidance outlines these links.

2.1.8.2. Analysis

84. Criterion (8) is optional and should, if applied, be used to determine the quantity of allowances allocated at installation level.

85. Information is required from a Member State on the application of criterion (8). Thus, the criterion will be deemed as fulfilled if a Member State states that it makes no specific provisions to take clean technologies, including energy efficient technologies, into account.

86. Criterion (8) can be seen as the extension of criterion (3) to the installation level. An installation using a clean or energy efficient technology has a lower technological reduction potential than a comparable installation not using such a technology. It follows that the use of a clean or energy efficient technology should not be rewarded under this criterion with respect to an installation belonging to an activity which has a relatively low technological reduction potential. The reduced technological reduction potential of such an installation would already have been covered in the implementation of criterion (3).

87. Moreover, there is a link between criterion (7) on early action and criterion (8), since an early action will typically have been an investment in a clean or energy efficient technology. The Commission recommends a Member State not to apply both criteria (7) and (8) to the same installation, unless it can be shown that the early action did not consist of an investment in a clean or energy efficient technology.

88. In addition, the use of clean technologies, including energy efficient technologies, should only be taken into account under this criterion with respect to installations using such technologies before the national allocation plan is published and notified to the Commission. The Commission notes that this criterion should not be applied to clean technologies that do not result in emissions covered by the Directive.

89. By clean or energy efficient technologies, the Commission understands technologies that have resulted in lower direct emissions of covered greenhouse gases than the alternative technologies that could realistically have been deployed by the installation concerned would have led to. In determining the difference in emission levels between direct emissions from combined heat and power and an alternative technology, the latter may consist of on-site separate power and heat production.

90. As regards energy production, the Commission will accept as clean or energy efficient technologies those technologies for which it has approved State aid under the Community guidelines on State aid for environmental protection. The following list is not exhaustive:

– High efficiency combined heat and power production. Member States may apply national definitions of "high efficiency" cogeneration production, unless such a definition has been adopted in Community law.

– District heating, other than high efficiency combined heat and power.

91. As regards other industrial technologies than energy production, a Member State should justify why a particular technology is to be considered as clean or energy efficient. A minimum requirement is that the technology constitutes a "best available technique" as defined in Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control and that it was being used by the installation at the date of submission of the national allocation plan. However, since a "best" available technique is defined as one which is "most effective in achieving a high general level of protection of the environment as a whole", it will, in addition, have to be shown that the technique is particularly performing in limiting emissions of covered greenhouse gases.

92. Where a waste gas from a production process is used as a fuel by another operator, the distribution of allowances between the two installations is a matter for Member States to decide. For that purpose, a Member State may choose to allocate allowances to the operator of the installation transferring the waste gas, provided this is done on the basis of a pre-established criterion, compatible with the existing criteria of Annex III and the Treaty. This paragraph applies independently of whether a Member State chooses to apply criterion (7) or criterion (8) in accordance with paragraph 108.

If a Member State takes clean technology, including energy efficient technologies, into account, it should do so by applying either criterion (7) or criterion (8) but not both.

2.1.9. Criterion (9) – Involvement of the public

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.

2.1.9.1. Analysis

93. This criterion is of a mandatory nature.

94. A Member State will be considered to have implemented criterion (9), if it describes in the national allocation plan how it makes the plan available to the public for comments, and how it provides for due account to be taken of any comments received. The plan should be made available in a manner which enables the public to comment on it effectively and at an early stage. This means that the public is informed, whether by public notices or other appropriate means such as electronic

media, about the plan, including its text, and that also other relevant information is made available, including *inter alia* information about the competent authority to which comments or questions may be submitted.

95. A Member State should provide for a reasonable time frame for submitting comments, and co-ordinate the deadline for comments to be submitted by the public with the national decision-making procedure, so that due account can be taken of comments before the decision on the national allocation plan. "Due account" is to be understood as meaning that comments are to be taken into account if appropriate with reference to the criteria in Annex III or to any other objective and transparent criteria applied by the Member State in the national allocation plan. A Member State should inform the Commission of any intended modifications following public participation subsequent to the publication and notification of the national allocation plan and before taking its final decision pursuant to Article 11. Feedback is to be provided, in a general form, to the public about the decision taken and the main considerations upon which it is based.

96. It should be noted that the possibility for the public to comment on the national allocation plan provided for under this criterion constitutes a second round of public consultation. Pursuant to Article 9(1) of the Directive, the comments resulting from a first round of consultation of the public on the basis of the draft plan should, where pertinent, already have been integrated into the national allocation plan prior to notification of the plan to the Commission and to the other Member States. For the overall public participation (consultation and taking account of comments) to be effective, the first round of public consultation is of particular importance. The rules described under this criterion should also be applied to the first round of consultation.

A Member State should inform the Commission of any intended modifications subsequent to the publication and notification of the national allocation plan before taking its final decision pursuant to Article 11.

2.1.10. Criterion (10) – List of installations

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

2.1.10.1. Introduction

97. This criterion provides for the transparency of the national allocation plan. It implies that the quantities of allowances per installation are indicated, and therefore visible to the general public, when the plan is submitted to the Commission and other Member States.

2.1.10.2. Analysis

98. This criterion will be deemed as fulfilled if a Member State has respected its obligation to list all the installations covered by the Directive. This includes installations to be temporarily excluded in the first period pursuant to Article 27 and installations to be unilaterally included in any period pursuant to Article 24.

99. As mentioned under criterion (5), combustion installations with a rated thermal input of more than 20 MW can be found in several sectors. A Member State should therefore indicate the main activity carried out at the site where the combustion installation is located, e.g. "paper" for a combustion installation which is part of the paper production process. A Member State should list installations by main activity, and provide subtotals of all data at activity level.

100. A Member State has to indicate the total quantity of allowances intended to be allocated to each installation and should indicate the quantity issued in each year to each installation following Article 11(4).

101. Article 11(4) constitutes an obligation to issue a share of the total quantity to each installation each year. Hence a Member State could issue a large proportion of the allowances in the first year(s) of a period and issue only a small share in the remaining year(s) of a period. Alternatively, a Member State could issue a small proportion of the allowances in the first year(s) of a period and issue a large share in the remaining year(s) of a period. Such approaches, in particular if taken by several Member States, may result in low market liquidity in the initial years, so that the market may fail to provide a sufficiently robust price signal. Such a signal is vital for the allowance market to provide operators of covered installations with an orientation whether to implement measures on-site or rather acquire allowances. Therefore, the Commission makes a recommendation on the proportion to be issued in each year.

102. Furthermore, a Member State should in principle issue to all operators included in the plan equivalent, but not necessarily equal, annual shares in order to avoid undue discrimination (cf. criterion (5)).

> The Commission recommends a Member State to issue each year a share that does not deviate substantially from equal proportions over the period.

2.1.11. Criterion (11) – Competition from outside the Union

> *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.*

2.1.11.1. Introduction

103. The European Union has repeatedly affirmed its commitment to respect the Kyoto target. At the same time, the European Union, at the Lisbon European Council in March 2000, set itself the strategic goal to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion. Emission allowance trading is a cost-effective instrument, which allows industrial activities covered by the Directive to keep the costs of contributing to the Community's climate change commitments low. The implementation of the Kyoto Protocol will give companies in the European Union the chance for a head-start in the gradual transition to a carbon-constrained global economy, since carbon efficiency may be an important source of competitive advantage in the future, as much as labour or capital productivity today.

In the short-term these commitments may imply increased costs for some companies and sectors.

2.1.11.2. Analysis

104. Criterion (11) is optional and should only be used, if applied, in determining the quantity of allowances per activity, since any effect from competition from countries or entities outside the Union would be one affecting all installations carrying out a certain activity.

105. A Member State should not use the mere existence of competition from outside the Union as a reason to apply this criterion. The Commission considers this criterion to be applicable exclusively to cases where covered installations belonging to a specific activity would be rendered significantly less competitive directly and predominantly as a result of a major difference in climate policies between the EU and countries outside the EU. In assessing any such differences in climate policy, a Member State should take into account any relevant measures that competitors outside the EU are subject to, including voluntary initiatives, technical regulation, taxes and emissions trading, and not judge solely on the basis of whether or not the country concerned has a quantified emissions commitment and has ratified the Kyoto Protocol.

106. A Member State should not take the existence of competition from outside the Union into account in such a manner as to improve the competitive position of installations carrying out an activity *vis-à-vis* competitors outside the Union as compared to their competitive position in the absence of the EU emissions trading scheme. It should be noted that incorrect application of this criterion may constitute export aid, which is incompatible with the EC Treaty.

107. If a Member State deems it necessary to take account of competition from outside the Union, it should also consider applying other options outside the national allocation plan.

108. A Member State should keep in mind, when applying this criterion to individual activities, that where the mandatory criterion (3) is applied at activity level, installations carrying out activities with a relatively large potential to reduce emissions should still receive a smaller share of allowances in relation to emissions, compared to installations carrying out activities with a relatively small potential to reduce emissions.

109. The existence of competition should only be taken into account in the national allocation plan by a modification of the quantity of allowances per activity, without a change in the total quantity of allowances determined in accordance with the criteria (1) to (5).

If competition from outside the Union is taken into account in the national allocation plan, the criterion should only be applied in determining the quantity of allowances allocated at activity level, without a change in the total quantity of allowances. If a Member State deems it necessary to take account of competition from outside the Union, it should also consider applying other options outside the national allocation plan.

3. GUIDANCE ON CIRCUMSTANCES UNDER WHICH FORCE MAJEURE IS DEMONSTRATED

Article 29

1. During the period referred to in Article 11(1), Member States may apply to the Commission for certain installations to be issued with additional allowances in cases of force majeure. The Commission shall determine whether force majeure is demonstrated, in which case it shall authorise the issue of additional and non-transferable allowances by that Member State to the operators of those installations.

2. The Commission shall, without prejudice to the Treaty, develop guidance to describe the circumstances under which force majeure is demonstrated, by 31 December 2003 at the latest.

110. In principle, allocation decisions are made by Member Sates before the beginning of the relevant trading period, thereby avoiding uncertainty in the allowance market. A limited provision allows the issuance of additional non-transferable allowances in exceptional and unforeseeable circumstances in the first period of the Community scheme.

111. Article 29 derogates from the general principle of the Community scheme, under which Member States allocate allowances before the beginning of the relevant trading period. Applications for force majeure allowances may therefore cause uncertainty in the allowance market, and, if granted, give an advantage to certain companies, which affects trade between Member States. Article 29 is therefore explicitly without prejudice to the Treaty, and the Commission will carefully consider the justification and potential effects of any application for such allowances.

112. Companies may seek insurance against various risks that could result in increased emissions, but insurance policies normally do not cover circumstances of force majeure. The Commission will not consider circumstances that could have been insured to constitute force majeure.

113. Circumstances of force majeure are, by their nature, difficult to anticipate. The Commission considers these to be exceptional and unforeseeable circumstances, which cause a substantial increase in annual direct emissions of greenhouse gases covered by Directive 2003/87/EC at an installation, which could not have been avoided even if all due care had been exercised. The circumstance must have been beyond the control of the operator of the installation concerned and of the Member State submitting an application to the Commission under Article 29 of the Directive with respect to the installation of that operator.

114. Circumstances that the Commission may consider to be *force majeure* include notably natural disasters, war, threats of war, terrorist acts, revolution, riot, sabotage or acts of vandalism.

115. The presence of *force majeure* has to be demonstrated at installation level and on a case-by-case basis.

116. An application under Article 29 of the Directive should include, in respect of each installation, the Member State's best estimate of the increase in emissions resulting from the circumstance for which *force majeure* is pleaded and a substantiation of that estimate.

117. A Member State should submit an application under Article 29 to the Commission by 31 January the year following the year of the trading period during which the circumstance occurred for which *force majeure* is pleaded.

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ANNEX

COMMON FORMAT FOR THE NATIONAL ALLOCATION PLAN 2005 TO 2007

1. DETERMINATION OF THE TOTAL QUANTITY OF ALLOWANCES

What is the Member State's emission limitation or reduction obligation under Decision 2002/358/EC or under the Kyoto Protocol (as applicable)?

What principles, assumptions and data have been applied to determine the contribution of the installations covered by the emissions trading Directive to the Member State's emission limitation or reduction obligation (total and sectoral historical emissions, total and sectoral forecast emissions, least-cost approach)? If forecast emissions were used, please describe the methodology and assumptions used to develop the forecasts.

What is the total quantity of allowances to be allocated (for free and by auctioning), and what is the proportion of overall emissions that these allowances represent in comparison with emissions from sources not covered by the emissions trading Directive? Does this proportion deviate from the current proportion of emissions from covered installations? If so, please give reasons for this deviation with reference to one or more criteria in Annex III to the Directive and/or to one or more other objective and transparent criteria.

What policies and measures will be applied to the sources not covered by the emissions trading Directive? Will use be made of the flexible mechanisms of the Kyoto Protocol? If so, to what extent and what steps have been taken so far (e.g. advancement of relevant legislation, budgetary resources foreseen)?

How has national energy policy been taken into account when establishing the total quantity of allowances to be allocated? How is it ensured that the total quantity of allowances intended to be allocated is consistent with a path towards achieving or over-achieving the Member State's target under Decision 2002/358/EC or under the Kyoto Protocol (as applicable)?

How is it ensured that the total quantity of allowances to be allocated is not more than is likely to be needed for the strict application of the criteria of Annex III? How is consistency with the assessment of actual and projected emissions pursuant to Decision 93/389/EEC ensured?

Please explain in Section 4.1 below how the potential, including the technological potential, of activities to reduce emissions was taken into account in determining the total quantity of allowances.

Please list in Section 5.3 below the Community legislative and policy instruments that were considered in determining the total quantity of allowances and state which ones have been taken into account and how.

If the Member State intends to auction allowances, please state the percentage of the total quantity of allowances that will be auctioned, and how the auction will be implemented.

2. DETERMINATION OF THE QUANTITY OF ALLOWANCES AT ACTIVITY LEVEL (IF APPLICABLE)

By what methodology has the allocation been determined at activity level? Has the same methodology been used for all activities? If not, explain why a differentiation depending on activity was considered necessary, how the differentiation was done, in detail, and why this is considered not to unduly favour certain undertakings or activities within the Member State.

If the potential, including the technological potential, of activities to reduce emissions was taken into account at this level, please state so here and give details in Section 4.1 below.

If Community legislative and policy instruments have been considered in determining separate quantities per activity, please list the instruments considered in Section 5.3 and state which ones have been taken into account and how.

If the existence of competition from countries or entities outside the Union has been taken into account, please explain how.

3. DETERMINATION OF THE QUANTITY OF ALLOWANCES AT INSTALLATION LEVEL (+ ANNEX I)

By what methodology has the allocation been determined at installation level? Has the same methodology been used for all installations? If not, please explain why a differentiation between installations belonging to the same activity was considered necessary, how the differentiation by installation was done, in detail, and why this is considered not to unduly favour certain undertakings within the Member State.

If historical emissions data were used, please state whether they have been determined in accordance with the Commission's monitoring and reporting guidelines pursuant to Article 14 of the Directive or any other set of established guidelines, and/or whether they have been subject to independent verification.

If early action or clean technology were taken into account at this level, please state so here and give details in Sections 4.2 and/or 4.3 below.

If the Member State intends to include unilaterally installations carrying out activities listed in Annex I below the capacity limits referred to in that Annex, please explain why, and address, in particular, the effects on the internal market, potential distortions of competition and the environmental integrity of the scheme.

If the Member State intends temporarily to exclude certain installations from the scheme until 31 December 2007 at the latest, please explain in detail how the requirements set out in Article 27(2)(a)-(c) of Directive 2003/87EC are fulfilled.

4. TECHNICAL ASPECTS

4.1. Potential, including technological potential

Has criterion (3) been used to determine only the total quantity of allowances, or also the distribution of allowances between activities covered by the scheme?

Please describe the methodology (including major assumptions made) and any sources used to assess the potential of activities to reduce emissions. What are the results obtained? How is it ensured that the total quantity of allowances allocated is consistent with the potential?

Please explain the method or formula(e) used to determine the quantity of allowances to allocate at the total level and/or activity level taking the potential of activities to reduce emissions into account.

If benchmarking was used as a basis for determining the intended allocation to individual installations, please explain the type of benchmark used, and the formula(e) used to arrive at the intended allocation in relation to the benchmark. What benchmark was chosen, and why is it considered to be the best estimate to incorporate achievable progress? Why is the output forecast used considered to be the most likely development? Please substantiate the answers.

4.2. Early action (if applicable)

If early action has been taken into account in the allocation to individual installations, please describe in which manner it is accommodated. Please list and explain in some detail the measures that were accepted as early action and what the criteria for accepting them were. Please demonstrate that the investments/actions to be accommodated led to a reduction of covered emissions beyond what followed from any Community or national legislation in force at the time the action was taken.

If benchmarks are used, please describe on what basis the grouping of installations to which the benchmarks are applied was made and why the respective benchmarks were chosen. Please also indicate the output values applied and justify why they are considered appropriate.

4.3. Clean technology (if applicable)

How has clean technology, including energy efficient technologies, been taken into account in the allocation process?

If at all, which clean technology has been taken into account, and on what basis does it qualify as such? Have any energy production technologies intended to be taken into account been in receipt of approved State aid for environmental protection in any Member State? Please state whether any other industrial technologies intended to be taken into account constitute “best available techniques” as defined in Council Directive 96/61EC, and explain in what way it is particularly performing in limiting emissions of covered greenhouse gases.

5. COMMUNITY LEGISLATION AND POLICY

5.1. Competition policy (Articles 81-82 and 87-88 of the Treaty)

If the competent authority has received an application from operators wishing to form a pool and if it is intended to allow it, please attach a copy of that application to the National Allocation Plan. What percentage of the total allocation will the pool represent? What percentage of the relevant sector's allocation will the pool represent?

5.2. Internal market policy – new entrants (Article 43 of the Treaty)

How will new entrants be able to begin participating in the EU emissions trading scheme?

In the case that there will be a reserve for new entrants, how has the total quantity of allowances to set aside been determined and on what basis will the quantity of allowances be determined for each new entrant? How does the formula to be applied to new entrants compare to the formula applied to incumbents of the relevant activity? Please also explain what will happen to any allowances remaining in the reserve at the end of the trading period. What will apply in case the demand for allowances from the reserve exceeds the available quantity of allowances?

Is information already available on the number of new entrants to expect (through applications for purchase of land, construction permits, other environmental permits etc.)? Have new or updated greenhouse gas emission permits been granted to operators whose installations are still under construction, but whose intention it is to start a relevant activity during the period 2005 to 2007?

5.3. Other legislation or policy instruments

Please list other Community legislation or policy instruments that were considered in the establishment of the National Allocation Plan and explain how each one has influenced the intended allocation and for which activities.

Has any particular new Community legislation been considered to lead to an unavoidable decrease or increase in emissions? If yes, please explain why the change in emissions is considered to be *unavoidable*, and how this has been taken into account.

6. PUBLIC CONSULTATION

How is this national allocation plan made available to the public for comments?

How does the Member State provide for due account to be taken of any comments received before a decision on the allocation of allowances is taken?

If any comments from the public received during the first round of consultation have had significant influence on the national allocation plan, the Member State should summarise those comments and explain how they have been taken into account.

7. CRITERIA OTHER THAN THOSE IN ANNEX III TO THE DIRECTIVE

Have any criteria other than those listed in Annex III to the Directive been applied for the establishment of the notified National Allocation Plan? If yes, please specify which ones and how they have been implemented.

Please also justify why any such criteria are not considered to be discriminatory.

8. ANNEX I – LIST OF INSTALLATIONS

Please submit a matrix containing the following information:

- Identification (e.g. name, address) of each installation
- The name of the operator of each installation
- The number of the greenhouse gas emissions permit
- The unique (EPER) identifier of the installation
- The main activity, and, if applicable, other activities carried out at the installation
- Total quantity of allowances to be allocated for the period, and the annual breakdown, for each installation
- Whether the installation has been unilaterally included or temporarily excluded and whether it is part of a pool
- Annual data per installation, including emission factors if emissions data are used, which have been used in the allocation formula(e)
- A subtotal per activity of data used and number of allowances allocated