



**COUNCIL OF
THE EUROPEAN UNION**

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COVER NOTE

from: European Commission

date of receipt: 7 January 2011

to: General Secretariat of the Council of the European Union

Subject: Draft Commission Decision of [...] concerning the unilateral inclusion of additional greenhouse gases and activities by the United Kingdom in the scheme for greenhouse gas emission allowance trading within the Union pursuant to Article 24 of Directive 2003/87/EC of the European Parliament and of the Council

Delegations will find attached Commission document D012349/01.

Encl.: D012349/01



EUROPEAN COMMISSION

Brussels,
D012349/01

Draft

COMMISSION DECISION

of [...]

concerning the unilateral inclusion of additional greenhouse gases and activities by the United Kingdom in the scheme for greenhouse gas emission allowance trading within the Union pursuant to Article 24 of Directive 2003/87/EC of the European Parliament and of the Council

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(Only the English text is authentic)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 24(1) thereof,

Whereas:

- (1) On 1 July 2010, the United Kingdom submitted an application for the unilateral inclusion of nitrous oxide (N₂O) emissions associated with the production of nitric acid (HNO₃) in the Union emission trading scheme, as an additional gas and activity, pursuant to Article 24 of Directive 2003/87/EC. On 9 November 2010, the United Kingdom submitted an amended version of that application.
- (2) The requested inclusion concerns two incumbent installations producing nitric acid that are already included in the Union scheme under the activity "Combustion installations with a rated thermal input exceeding 20 MW (except hazardous or municipal waste installations)". The requested period for the inclusion of nitrous oxide (N₂O) from nitric acid production is from 1 April 2011 until 31 December 2012.
- (3) The UK has proposed to apply the following declining benchmark: 1.5 kg N₂O/t HNO₃ for the year 2011, and 1.3 kg N₂O/t HNO₃ for the year 2012. This declining benchmark would be applied to the average production level of the base years (2003, 2005 and 2008). No growth factor would be used, nor was a differentiation of the benchmark value based on the abatement technology for nitrous oxide (N₂O) proposed.
- (4) Further to the UK's application, installations that commence the operation of nitric acid production activity after 30 June 2010 and before the end of 2012 (new entrants)

¹ OJ L 275, 25.10.2003, p. 32.

will be allocated emission allowances for free using a benchmark equal to 0.12 kg N₂O/t HNO₃. The benchmark level will be applied to the verified installed capacity of the new entrant multiplied by standard factors for the number of operational days (330) and load (90%).

- (5) As a result, a total of 922 353 allowances would be allocated to both incumbent installations for the period of inclusion (from 1 April 2011 until 31 December 2012). The incumbent installations would receive allowances that have been allocated to installations that later closed. Allowances allocated to new entrants would come from the general reserve for new entrants, meaning that no separate reserve for new entrants producing nitric acid would be created. Hence, the total quantity of allowances allocated by the United Kingdom would not increase as a result of the requested inclusion.
- (6) Further to the UK's application, the installations unilaterally included in the Union scheme would not be allowed to use additional CERs and ERUs pursuant to Article 11a of Directive 2003/87/EC.
- (7) On 17 December 2008 and 10 December 2009, the Commission approved applications submitted by the Netherlands and Austria respectively for the unilateral inclusion of the emission of nitrous oxide (N₂O) associated with the production of nitric acid (HNO₃) in the Union scheme, as an additional gas and activity². The application submitted by the United Kingdom proposes the same declining benchmarks as used by the Netherlands and Austria, both for incumbents and for new entrants.
- (8) The unilateral inclusion of nitric acid production is consistent with the policies and measures submitted in the UK's national allocation plan and will assist the United Kingdom to achieve its emissions reduction target under the Kyoto Protocol to the United Nations Framework Convention on Climate Change.
- (9) The monitoring and reporting system to be applied by the United Kingdom to the included gas and activity as of 1 April 2011 complies with the criteria set out in Commission Decision 2007/589/EC³.
- (10) The Commission notes that implementation of this unilateral inclusion may imply State aid pursuant to Article 107 of the Treaty on the Functioning of the European Union. The Commission has carried out a preliminary assessment of the compatibility of this unilateral inclusion with Article 107 of the Treaty on the Functioning of the European Union. At this preliminary stage, the Commission has no indication that State aid potentially involved may be found incompatible with the internal market should it be assessed in accordance with Articles 107 and 108 of the Treaty on the Functioning of the European Union .

² Commission Decisions of 17 December 2008 and 10 December 2009 concerning the unilateral inclusion of additional greenhouse gases and activities by the Netherlands and Austria in the Community emissions trading scheme pursuant to Article 24 of Directive 2003/87/EC of the European Parliament and of the Council, notified under document numbers C(2008) 7867 and C(2009) 9849.

³ Commission Decision of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council, OJ L 229, 31.8.2007, p. 1, amended by Commission Decision of 17 December 2008 amending Decision 2007/589/EC so as to include monitoring and reporting guidelines for emissions of nitrous oxide, OJ L 24, 28.1.2009, p. 18.

- (11) The measures provided for in this Decision are in accordance with the opinion of the Climate Change Committee established by Article 9 of Decision 280/2004/EC of the European Parliament and of the Council concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol⁴.

HAS ADOPTED THIS DECISION:

Article 1

The application submitted by the United Kingdom for the unilateral inclusion of the emission of nitrous oxide (N₂O) associated with the production of nitric acid (HNO₃) in the Union scheme, as an additional gas and activity, is approved.

Article 2

This decision shall apply as of 1 April 2011.

Article 3

This Decision is addressed to the United Kingdom.

Done at Brussels,

For the Commission
Connie Hedegaard
Member of the Commission

⁴ OJ L 49, 19.02.2004, p.1.