



EUROPEAN COMMISSION

Brussels, 6.7.2012  
C(2012) 4576 final

**COMMISSION DECISION**

**of 6.7.2012**

**concerning the application pursuant to Article 10c (5) of Directive 2003/87/EC of the European Parliament and of the Council to give transitional free allocation for the modernisation of electricity generation notified by the Czech Republic**

Only the Czech text is authentic

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (hereinafter TFEU),

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/EC<sup>1</sup> (hereinafter "the Directive"), and in particular Article 10c(6) thereof,

Whereas:

- (1) Article 10c of the Directive allows eligible Member States to provide for transitional allocation of emission allowances free of charge to installations for electricity production.
- (2) Auctioning is the rule for allocating allowances from 2013 onwards to operators in the electricity generation sector. However, in order to modernise their electricity systems, Member States eligible for using the option provided by Article 10c of the Directive may transitionally give allowances to such operators for free in the period 2013-2019. The allowances are deducted from the quantity that the Member State would otherwise auction as determined pursuant to Article 10(2) of the Directive. The value of the corresponding emission allowances allocated for free must then be used to finance investments in retrofitting and upgrading of the infrastructure, clean technologies, and diversification of the energy mix and sources of supply.
- (3) The application of the Czech Republic pursuant to Article 10c(5) of the Directive, was notified to the Commission by letter dated 29 September 2011. The Czech Republic submitted additional information in order to complete the notified plan by letter dated 16 January 2012 in reply to questions from the Commission, and by letter of 21 June 2012, registered on 26 June 2012.
- (4) The Czech application, including the total maximum quantity of allowances of 107.666.664 proposed to be allocated to installations pursuant to Article 10c over the period 2013-2019, has been assessed against the criteria set out in Article 10c of the

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<sup>1</sup> OJ L 275, 25.10.2003, p. 32.

Directive, taking into account the Commission's Communication "Guidance document on the optional application of Article 10c of Directive 2003/87/EC"<sup>2</sup> (hereinafter "the Communication") and the Commission Decision of 29 March 2011 on guidance on the methodology to transitionally allocate free emission allowances to installations in respect of electricity production pursuant to Article 10c(3) of Directive 2003/87/EC<sup>3</sup> (hereinafter "the Decision").

- (5) In accordance with Article 10c(1)(c), in 2006, more than 30% of electricity in the Czech Republic was produced from a single fossil fuel, and the GDP per capita at market price did not exceed 50% of the average GDP per capita at market price of the Union. The Czech Republic may therefore use the option provided for by Article 10c of the Directive.
- (6) Together with its application, the Czech authorities provided a list of 81 installations for electricity production in operation by 31 December 2008 and one installation for electricity production for which the investment process was physically initiated by the same date. By providing substantiated evidence showing that the construction of this installation has indeed started before 31 December 2008, the Czech authorities could demonstrate that the investment decision was not influenced by the option of receiving a free allocation of emission allowances. The Commission therefore considers all installations included in the Czech application eligible for receiving allowances free of charge pursuant to Article 10c of the Directive.
- (7) Allocations to the installations on the list will take place in accordance with the requirements of Article 10c(3) of the Directive and the Decision, in particular Article 1 thereof.
- (8) As part of its national plan, the Czech Republic has proposed investments in retrofitting and upgrading of the infrastructure, clean technologies, and diversification of the energy mix and sources of supply. The proposed investments have been undertaken from 25 June 2009 or will be undertaken in the future. The investments included in the Czech national plan comply with the requirements of Article 10c(1) and are compatible, to the extent possible, with the principles set out in point 23 of the Communication. They are therefore eligible for being financed by the value of the allowances allocated pursuant to Article 10c.
- (9) In view of the objective of Article 10c of the Directive to modernise the electricity generation sector, the value of the allowances provided pursuant to Article 10c(1) must be used for investments that bring about an added value in this respect. Thus, it should not be used to increase the electricity generation capacity to supply a growing market demand. Investments made with a view to matching electricity supply and demand would happen irrespective of the allocation pursuant to Article 10c. Where new electricity generation capacities are funded from the value of free emission allowances provided pursuant to Article 10c(1), the added value in terms of modernisation required by Article 10c must be ensured through a proportionate and timely de-commissioning of existing less-efficient electricity generation capacities. In its application, the Czech Republic confirmed that where an investment leads to an increase in the electricity generation capacity of an installation, the operator concerned

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<sup>2</sup> OJ C 99, 31.03.2011, p. 9

<sup>3</sup> C(2011) 1983 final

must commit itself, under threat of sanctions, to start de-commissioning of an equivalent amount of capacity within one year and to finalise the process within two years after the new capacity has been put in operation. Exceptionally, the old capacity could be kept as a generation backup, disconnected from the fuel feed and grid, whereby it is ensured that the new capacity and the old capacity cannot be in operation at the same time.

- (10) The Commission has also examined the provisions with regard to monitoring and enforcement as regards the intended investments. In particular, the Czech Republic proposes to only issue the allowances to the operator once the latter has demonstrated in a report due by 30 November of each year to the satisfaction of the competent authority that the investment has indeed been carried out. In case of a delay of investment up to two years, the allowances will be issued upon proof that the investment has been carried out within the relevant timeframe but no later than 31 December 2019. Allowances that will not be issued to the operator will, in accordance with Article 10(1) and (4) of the Directive, be auctioned.
- (11) In order to establish that the value of free emission allowances granted under Article 10c corresponds to the amount of investments identified in the national plan, the Czech Republic used in its application the values set out in Annex VI to the Communication. However, the Czech Republic is of the view that in case the market value of the allowances laid down in Annex VI to the Communication is significantly different from their prevailing market value, another market value should be used to determine whether the amount of allowances corresponds to the value of the investment. Therefore, where the market value laid down in Annex VI to the Communication deviates by more than 10% from a reference market value, the Czech Republic proposes to use the latter instead. The reference market value is determined once every year and will be based on the average of the settlement prices of spot trades of allowances on a specific carbon trading exchange as recorded on the first and fifteenth's trading day of each month in the period from January to November of the year preceding the one in which the allowances are issued. This reference value will be made public together with the information on how it has been derived. Furthermore, the reference value will only be determined once for each year and apply to all allowances scheduled for issuance in that year. It is thus ensured that in case of delay of investments, the value will be the same as if the investment was carried out as initially planned.
- (12) The provisions proposed by the Czech Republic allow close monitoring and effective enforcement of the national plan and ensures that the allowances allocated under Article 10c are clearly mirrored by investments in the modernisation of the electricity generation sector. In particular, the Commission notes that the methodology to determine the alternative market value is based on objective, non-discriminatory and transparent criteria and will be maintained throughout the whole period 2013-2020. Investments are subject to the competent authority's scrutiny and proper reporting to the Commission in accordance with Article 10c(1) and (4) is foreseen. Therefore, the Commission considers the provisions with regard to monitoring and enforcement sufficient to ensure proper execution of the investments identified in the national plan.
- (13) The Commission takes the view that the allocation of free allowances as proposed by the Czech Republic in its application does not result in undue distortions of competition within the meaning of Article 10c(5)(e) of the Directive as it is consistent,

in particular, with points 11 and 44 of the Communication. At the same time, the Commission considers that the allocation of allowances free of charge to installations for electricity production and the financing of corresponding investments involve state aid within the meaning of Article 107(1) TFEU which the Czech Republic has notified to the Commission for approval in accordance with the notification requirement pursuant to Article 108(3) TFEU. The Czech Republic cannot put into effect the proposed aid measures until the Commission has adopted a final decision that the state aid involved is compatible with the internal market.

- (14) The scheme set out in the application must be implemented in accordance with Directive 2003/87/EC and with other relevant provisions of Union law including Directive 2001/42/EC. The Czech Republic may in accordance with Article 10c(2) of the Directive reduce the total transitional free allocation provided in the application or decide to give transitional free allocation pursuant to Article 10c of the Directive for a period shorter than 2013-2019 provided that no inconsistency with the Directive or other Union law is thereby created. This decision is also without prejudice to measures taken at national level, in compliance with Union law, relating to the national energy policy and to the right of Member States to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply.
- (15) The Commission has found that the application is compatible with Article 10c of the Directive.

HAS ADOPTED THIS DECISION:

*Article 1*

No objections are raised to the Czech application to transitionally allocate allowances free of charge to installations for electricity production in the period 2013-2019 pursuant to Article 10c(5) of the Directive.

*Article 2*

This Decision is addressed to the Czech Republic.

Done at Brussels, 6.7.2012

*For the Commission*  
*Connie HEDEGAARD*  
*Member of the Commission*