



EUROPEAN COMMISSION

Brussels, 6.7.2012
C(2012) 4564 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 Romania

Only the Romanian 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/EC¹ (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 to 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 Romania pursuant to Article 10c(5) of the Directive, was notified to the Commission by letter dated 30 September 2011. Romania 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 22 June 2012.
- (4) The Romanian application, including the total maximum quantity of allowances of 71.409.926 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 Directive, taking into account the Commission's Communication "Guidance document

¹ OJ L 275, 25.10.2003, p. 32.

on the optional application of Article 10c of Directive 2003/87/EC"² (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/EC³ (hereinafter "the Decision").

- (5) In accordance with Article 10c(1)(c), in 2006, more than 30% of electricity in Romania 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. Romania may therefore use the option provided for by Article 10c of the Directive.
- (6) Together with its application, the Romanian authorities provided a list of 37 installations for electricity production in operation by 31 December 2008 and two installations for electricity production for which the investment process was physically initiated by the same date. By providing substantiated evidence showing that the construction of these installations has indeed started before 31 December 2008, Romania could demonstrate that the investment decision was not influenced by the option of a receiving free allocation of emission allowances. The Commission therefore considers all installations included in the Romanian 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 Article 1 of the Decision.
- (8) As part of its national plan, Romania has proposed investments in retrofitting and upgrading of the infrastructure, clean technologies, and diversification of the energy mix and sources of supply.
- (9) In view of the title and the objective of Article 10c of the Directive, investments eligible under this provision need to be directly linked to the modernisation of the electricity generation sector. In other words, it needs to be demonstrated for each investment funded by the gains accruing from the allocation of allowances free of charge pursuant to Article 10c that it indeed contributes to the modernisation of the electricity generation sector. Any installation eligible for receiving free allocation pursuant to Article 10c(1) may use the value of these allowances to finance such investments. Accordingly, the modernisation requirement embedded in Article 10c does not exclude that a Member State provides in its national plan for investments that relate to installations for which the investment process was physically initiated by 31 December 2008. However, in such a case, the modernisation requirement entails, just as for installations in operation by 31 December 2008, that the investment contributes to the modernisation of the electricity generation sector. In particular for investment RO-\$-015, Romania submitted upon request by the Commission further information substantiating that the investment is not identical to the investment process physically initiated by 31 December 2008 for installation RO-033, but that it contributes to the modernisation of electricity generation.
- (10) The investments proposed by Romania in the national plan have been undertaken from 25 June 2009 and comply with the requirements of Article 10c(1) and are compatible,

² OJ C 99, 31.03.2011, p. 9

³ C(2011) 1983 final

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.

- (11) 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) 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, Romania confirmed that where an investment leads to an increase in the electricity generation capacity of an installation, less efficient capacity will be de-commissioned elsewhere. Romania also included relevant provisions, in particular with regard to the monitoring of the de-commissioning obligation, in its application.
- (12) The Commission has also examined the provisions with regard to monitoring and enforcement as regards the intended investments. In particular, Romania proposes to only issue the allowances to the operator once the latter has demonstrated to the satisfaction of the competent authority that an amount equivalent to the market value of the allowances has been transferred to a dedicated fund managed by the Ministry of Economy, Trade and Business Environment (METBE). Allowances that will not be issued to the operator will, in accordance with Article 10(1) and (4) of the Directive, be auctioned.
- (13) The resources of the fund may then be used to finance a share of the value of any investment provided in the national investment plan. Romania has confirmed in its application that the conditionality inherently established by Article 10c of Directive 2003/87/EC with respect to the allocation of free emission allowances and the investments required by Article 10c(1) is complied with. In particular, Romania commits itself to ensure that payments from the fund to an investor will only be made upon proof that the investment has indeed been made. Pre-financing of investments up to 10% is allowed, subject to close monitoring and sanctions in case of non-execution of the investment.
- (14) In order to establish that the value of free emission allowances granted under Article 10c corresponds to the amount transferred to the fund in order to finance investments identified in the national plan, Romania used in its application the values set out in Annex VI to the Communication. However, Romania 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 the amount that an operator has to transfer to the fund in order to receive an equivalent amount of allowances. Therefore, where the market value laid down in Annex VI to the Communication deviates by more than 10% from a reference market value, Romania proposes to use the latter instead. The reference market value is determined twice every year by 1st April and 1st October and will be based on the average of the settlement prices of each auction held at the Common Auction Platform in the 1st and the 3rd quarter of the current year. This reference value will be made public.

- (15) The mechanism proposed by Romania allows 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 this mechanism sufficient to ensure proper execution of the investments identified in the national plan.
- (16) It is re-called that in accordance with point 31 of the Communication investments funded by gains accruing from free allocation of emission allowances under Article 10c of the Directive may be partly funded from other Union sources on condition that they comply with the requirements of the Communication and that Union rules on overall funding limits are respected.
- (17) The Commission takes the view that the allocation of free allowances as proposed by Romania 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 Romania will notify to the Commission for approval in accordance with the notification requirement pursuant to Article 108(3) TFEU. Romania 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.
- (18) 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. Romania 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.
- (19) 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 Romanian 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 Republic of Romania.

Done at Brussels, 6.7.2012

*For the Commission
Connie HEDEGAARD
Member of the Commission*