

Elements to be assessed in the framework of an application submitted by a Member State pursuant to Article 10c(6) of Directive 2003/87/EC

In the following, a template is provided that contains a list of elements to be used by Member States who wish to submit an application for temporary derogation from full auctioning for power in accordance with Article 10c of the revised EU ETS Directive (Directive 2003/87/EC). The structure of the template corresponds to Annex VII of the Communication from the Commission "Guidance document on the optional application of Article 10c of Directive 2003/87/EC"¹. While the use of the template is not mandatory for Member States, the Commission recommends using the template, as it is designed to facilitate a swift and objective assessment of an application submitted pursuant to Article 10c(6) of the revised EU ETS Directive.

Member States are formally invited to submit all information they deem necessary to comply with Article 10c in general and Article 10c(5) in particular of the revised EU ETS Directive. The requirements of these provisions are set out in the above Communication.

The template does not necessarily represent a complete list of information to be assessed by the Commission, in the event an application pursuant to Article 10c(6) of the EU ETS Directive is submitted. For this reason, information additional to that required by the template may also be requested by the Commission for the assessment pursuant to Article 10c(6) of the EU ETS Directive.

The template and the information submitted by Member States using the template is without prejudice to the state aid assessment under Article 107 TFEU referred to in point 27 of the above Communication or to the information required under this state aid assessment. It is important to note that the information requested by this template does only relate to the assessment required by Article 10c(6) of the EU ETS Directive and is not related to the assessment required under the relevant provisions on State aid of the TFEU. For this reason, information not requested by or addressed in this template may be required for the state aid assessment referred to in point 27 of the above Communication from the Commission. Member States should notify the relevant information to the Commission in accordance with the relevant rules for state aid.

¹ OJ C99 of 31.3.2011, page 9

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A. Evidence that at least one of the conditions laid down in Article 10c(1) of Directive 2003/87/EC is met

Member States may fill the information required from the following worksheet:

[A. Eligibility of Member State](#)

In the event that a Member State meets the condition under Article 10c(1) letter c, the Member State concerned is required to point to the relevant statistical source.

B. Eligibility of installations considered to receive temporary free allocation of emission allowances, total quantity of temporary free allocation of emission allowances and amounts of free emission allowances allocated to these installations

B.1. List of installations deemed to be eligible for free temporary free allocation under Article 10c of Directive 2003/87/EC

In order to provide the necessary information, Member States may introduce the relevant data to the following worksheets:

[B.1.a. Company groups](#)

[B.1.b. Operators](#)

[B.1.c. Installations](#)

B.2. Total quantity of free allocation

In order to determine the total quantity of free allocation, Member States may introduce the relevant data to the following worksheet:

[B.2. Total quantity](#)

B.3. Installation based temporary free allocation of emission allowances

B.3.1. Temporary free allocation of emission allowances on the basis of verified emissions 2005 to 2007

In order to determine the temporary free allocation of emission allowances to each eligible installation on the basis of verified emissions 2005 to 2007, Member States may assign the relevant data to the rows in the following worksheet:

[B.3.1. Allocation based on VE](#)

The information assigned to the rows in the sheet concerned shows the temporary free allocation of emission allowances on the basis of verified emissions of the period 2005 to

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2007 in accordance with an approach complying with Article 3 of Commission Decision C(2011) 1983 final of 29.3.2011. It is however not excluded that alternative approaches might also comply with this provision. In such a case, Member States are requested to provide the information necessary to assess the compliance of such an alternative approach with the said provision. This information may deviate from what is requested by the template.

B.3.2. Temporary free allocation of emission allowances on the basis of benchmarks

In order to determine the temporary free allocation of emission allowances to each eligible installation on the basis of ex-ante efficiency benchmarks, Member States may assign the relevant data to the rows in the following worksheet and also introduce the relevant data:

[B.3.2. Allocation based on BM](#)

C. Investments listed in the national plan, eligibility of investments in the national plan, balance between market value of free emission allowances and value of investments, non-transferable allowances

C.1. Investments listed in the national plan

Member States may introduce the relevant data to the following worksheet and assign them to the rows in the following worksheet:

[C.1. Investments](#)

Please note that compliance of the investments with principles 2 and 5, as set out in point 23 of the Communication from the Commission "Guidance document on the optional application of Article 10c of Directive 2003/87/EC" is optional (see also point 24 of this Communication), while compliance of the investments with principles 1, 3, 4 and 6 is mandatory.

If the value of investments is indicated in national currencies other than the Euro, Member States should justify the exchange rate used in cell "H3" of the above worksheet. Please note that the value in Euro is to be established in accordance with Annex VI of the Communication from the Commission "Guidance document on the optional application of Article 10c of Directive 2003/87/EC".

Member States should attach the national plan required by Article 10c(1) of Directive 2003/87/EC to their application and confirm that the list of investments provided in the above worksheet represents a complete list of investments identified in the national plan.

C. 2. Mechanism to ensure the balance between the value of investments and the value of free emission allowances

2.1. Please provide a description of the overall approach, the legal base and the operational details of the mechanism.

2.2. Please explain how the mechanism ensures that the value of emission allowances allocated for free in the framework of Article 10c of Directive 2003/87/EC is mirrored by the investments identified in the national plan and that the investments are undertaken in order to match the amount of investments with the value of free emission allowances.

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2.3. Please indicate the legal provisions ensuring that information on the net financial flows under the mechanism will be made available through the reports to be submitted to the Commission pursuant to Article 10c(1) of Directive 2003/87/EC including a copy of the text

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2.4. Please give a fictive example of how the information on the net financial flows under the mechanism will be made available through the reports to be submitted to the Commission pursuant to Article 10c(1) of Directive 2003/87/EC

C.3. Balance between market value of free emission allowances and value of investments

Member States may introduce the relevant data to the following worksheet and assign them to the rows in the following worksheet:

[C.3. Balance](#)

C.4. Non-transferable allowances (only to be filled when applicable)

If applicable, i.e. the Member State concerned intends to make use of the option provided by Article 10c(2) 2nd subparagraph of Directive 2003/87/EC, the Member State concerned may introduce the relevant data to the following worksheet and assign them to the rows in the following worksheet:

[C.4.1. Non-transferable](#)

C.4.2. Please justify the quantity of allowances made non-transferable in the light of the underlying objective to be achieved through the allocation of non-transferable allowances

C.4.3. Demonstration of the need to allocate non-transferable allowances

4.3.1. Please provide a description of the underlying objective to be achieved through the allocation of non-transferable allowances

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4.3.2. Please provide a justification why this objective could not be achieved more effectively by other means.

4.3.3. Have the incentives created in respect of emission reductions and the potential increase in ETS compliance costs resulting from the allocation of non-transferable allowances been taken into account? If so, how and to which extent?

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4.4. Please explain why the number of non-transferable allowances is justified, i.e. is necessary and proportionate.

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4.5. Please explain why the number of non-transferable allowances is not deemed to create undue distortions of competition.

D. Monitoring and enforcement provisions with respect to the intended investments pursuant to the national plan

D.1. Legal base of effective monitoring and enforcement provisions in Member State

D.1.1. Please provide a detailed description of the monitoring mechanism

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D.1.2. Please provide a detailed description of how to enforce investments

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D.1.3. Please provide a reference to the legal provisions, such as laws, regulations etc as well as relevant administrative provisions setting up the monitoring mechanism

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D.1.4. Please identify the national authorities competent to implement the monitoring mechanism

D.2. Important elements of effective monitoring and enforcement to be addressed in the legal provisions under D.1.3.

D.2.1. Please identify the provisions to define compliance indicators (examples see Annex VIII of the Commission Communication "Guidance document on the optional application of Article 10c of Directive 2003/87/EC")

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D.2.2. Please identify relevant provisions on field supervision

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D.2.3. Please identify relevant provisions concerning on-the-spot checks

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D.2.4. Please identify relevant provisions requiring annual independent verification by external auditors for each investment including the issuance of an official document certifying the nature of each investment and the exact amount spent each year.

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D.2.5. Please identify relevant provisions requiring third-party quantitative and qualitative assessment of investments to comply with the EU ETS Directive and the Guidance document.

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D.2.6. Please identify relevant provisions requiring copies of external auditor certification documents accompanied by an official translation into English to be annexed to the annual reports to be submitted by Member States to the Commission pursuant to Article 10c(1) of the EU ETS Directive.

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D.2.7. Please explain how the submission of the annual reports on investments pursuant to Article 10c(1) of the EU ETS Directive is ensured.

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D.2.8. Please identify relevant provisions requiring publication of operators' reports pursuant to Article 10c(4) of the EU ETS Directive.

D.3. Penalties and corrective measures in case of non-compliance with obligation to invest to recover value of free allowances not invested

D.3.1. Please provide a detailed description of measures in case of companies not complying with the obligation to invest

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D.3.2. Please provide a detailed description of penalties and measures established with a view to recovering the balance between the value of free allowances and the investments identified in the national plan.

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D.3.2. Please identify relevant provisions concerning the obligation to repay free emission allowances up to the amount of the observed lack of investments

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D.3.2. Please identify relevant provisions requiring automatic forfeiture of allowances from companies not complying with their obligations accruing from the national plan and the Guidance document on the optional application of Article 10c of Directive 2003/87/EC (OJ C99 of 31.3.2011, p9)

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D.3.3. Please identify relevant provisions on dissuasive financial penalties of a punitive nature.

E. Transparency and public consultation

E.1. Has the application been published before submitting it to the Commission? If so, when, where and how has it been published? If not, why not?

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Annex I

Member States are requested to attach the national law implementing Article 10c to the application to be submitted pursuant to Article 10c(5) of the EU ETS Directive