



EUROPEAN
COMMISSION

Brussels, 23.5.2012
C(2012) 3237 final

COMMISSION DECISION

of 23.5.2012

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 Lithuania

Only the Lithuanian text is authentic

COMMISSION DECISION

of 23.5.2012

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 Lithuania

Only the Lithuanian text is authentic

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 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 Lithuania pursuant to Article 10c(5) of the Directive, was notified to the Commission by letter dated 5 October 2011. Lithuania submitted additional information in order to complete the notified plan by letter dated 27 January 2012 in reply to questions from the Commission, and by letter of 3 April 2012.
- (4) The Lithuanian application, including the total maximum quantity of allowances of 2.853.628 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), point b, in 2007, the Lithuanian electricity network was only directly or indirectly connected to the network operated by the Union for the Coordination of Transmission of Electricity (UCTE) through a single line with a capacity of less than 400 MW. Lithuania may therefore use the option provided for by Article 10c of the Directive.
- (6) Together with its application, the Lithuanian authorities provided a list of installations eligible to transitionally receive allowances for free. 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.
- (7) As part of its national plan, Lithuania 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. They comply with the requirements of Article 10c(1) and, 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.
- (8) The Commission has also examined the provisions with regard to monitoring and enforcement as regards the intended investments. In particular, Lithuania proposes to only issue the allowances to the operator once the latter has demonstrated to the satisfaction of the competent authority that the investment has indeed been carried out. Where an operator fails to undertake an investment in the year in which it was foreseen, the competent Lithuanian authorities may extend the investment term for a period up to 2 years provided that the reasons for the delay are clearly substantiated and the sum of investments during these 2 years is not lower than the value of emission allowances allocated for these 2 years. Allowances that will not be issued to the operator will, in accordance with Article 10(1) and (4) of the Directive, be auctioned. The mechanism proposed by Lithuania 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. 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.
- (9) The Commission takes the view that the allocation of free allowances as proposed by Lithuania in its application does not result in undue distortions of competition within the meaning of Article 10c(5)(e) of the Directive. 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

² OJ C 99, 31.03.2011, p. 9

³ C(2011) 1983 final

meaning of Article 107(1) TFEU which Lithuania shall have to notify to the Commission for approval in accordance with the notification requirement pursuant to Article 108(3) TFEU. Lithuania 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.

- (10) 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. Lithuania 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.
- (11) 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 Lithuanian 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 Lithuania.

Done at Brussels, 23.5.2012

For the Commission
Connie HEDEGAARD
Member of the Commission