



EUROPEAN
COMMISSION

Brussels, 23.5.2012
C(2012) 3260 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 Cyprus**

Only the Greek text is authentic

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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 Cyprus

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THE EUROPEAN COMMISSION,

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

Having regard to ¹ (hereinafter 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 "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 Cyprus pursuant to Article 10c(5) of the Directive, was notified to the Commission by letter dated 28 September 2011. Cyprus submitted additional information in order to complete the notified plan by letter dated 20 January 2012 in reply to questions from the Commission, and by letter of 4 April 2012.
- (4) The Cypriot application, including the total maximum quantity of allowances of 10.975.977 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 a, in 2007, the Cypriot electricity network was not directly or indirectly connected to the network interconnected system operated by the Union for the Coordination of Transmission of Electricity (UCTE). Cyprus may therefore use the option provided for by Article 10c of the Directive.
- (6) Together with its application, the Cypriot 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, Cyprus 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 and 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, Cyprus proposes to oblige the operator to repay the value of the allowances in the event that the investments proposed in the national plan are not undertaken taking into account a delay of one year and to the extent the investments have not been undertaken. In such a case, Cyprus also proposes to halt the issuance of free allowances to the operator concerned for the forthcoming years until 2020. 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 Cyprus 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 Cyprus 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 meaning of Article 107(1) TFEU which Cyprus has notified to the Commission for approval in accordance with the notification requirement pursuant to Article 108(3) TFEU. Cyprus cannot put into effect the proposed aid measures until the Commission

² OJ C 99, 31.03.2011, p. 9

³ C(2011) 1983 final

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. Cyprus 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 Cypriot 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 Cyprus.

Done at Brussels, 23.5.2012

For the Commission
Connie HEDEGAARD
Member of the Commission