



Brussels, 30.11.2012  
C(2012) 8675 final

**COMMISSION DECISION**

**of 30.11.2012**

**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 Hungary**

Only the Hungarian 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 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 Hungary pursuant to Article 10c(5) of the Directive, was notified to the Commission on 30 September 2011. Hungary submitted additional information in order to complete the notified plan by e-mail transmitted on 16 January 2012 in reply to questions from the Commission, by e-mail transmitted on 31 May 2012, and by letter of 9 November 2012.
- (4) The Hungarian application, including the total maximum quantity of allowances of 7.047.255 proposed to be allocated to installations pursuant to Article 10c in year 2013, has been assessed against the criteria set out in Article 10c of the Directive, taking into account the Commission's Communication "Guidance document on the

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

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 Hungary 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. Hungary may therefore use the option provided for by Article 10c of the Directive.
- (6) Together with its application, the Hungarian authorities provided a list of 16 installations eligible to transitionally receive allowances for free. Hungary proposes to allocate the free emissions allowances to those installations only in 2013. 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, Hungary has proposed two investments relating to the 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 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.
- (8) The Commission has also examined the provisions with regard to monitoring and enforcement as regards the intended investments. In particular, Hungary proposes to issue the allowances to the operators and oblige them to transfer a financial amount equivalent to the market value of the allowances to a dedicated Monitoring Authority. Hungary intends to appoint the National Inspectorate for Environment, Nature and Water to act as the Monitoring Authority.
- (9) The funds collected by the Monitoring Authority, with the exception of the part covering its operational expenses, will then be used to finance the investments provided in the national investment plan. Hungary commits itself to ensure that payments of the funds by the Monitoring Authority will only cover the expenses already made in the investment process. According to the Hungarian application, pre-financing of investments is not allowed.
- (10) Hungary 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 Monitoring Authority following the issuance of the free emission allowances. Therefore, where a reference market value is more than 20 % lower than market value laid down in Annex VI to the Communication, Hungary proposes to use the former instead. The reference market value will be determined once and will be based on volume weighted average prices of three emission futures markets trading with allowances, as indicated in the application, during the period between 1 January 2013 and 28 February 2013. This reference value will be made public.

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

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

- (11) The provisions proposed by Hungary 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. 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.
- (12) 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.
- (13) The Commission takes the view that the allocation of free allowances as proposed by Hungary 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 Hungary will notify to the Commission for approval in accordance with the notification requirement pursuant to Article 108(3) TFEU. Hungary 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 and Directive 2009/73/EC. Hungary may in accordance with Article 10c(2) of the Directive reduce the total transitional free allocation foreseen in the application 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 Hungarian application to transitionally allocate allowances free of charge to installations for electricity production pursuant to Article 10c(5) of the Directive.

*Article 2*

This Decision is addressed to Hungary.

Done at Brussels, 30.11.2012

*For the Commission  
Connie HEDEGAARD  
Member of the Commission*