



Ministerstvo životního prostředí
České republiky

SENDER:

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ADDRESS:

Mr. Jos Delbeke
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European Commission
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Belgium

Prague
Ref.:

21 June 2012
51549/ENV/12
1240/770/12

Dear Mr. Delbeke,

Dear Jos,

by my letter of 12th June 2012, the Czech Republic officially resubmitted its application for derogation pursuant to article 10c of the Directive 2009/29/EC. In the light of consultation with the Commission, which took place after the resubmission, I would hereby like to replace the resubmitted documents with the ones in the attachment. Please consider them as a final version of our application for derogation.

Yours sincerely,

Ivo Hlaváč

Annexes:



Annex: Changes in the application and related documents

On 29th September 2011, the application for derogation of the Czech Republic was submitted together with National Plan of Investments and Methodology Report accompanied by several complementary documents. On 14th December 2011 the Commission requested the Czech Republic to provide additional information regarding eligible installations, eligible investments and other matters to make the application complete. This information was submitted to the Commission by the letter of 13th January 2012.

Based on the abovementioned information, the application was checked for compliance with the Directive and several issues were identified. In order to sort them out, the Ministry of the Environment (MoE) of the Czech Republic and the DG Climate Action have agreed on the changes in the application so that it could be deemed compatible with the Directive and thus approved by the Commission.

Apart from minor corrections of technical nature, following main changes have been made in the application:

Determination of market value of allowances

Considering the current level of the carbon price, the Czech Republic wishes to make use of a mechanism to determine the value of allowance in case when the alternative market value deviates by more than 10 % from the market value laid down in Annex VI of the Guidance document. In other case, the market value laid down in Annex VI will be used.

The methodology will be maintained and applied throughout the whole period 2013-2020, during which the pricing of allowances is relevant. The determination of the market value is based on the settlement prices of spot trades, as recorded on the first and fifteenth trading day of months from January to November (22 values) of the year preceding the year where allowances are issued. The average of these values will represent the market value of the allowances.

The source of data shall be: <http://www.bluenext.eu/statistics/downloads.php>,

the exchange: Bluenext and

the product: Bluenext Spot EUA.

Every year in the late November or early December the Ministry of the Environment will determine the value of allowances to be issued next year and publish this value on its websites, together with the information, if this value triggers the use of the market value laid down in Annex VI of the Guidance document or the use of the alternative market value. The value used for every year will be included in the annual report to the Commission. With this



approach, the market value of allowances to be issued will be determined only once for each year, where free allowances are issued. That means that in case that allowances are allocated to an operator but are not issued because of insufficient value of implemented investments, the price of allowances will be determined only once, using the market values from the year preceding the year of initially planned issuance. For purpose of their issuance later, their price will remain the same and will not be recalculated.

Eligibility of installations

The eligibility of installations has been reassessed also in the light of data gathered in the process of National Implementation Measures (NIMs) pursuant to the Article 10a of the Directive. Some installations have been found as not eligible for free allocation and removed from the National Plan of Investments (NPI), some have been found eligible and added to the NPI, so that the list of installations included complies with the Article 10c of the Directive and corresponds with the data collected under NIMs.

Legislation

Within the legislative process of transposition of the Directive 2009/29/EC into the legislation of the Czech Republic, the provisions implementing the Article 10c have been drafted. This draft is included in the Methodology Report in its latest version. It is important to point out that the English translation is merely informative and may not have the same legal effect as the Czech original. But, the legislation has been drafted to address any concerns raised by the Commission. Inter alia, the sentence “*Free allowances will only be allocated for investments implemented until 31 December 2019.*” shall ensure that although there is some flexibility in terms of timing of the investments, no allowances will be allocated for investments carried out in 2020 or later.

Further, provision “*Allowances for the trading period from 1 January 2013 to 31 December 2020 and for each subsequent trading period, which are not allocated free of charge under this Act, are auctioned in accordance with the rules laid down by the European Commission Regulation on auctioning of allowances.*” states clearly that if some allowances would be allocated, but not issued to an operator (for example because of insufficient implementation of investments) beyond the possible flexibility of “carry over” of allocation, these allowances will be auctioned.

Decommissioning and backup

Article 23 of the Guidelines 2011/C 99/03 states that eligible investments in NPI as a part of application for free allocation to electricity generators pursuant to Article 10c of the Directive shall not lead to increase in total capacity of electricity generation from fossil fuels. This would be considered as fulfilled, if assured that there will not be an increase of capacity of electricity generation on the level of Member State.



From the abovementioned reason the National Legislation of the Czech Republic has to assure an appropriate provisions and treatment in case that such situation will occur. If operator notifies an investment, which may increase capacity of electricity production, they must commit themselves to decommission an old capacity of electricity generation accordingly. The decommissioning process must start within one year and must be carried out within the period of two years since the new capacity is fully operational. This provision assures that the electricity generation capacity from fossil fuels will not be increased in the Czech Republic as a result of application of Article 10c of the Directive. There is anticipated compliance and enforcement in the case that the operators commit themselves to decommission, but it will not take place fully or partially in the above-mentioned time period. In this particular case when a certain amount of allowances has been handed out, it means that a fine is applicable and it corresponds to the value of allowances multiplied by a specific price index.

The following text describes what should be understood and recognized as an appropriate process towards decommissioning under Article 10c:

- **Physical decommissioning.** If a new capacity is installed, an old one is completely demounted and removed, including cancelation or complete change of permit. This is a case of decommissioning without any doubts.
- **Decommissioning and keeping as a backup.** In this particular case, an old source is kept as a cold backup, while a new capacity is fully used. The cold backup means that the new and old capacity cannot be in operation at the same time. The reason for keeping the cold backup is that it could be brought to operation in case of an accident or comprehensive maintenance without interrupting of energy production. Any such change in cold backup shall be reported to competent authority accordingly. This process is to be supported by EIA (Environmental Impact Assessment), by through all relevant NIM investments will be assessed accordingly. To fulfill all requirements of EIA the MoE will apply conditions relevant to decommissioning where applicable. It means that old part of installation will have to be removed or switched into a cold backup regime (with no possibility for parallel workload of new and old technology together). We understand this option as a reasonable case of eligible decommissioning.