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]](#footnote-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.

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](file:///C%3A%5Cuser%5CLocal%20Settings%5CTemp%5CnotesFFF692%5CTemplate%20for%20application%20final.xls#'A. Eligibility of Member State'!C2)

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.

Article 10c(1)(c) is relevant for the Czech Republic, as in 2006 more than 30 % of electricity was generated in the Czech Republic from a single type of fossil fuel, and the Gross Domestic Product per capita at market price did not exceed 50 % of the average Gross Domestic Product per capita at market price of the Community.

Eurostat data indicates that the total gross electricity generation of the Czech Republic in 2006 was 84.361 GWh, of which 43.619 GWh was generated from brown coal. The share of brown coal in gross electricity generation in the Czech Republic in 2006 corresponded to a value of 51.71%.

According to Eurostat data, the average Gross Domestic Product per capita at market price of the EU in 2006 was 23,700 EUR, and the Gross Domestic Product per capita at market price of the Czech Republic was 11,100 EUR, which corresponds to 46.41 % of the average Gross Domestic Product per capita of the Community.

It follows that the Czech Republic is eligible for transitional free allocation of allowances for installations for electricity generation under Article 10c of the Directive.

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 theses 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](file:///C%3A%5Cuser%5CLocal%20Settings%5CTemp%5CnotesFFF692%5CTemplate%20for%20application%20final.xls#'B.1.a. Company groups'!A2)

[B.1.b. Operators](file:///C%3A%5Cuser%5CLocal%20Settings%5CTemp%5CnotesFFF692%5CTemplate%20for%20application%20final.xls#'B.1.b. Operators'!A2)

[B.1.c. Installations](file:///C%3A%5Cuser%5CLocal%20Settings%5CTemp%5CnotesFFF692%5CTemplate%20for%20application%20final.xls#'B.1.c. Installations'!A5)

### *Installations for electricity generation*

The installations for electricity generation covered by the EU ETS can be divided into three categories:

1) electricity generators as defined in the Directive, which generate only electricity,

2) electricity generators as defined in the Directive, which generate electricity and heat,

3) installations which generate electricity but which also carry out some other activity listed in Annex I to the Directive (according to the definition, installations involving industrial energy generation are not considered electricity generators - e.g. paper mills, ironworks etc.).

The installations under categories 1) and 2) are eligible for the free allocation of allowances for electricity generation, whereas in the case of installations generating electricity and heat, only relevant emissions attributable to electricity generation are taken into account.

### *Cut-off date*

However, the eligibility of an installation is also dependent on the date of the commencement of its operation, or, as the case may be, the date of the physical initiation of the investment process for the respective installation, which the Directive sets as 31 December 2008 and earlier.

The following data is requested as evidence of the eligibility of an installation:

1) in the event of the commencement of the operation of the installation prior to 31 December 2008, data evidencing the verified emissions of the installation for the period 2008-10,

2) in the event of the initiation of the investment process for the installation prior to 31 December 2008, data evidencing that as of this date the process had actually been physically initiated (e.g. commencement of construction work, conclusion of a construction contract between the investor and the company that is in charge of the construction work, issuance of a building permit etc.).

All the installations included in the national plan meet at least one of the criteria above. The operators of these installations have provided evidence of their verified emissions during the period 2008-2010. An overview is given on sheet B.1.c Installations. In the case of installations for which the investment process had been physically initiated as of 31 December 2008, the operators have evidenced this fact by, for example, a concluded contract for work between the investor and the contractor in charge of the construction work or by a building permit etc. The decision to build a new electrical power station was therefore not influenced by the prospect of obtaining free emission allowances for the power station. All the installations have been issued with greenhouse gas emission permits and therefore meet the requirements on eligible installations for the allocation of free allowances according to Article 10c of Directive 2009/29/EC and Commission Communication 2011/ C 99/03.

### *Eligibility of installations in the Czech Republic*

During the preparation of the application and the national plan, the Ministry of the Environment called the operators of installations to submit applications for the free allocation of allowances for electricity generation by a deadline of 30 June 2010. The main information required in the application was as follows:

1) A list of the installations which holders of a greenhouse gas emission permit expect to be operating in the period from 1 January 2013 to 31 December 2019 and which were in operation, or for which the investment process had been physically initiated, as of 31 December 2008.

2) A draft plan regarding investments into the retrofitting and upgrading of installations, clean technologies etc. with a value corresponding to at least the expected market value of the allowances allocated for free, on the proviso that the plan is to propose the investment of the relevant funds by 31 December 2019 and that the investment process is to be physically initiated for at least one project under the submitted plan at the latest by 31 December 2013, whereas investments under the submitted plan initiated from 25 June 2009 may be counted for this purpose.

3) A proposal for control checks on the performance of the planned investments.

Representatives of the Ministry of the Environment and the Ministry of Industry and Trade and independent experts were brought together to establish an evaluation committee, which disqualified any installations not eligible for free allocations (not electricity generators) and projects which are not capable of covering the value of the allowances allocated free of charge (e.g. which do not lead to the reduction of CO2 emissions). The eligible installations and eligible investments were then included into the national plan. Installations were also included which are eligible for free allocation but did not apply for it or do not have eligible investments.

Some installations were established by a division from an original installation, which was carrying out activities other than combustion of fuels. This is the case of ArcelorMittal Energy Ostrava, Tamero Invest and Energetika Třinec. These are all CHP plants

Energetika Třinec is supplying a steel plant Třinecké železárny with electricity and heat. It also delivers to external consumers and households. Energetika Třinec was not detached from Třinecké železárny, but it was established as a separate installation from the very beginning, from 2005. Therefore, it should be an eligible installation.

Unlike Energetika Třinec, ArcelorMittal Energy Ostrava and Tamero Invest were detached from their original installations (steel plant, resp. chemistry plant) in 2011. They both have emission permit issued before 30. June 2011. “Verified emissions” of these installations in National Plan of Investments only refer to emissions attributable to the new, sepaerate installations and do not include other emissions from steel or chemistry production. Eligible emissions from the electricity production are calculated in the same way as in other installations. ArcelorMittal Energy Ostrava delivers approximately 10 % of the electricity to the external subjects and households, Tamero Invest around 70 %.

Therefore, both ArcelorMittal Energy Ostrava and Tamero Invest should be deemed eligible for free allocation. Investments planned by operators of all three abovementioned installations are solely aimed at modernisation of electricity production and infrastructure, as one can see from the National Plan of Investments; investments in steel or chemistry production are not included.

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](file:///C%3A%5Cuser%5CLocal%20Settings%5CTemp%5CnotesFFF692%5CTemplate%20for%20application%20final.xls#'B.2. Total quantity'!B2)

The total quantity of the allowances which the Czech Republic will be able to allocate for electricity generation for free has been determined in accordance with Article 10c(2) of the Directive and the Guidance Document issued by the European Commission.

The total quantity of free allowances for electricity generation has been calculated using the formula below:

TQFA13 = (GFNC / TGEP) \* AAQEEG05-07 \* 0.7,

where

TQFA13 total quantity of free allowances for the year 2013,

GFNC gross final national consumption of electricity,

TGEP total gross electricity production,

AAQEEG05-07 annual average quantity of emissions from eligible installations resulting from electricity generation in the years 2005-7,

0.7 linear reduction factor corresponding to the progressive reduction of free allowances - in 2013 the maximum level for allocation of free allowances amounts to 70 % and thereafter decreases linearly to 0 % in 2020 (so that for 2014 the factor is therefore 0.6 etc.).

Since there is no officially registered figure for GFNC, it has been calculated using the following formula prescribed by the European Commission:

GFNC = FEC - MNET + {[(FEC - MNET) / (TGEP + MNET)] · TDL} + {[(FEC - MNET) / TGEP] · CEG}, where

FEC final electricity consumption (Eurostat code 101700),

MNET net electricity imports (Eurostat code 100600),

TGEP total gross electricity generation (Eurostat code 107000),

TDL transmission and distribution losses (Eurostat code 101400),

CEG self-consumption during electricity generation (Eurostat code 101301).

The total quantities of free allowances for electricity generation broken down according to the gradual staging of the auctions (indicated by the reduction factors for each year in the period 2013-20) are shown in the following table:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |
| 0.7 | 0.6 | 0.5 | 0.4 | 0.3 | 0.2 | 0.1 | 0 |
| 26 916 672 | 23 071 427 | 19 226 190 | 15 380 956 | 11 535 717 | 7 690 475 | 3 845 241 | **0** |

Note: The sum total of the free allowances for the entire period 2013-20 amounts to 107 666 678.

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](file:///C%3A%5Cuser%5CLocal%20Settings%5CTemp%5CnotesFFF692%5CTemplate%20for%20application%20final.xls#'B.3.1. Allocation based on VE'!A6)

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 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.

### *Calculation of the allocation at the installation level based on historical emissions*

The Czech Republic has decided for allocation at the installation level based on historical emissions.

To determine historical emissions it was necessary to divide up the emissions from installations generating both heat and electricity. This division was carried out using the formula given in Annex IIa to Commission Decision C(2011)1983. Since practical application of the formula was not straightforward, the MoE prepared an interpretative explanation for operators, stating how to proceed with the division calculation: From VE, emissions from heat generation only are subtracted. Emissions from condensing electricity production are deemed eligible. Emissions from CHP are split in line with Annex IIA. Emissions from extraction electricity production are split into condensing and CHP production. All the data was then independently verified by accredited entities. The details of the emissions division calculation are given in an Excel sheet “Division of Emissions Heat-Electricity”.

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](file:///C%3A%5Cuser%5CLocal%20Settings%5CTemp%5CnotesFFF692%5CTemplate%20for%20application%20final.xls#'B.3.2. Allocation based on BM'!A6)

The Czech Republic has used benchmarking only for new installations and installations for which the requisite data was not available.

Establishing the benchmark

The national ex-ante efficiency benchmark was established in complete accordance with the methodology set out in Annex I of the Decision, **and has a value of 0.8095 t CO2/MWhe**.

|  |  |  |
| --- | --- | --- |
| **BMMS** |  **=**  | **∑(EFi \* Peli / ηi)** |
| **fuel = i** |
| **∑ Peli**  |
| **fuel = i** |

where

BMMS Member State specific emission benchmark for electricity generation,

EFi Emission factor for fuel i,

Peli fuel-specific electricity production using fuel i,

ηi fuel-specific efficiency for the generation of electricity using fuel i based on best available techniques,

i fuel number.

The benchmark was derived from fuel-specific inputs that were calculated using net electricity generation from a specific fuel in accordance with Eurostat indicators 107106 –107111 for Eurostat product code 6000 (electricity), the efficiency of generating electricity, while taking into account best available techniques for the specific fuel and a fuel-specific emission factor.[[2]](#footnote-2)

### *Calculation of the allocation at the installation level based on the benchmark*

The allocation at the installation level has been calculated using the following formula:

AllI2013 = rEIPFAIel \* BMMS \* 0.7 \* CF,

 where

AllI2013 allocation for the installation for 2013,

rEIPFAIel relevant electricity production for an eligible installation,

BMMS Member State specific emission benchmark for electricity generation.

The relevant electricity production for an eligible installation (rEIPFAIel) was determined according to the procedure described in the Decision:

rEIPFAIel = Cel \* LFD,

where

Cel installed electrical capacity of an eligible installation or the electrical design capacity of eligible installations which are not in operation but for which an investment process had been physically initiated by 31 December 2008,

LFD standardised load factor in hours per year in accordance with the table below. The load data was provided by installation operators and then cross-checked with the data stated in their integrated permits and corrected as necessary.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Load | Peak load | Peak load | Medium load | Medium load | Medium load | Basic load | Basic load |
| Standardised load factor in hours per year | 1,000 | 2,000 | 3,000 | 4,000 | 5,000 | 6,000 | 7,000 |

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](file:///C%3A%5Cuser%5CLocal%20Settings%5CTemp%5CnotesFFF692%5CTemplate%20for%20application%20final.xls#'C.1. Investments'!A5)

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.

### *Principles for the national plan*

The Guidance Document sets out the principles which should be complied with by the investments identified in the national plan if they are to be approved by the Commission. In their applications, the operators have declared that the relevant investments are in compliance with the established principles, which are:

1. The national plan should identify investments which, directly or indirectly (investments in networks and ancillary services), contribute to decreasing greenhouse gas emissions in a cost effective manner.
2. The investments should be designed to eliminate in the future, to the extent possible, situations which establish the eligibility conditions for the allocation of free allowances[[3]](#footnote-3).
3. The investments should be compatible with each other and other relevant EU legislation. They must neither reinforce dominant positions nor unduly distort competition and trade on the internal market and, where possible, should strengthen competition on the internal market in electricity.
4. The investments should be additional to the investments which Member States must undertake in order to comply with other objectives or legal requirements ensuing from EU law. They should also not concern investments which would be required to satisfy increasing electricity supply and demand.
5. The investments should contribute to diversification and reduction of the carbon intensity of the energy mix and the sources of energy supply for electricity generation.
6. The investments should be economically viable even in the absence of the free allocation of allowances once transitional allocation of such allowances comes to an end, with the exception of specific pre-defined emerging technologies which are still at the demonstration stage and which are specified in Annex III to the guidance document.

The national plan complies with the above principles on the following grounds:

Ad 1) The national plan complies with this principle because it contains projects leading to the reduction of greenhouse gas emissions. Where possible, the operators gave quantitative estimates of this reduction in their applications and derived it from the transition to less emission-intensive fuel, increasing efficiency, reducing self-consumption etc.

Ad 2) The plan as a whole presents a mix of measures whose implementation in the Czech Republic will lead to greater diversification of sources as a result of using sources other than brown coal and/or reducing brown coal consumption by increasing efficiency and reducing self-consumption.

Ad 3) The investments are mutually compatible and do not conflict with either Czech or EU law. The free allocation of allowances for electricity generation has been made conditional upon the implementation of these investments so that it will be carried out in accordance with Article 10c of Directive 2009/29/EC.

Since the investments and the free allocations meet all the stipulated conditions and are in accordance with the EU legislation which allows them, it is understood that they do not unduly distort either competition or trade on the internal market. Neither do the investments reinforce any entity's dominant position, as is shown in detail in the Analysis of Czech Electricity Market.

Ad 4) The investments will result in no increase, or only a minimal increase, in electricity generation. In many cases involving the construction of new energy sources the older generation capacity will simultaneously be decommissioned. The Czech Republic does not consider the possibility of free allocation to be a tool for the fulfilment of other objectives or legislative requirements ensuing from EU law; the main objective is to reduce the dependence of the Czech Republic on solid fossil fuel. The Czech Republic is complying or will comply with its other objectives (e.g. reduction of greenhouse gas emissions, increasing the share of RES in energy production) through other measures, and will ensure that no double counting of investments results.

Ad 5) The investments lead to a reduction in carbon intensity and to the diversification of sources (described in point 2).

Ad 6) The projects are planned to have a long service life that will continue long after the free allocation of allowances for electricity generation comes to an end. In their economic evaluation of the investments the operators took this fact into account and were not motivated in any way to implement investments which would not be cost-effective under standard market conditions.

The Ministry of the Environment also gave consideration as to whether it would be necessary to carry out an environmental impact assessment of the national plan. Since the material does not display the features of a concept within the meaning of Act No. 100/2001 Coll., it cannot be deemed to be a concept under this legislation. Neither does it meet the criteria of the framework for assessment by an authorised entity. Moreover, the material involved is a national plan of investments, which does not fall under the provisions of Act No. 100/2001 Coll., as the Act states that financial and budgetary concepts are not subject to assessment according to Section10a(2)(c)**.(Emphasis added by ELS)**

### *Investments in the national plan of the Czech Republic*

In order for the Ministry of the Environment to include an operator of an eligible installation on the list of installations which may for a transitional period obtain free allowances for electricity generation, the operator was required to undertake the investment of at least the market value[[4]](#footnote-4) of the allowances allocated free of charge into retrofitting and upgrading its infrastructure and clean technologies.

The conditions for the eligibility of projects and for including them in the national plan were as follows:

* The measures must lead to a reduction in greenhouse gas emissions – primarily of CO2.
* The project must meet the criteria set out in the BREF reference documents[[5]](#footnote-5). The criteria must be met both for the project as a whole and for each technological area.
* The operator was required to calculate the so-called "greening" of the project (the share of the investment costs corresponding to an annual emission reduction by one ton of CO2equiv.). Projects with a resultant value of lower than 100,000 CZK are to be deemed fully eligible from the perspective of the free allocation of allowances.[[6]](#footnote-6) A project was not automatically rejected if it did not meet the condition on the "minimum greening", but if the greening was substantially higher, it was recommended to the operator to reconsider the inclusion of such investments in the plan. In these cases, operators withdrawed all these investments voluntarily.
* If the investment relates to a new source of greenhouse gas emissions, this must displace another, existing source (this can be substantiated either by the cancellation of the greenhouse gas emission permit, documentary evidence of the decommissioning of another source etc., or the operator must calculate the "displacement effect" using the average emission factor for electricity generation in the Czech Republic).
* The project may not utilise other public investment support[[7]](#footnote-7). If the operator nonetheless utilises other investment support, only the part of the investment which was not paid for using such other investment support will be counted.
* In accordance with the Guidance Document of the European Commission, support for the construction of new nuclear energy installations or for increasing the capacity of existing nuclear energy installations was ruled out, with the exception of the extraction and recovery of waste heat already produced.
* In view of the inevitable technological risks involved, innovative projects in the field of RES are supported only where there are reasonable grounds to expect successful demonstration, and where such projects potentially also involve complementary actions addressing such risks.
* Only projects implemented in the Czech Republic have been supported.
* The investments are to be carried out by the operator of the installation. Where an operator is to collaborate on the implementation of the project with another entity, the operator nonetheless remains entirely responsible for the implementation of the investment plan (the operator must demonstrate that it is financing the investments, must submit reports on the implementation of the investments etc.).

The vast majority of the investments stated by operators in their applications involve retrofitting and investments into modern technologies to increase efficiency or to reduce self-consumption, upgrading heat distribution networks to reduce losses or the transition to less emission-intensive fuel. In some cases, where retrofitting/repair was no longer possible or advisable (e.g. in the case of installations and technologies several decades old), the investments involved the purchase of new technology such as a turbine or an incineration boiler with a higher level of efficiency, and using it as a replacement for the old equipment. Old technology is as a rule either to be decommissioned or retained as a back-up during planned maintenance work or in the event of an emergency, although not with the intention of operating the old and new sources simultaneously, due to insufficient capacity, a lack of fuel or insufficient demand. Even where the old source is not decommissioned at a particular individual installation, another installation will be decommissioned within the Czech Republic, as is shown by the Analysis of Czech Electricity Market. This indicates that the amount of electricity generated by the installations listed in the national plan will remain at the same level, and the free allocation of allowances will not therefore lead to an increase in electricity generation by these installations.

Operators were requested to provide with more detailed information on their investments plans, if they included an investment in a new source. This was true for ČEZ, AES Bohemia, ArcelorMittal Energy Ostrava, Teplárna Varnsdorf, Elektrárny Opatovice, United Energy, KA Contracting, Energy Ústí nad Labem, Výroba a prodej tepla Příbram, ŠKO-ENERGO and Dalkia ČR.

* ČEZ – the investment plan of the CEZ Group is grounded on the replacement of existing installations (or sources) with new less carbon intensive installations (or sources). In most cases, the CEZ Group intends to decommission such existing installations. However, it may be the case that the installed capacity of a particular existing installation will remain the same but its production will decrease (load factor of the existing installations will decrease). More detailed plan of decommissioning and reducing of load factors of more carbon intensive installations will be prepared at the time of starting operation of new less carbon intensive installations and will be based on actual legal framework and market conditions.
* AES Bohemia – the current portfolio of AES Bohemia contains three lignite fired boilers, which are planned to be substituted with their investments in the National Plan of Investments (gas fired CHP unit/gas engines and use of biomass). Although the precise scenario is not known yet, the operator pledges only to substitute the old boilers with new capacity, which eventually does not lead to increase of total installed capacity.
* ArcelorMittal Energy Ostrava – the operator plans to build a new boiler, which would replace an old one. This means that the installed capacity will remain the same or may even decrease because of reduced production capacity in ArcelorMittal Ostrava steel plant.
* Teplárna Varnsdorf – the old lignite fired boiler has been already decommissioned and replaced by a biomass fired boiler, no capacity increase takes place.
* Elektrárna Opatovice – there are three projects, which could possibly increase the installed capacity. The purchase of a new turbine is paired with a decommissioning of the old, less efficient one. Building a gas fired CHP unit will lead both to decommissioning of some of the lignite fired boilers and to reducing of load factor of the remaining boilers. The reduction of electricity production is also due to the capacity of transmission network, which does not allow operating both sources simultaneously.
* United Energy – the operator plans to build new block with higher efficiency, which will lead both to decommissioning of some of the old lignite fired boilers and to reducing of load factor of the remaining boilers. The reduction of electricity production is also due to the capacity of transmission network, which does not allow operating both sources simultaneously.
* KA Contracting – the current lignite fired boiler will be replaced by a biomass fired unit.
* Energy Ústí nad Labem – an old turbine will be replaced by a new, more efficient generator. The old turbine will be kept as a backup.
* Výroba a prodej tepla Příbram - the current lignite fired boiler will be replaced by a biomass fired unit.
* ŠKO-ENERGO - the current lignite fired boiler will be replaced by a biomass fired unit.
* Dalkia ČR – the operator plans three projects of replacing old boilers by new ones, with enabling co-firing of biomass. One boiler was already decommissioned; two others are supposed to be decommissioned by 2019.

We would like to stress that every investment realized will be subject to a financial and energy audit and these must be reported to the Ministry of Environment on yearly basis pursuant to the draft amendment of the Act No. 695/2004 Coll (see below). If operator does not satisfy these conditions, he would not be allocated any allowances. Requirements for reporting will be further elaborated in cooperation with the Commission; one of the requirements will probably be the proof of having decommissioned an old capacity. The draft amendment also contains a sanction in case that operator states false information in its report.

### *Investments into heat distribution networks*

Installations employing high efficiency cogeneration (meeting the conditions of Directive 2004/8/EC[[8]](#footnote-8)) are identified as electricity generators under the European Commission's Guidance paper to identify electricity generators[[9]](#footnote-9) and the Communication of the Ministry and can therefore be allocated free allowances in accordance with Article 10c of the Directive.

The European Commission's Guidance leaves it to the Member States to decide on the definition of installations. In the Czech Republic, an installation is defined in Section 2(1)(a) of the Act as "a stationary technical unit where one or more of the activities listed under paragraphs A to D of Annex I to this Act are carried out, and any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions; installations shall not include stationary technical units used for research, development and testing of new products and processes. Where one operator of an installation carries out at a single installation or on the same site several activities falling under the same heading in the list given under paragraphs A to D of Annex I to this Act, the capacities of such activities are to be added together."

The arguments for including investments into heat distribution networks into the "national plan" in the case of installations employing high efficiency cogeneration of heat and power (CHP) according to Directive 2004/8/EC are as follows:

* The physical principle employed in CHP indicates that the expansion of useful heat supply is the sole possible means for expanding clean electricity production in cogeneration. If Article 10c were not to support the expansion of heat supplies, this would mean surrendering a source of motivation for the expansion of clean electricity production technology capable of reducing primary energy consumption, and at the same time giving up the opportunity to reduce emissions of greenhouse gases by levels of the order of tens of percent. Such a level of reduction is not achieved by any other known methods of upgrading electricity generation which would be usable on a mass scale.
* The very definition of high efficiency CHP (Directive 2004/8/EC) and the wording of Article 10a(4) of the Directive require useful heat supply carried out using heat distribution networks connecting the heat producer and the consumer (customer). Electricity generation in high efficiency CHP is therefore clearly tied to the production and supply of useful heat even from the perspective of legislation. Without the development of heat distribution networks, it will not be possible to increase the share of CHP in total electricity generation.
* In addition to the opportunity for wider usage of CHP, investments into heat distribution networks will also lead to a reduction in losses during energy supply, thereby resulting in the reduction of greenhouse gas emissions (a fundamental objective of the EU ETS).
* If the investments under the national plan are partially focused on heat distribution networks, this will simultaneously minimise the risk of distortion of competition on the electricity market (a requirement of Directive 2009/29/EC). In the context of the assessment of support for investments into CHP and heat distribution networks, DG Competition has already issued a precedent decision to the effect that direct support for high efficiency CHP and heat supply does not violate the rules on the provision of public support – e.g. in March 2010 for project N 295/2008 Investment aid for a heat plant in Mellach[[10]](#footnote-10) with a grant of 16 million EUR.

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.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.

The provision of Article 10c(1) of Directive 2003/87/EC regarding the need to invest at least the market value of emission allowances allocated for free has been transposed into Czech legislation. Nonetheless, to ensure that this is actually implemented in practice the Czech Republic will apply an allocation mechanism wherein allowances will be allocated only once operators have proven that they have already made investments matching the value of the allowances. They will submit this information each year in a report on the implementation of investments, which will be certified by an independent entity. Where an operator makes investments exceeding the value of its free allocation entitlement in a given year, the value invested will count towards the amount of its allocation in subsequent years. Where an operator invests less, it will be allocated a corresponding quantity of allowances, and may then receive the balance in subsequent years if it makes investments with the relevant value. If an operator obtains free allowances by stating false information, it will be subject to a penalty under the Act. However, in view of the manner in which the allocation mechanism has been set up, this situation is highly unlikely.

This allocation mechanism will be introduced by a new Act transposing 2009/29/EC Directive into the Czech legislation. This Act is still in the legislative process however, the process is already at a stage where it can be anticipated that the Act will be adopted in the wording given below and the allocation mechanism will be applicable from 2013.

The existing provisions of the Act relating to the submission of applications by operators are as follows:

"Holders of greenhouse gas emission permits will be able to submit the requisite supporting documents to the Ministry of the Environment until 30 June 2010 at the latest.

... The requisite supporting documents shall include inter alia a draft plan regarding investments into the retrofitting and upgrading of installations, clean technologies etc. with a value corresponding to at least the expected market value of the emission allowances allocated for free, on the proviso that the plan is to propose the investment of the relevant funds by 31 December 2019 and that the investment process is to be physically initiated for at least one project under the submitted plan at the latest by 31 December 2013,..."

The draft of the Act introduces the allocation mechanism as follows (as far as derogation is concerned):

**Draft of the new Act on the conditions for trading of greenhouse gas emission allowances**

**§ 7**

**Auctioning of allowances and use the proceeds from the auction**

**...**

**(5) 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.**

**...**

**§12**

**Allocation of free emission allowances in relation to electric power production modernisation**

**(1) Free allowances in relation to electric power production modernisation shall be allocated on the basis of applications filed by the facility operators for allocation of free allowances based on the national plan of investments into equipment and modernisation of infrastructure and clean technologies elaborated by the Ministry and approved by government and by the European Commission (hereinafter referred to as the "application approved by the European Commission"). Investments in equipment and modernisation of infrastructure and clean technologies do not include the projects implemented for the purpose of fulfilment of the requirements of legal regulations effective as of 25 June 2009. Free allowances will only be allocated for investments implemented until 31 December 2019.**

**(2) The facility operator, which makes investments according to the plan specified in the application approved by the European Commission, shall submit to the Ministry a Report on Investments, which are the subject of the approved plan of investments (hereinafter referred to as the "Report"), and shall do so until 30 November of each year in 2012 to 2018, and until 31 December 2019. The Report filed until 30 November 2012 shall specify the investments made in the period after 25 June 2009; only new investments not described in the Reports in previous years shall be specified in the subsequent Reports. Each Report must include the content elements as specified in Annexe No. 2 to this Act. If a Report submitted in a timely manner does not comply with the specified elements, the Ministry will immediately request the facility operator to amend or modify the Report within 15 days. If the operator does not submit the Report in a timely manner, it will be understood that no investments were made.**

**(3) The Ministry will decide on the quantity of allowances to be allocated free of charge to the individual operators for the respective year on the basis of application approved by the European Commission and the investments specified in the submitted Report. The operator will be the only participant to the proceedings. Appeal against the decision has no effect of suspending.**

**(4) The investments not taken into account by the Ministry in making decisions on allocation of allowances, because they exceed the quantity specified in the application approved by the European Commission, shall be taken into consideration in deciding on allocation of allowances in the following years. The quantity of free allowances, allocation of which for the respective year will not be decided by the Ministry contrary to the application approved by the European Commission, because the facility operator did not make the investment in the amount corresponding to the value of allowances, which should have been allocated according to the application, shall be allocated to the operator in the following years on the basis of the performed investments documented in the Report according to Clause 2. If the facility operator does not make the investments according to the plan specified in the application approved by the European Commission, such fact must be properly justified to the Ministry. The investments not made by the operator within 2 years from the date provided in the plan referred to in the application approved by the European Commission shall not be taken into account by the Ministry in deciding on allocation of free allowances.**

**(5) When deciding on the quantity of free allowances for allocation, the Ministry shall not take into account the investments that will lead to an increase in the aggregate of the installed electrical capacity of all facilities operated by a single operator when compared with the original aggregate of the installed electrical capacity. It will be understood that an investment will not lead to an increase in the total electrical capacity, if the facility operator binds itself in the Report pursuant to Clause 2 that it will ensure a decrease in a corresponding manner in the capacity of such facility or any other facility within 2 years after the capacity increase. If the operator ensures the decrease in capacity according to sentence two only partially, the Ministry making the decision on the quantity of free allowances shall take into account the value of investment proportionally to the capacity decrease.**

**(6) Until 31 January of every year, the Ministry shall publish (in a manner allowing remote access) the Reports submitted by operators according to Clause 2, and on the basis of such Reports, the Ministry shall elaborate an Annual Report to be submitted to the European Commission and publish this report.**

**...**

**PART FIVE**

**ADMINISTRATIVE OFFENCES**

**§ 18**

**Administrative offenses of an operator**

**(1) The operator shall commit an administrative offense if**

**…**

**f) reports an investment according to § 11 paragraph 2 that was not implemented,**

**g) in breach of the obligation under § 11 paragraph 4 does not set from the operation an existing source within two years after putting a new source into operation or does not initiate the process of decommissioning within one year after putting a new source into operation,**

**...**

**4) For an administrative offense pursuant to paragraph 1. f) or g), the operator is obliged to pay the amount of money that corresponds to the value of illegally acquired allowances allocated free of charge at the date of their annual allocation, multiplied by total industrial producer price index announced by the Czech Statistical Office.**

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

Currently this issue is provided for only in general terms under Act No. 695/2004 Coll., Section 10a(6):

… An operator of an installation that has received free allowances shall submit a report on the implementation of its investments to the Ministry by the end of each calendar year. The scope of the requisite information in this report will be determined under an implementing legal regulation. If a report submitted within the set deadline is nonetheless incomplete or inaccurate, the Ministry will immediately request the operator of the installation to supplement or revise the report within a period of thirty days…

The implementing regulation (decree) that is mentioned will be prepared by the end of 2011. Its preparation was postponed pending the publication of the European Commission's Guidance Document. It will contain precise requirements on the form of the annual reports, including information on financial flows certified by an audit.

Further obligations of operators are set out in the Communication of the Ministry of the Environment regarding the submission of applications for the free allocation of allowances for electricity generation for the period 2013-20[[11]](#footnote-11) of 2 July 2010 :

Following the implementation of the investments, the volume of funds invested will be proved by means of a financial audit. The project must also be assessed by an energy auditor.

Following the adoption of the amendment to the Act in the wording above, the submission of annual reports on the implementation of investments by operators will be a necessary condition for the allocation of allowances. This will act as effective motivation for operators to comply with this obligation. The reports are to be submitted by 30 November, allowing the Ministry of the Environment a period of two months until 31 January to process them and send a summary report to the Commission. This is an obligation of the Czech Republic ensuing from the second paragraph of Article 10c(1) of the Directive, and provided for in greater detail in Section 6.3 of Commission Communication 2011/ C 99/03. The amendment to the Act also requires the submission of this report to the Commission.

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

As stated above, the volume of funds invested will have to be proven by means of a financial audit.

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](file:///C%3A%5Cuser%5CLocal%20Settings%5CTemp%5CnotesFFF692%5CTemplate%20for%20application%20final.xls#'C.3. Balance'!A5)

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](file:///C%3A%5Cuser%5CLocal%20Settings%5CTemp%5CnotesFFF692%5CTemplate%20for%20application%20final.xls#'C.4.1. Non-transferable'!D1)

This part is not applicable to the Czech Republic.

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

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?

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

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

## Monitoring and enforcement provisions with respect to the intended investments

The main body which will monitor the performance of undertakings by operators will be the Ministry of the Environment. Of key importance for control purposes will be the reports on the implementation of the investments included in the national plan, which each operator must submit every twelve months in accordance with Art. 10c(4) of the Directive.

Act No. 695/2004 Coll. also sets out corrective and penalty mechanisms for cases where operators fail to perform their obligations. Moreover, if, for example, an operator fails to perform its obligation to submit reports each year, it will not be allocated allowances.

### *Obligations of operators*

Each year, operators are required to submit a report on the implementation of the investments included in the national plan. Amongst other things, these reports will contain an award from an independent auditor, who will verify, on the basis of an on-the-spot check, the nature of the particular investments and the exact amount spent in the relevant year, and above all that the reported expenditures are genuine.

Following the implementation of the investments, the volume of funds invested will be proved by means of a financial audit. The project must also be assessed by an energy auditor or a verifier of greenhouse gas emissions when it is in operation.

The obligations of operators are laid down in the Act. Details relating to the submission of reports will be stipulated by an implementing regulation, which will be based on the content requirements for the report on the implementation of investments, compliance indicators and the format of the report specified by the Commission for this purpose.

The anticipated content of the reports on the implementation of investments will include at least the following:

* *a concise executive summary,*
* *an overview of the overall performance of the plan of investments, i.e. primarily the volume of investments made to date, the number of already implemented projects and the environmental benefit of these projects, and an estimate of the level of performance of the plan as a whole,*
* *an overview of performance in relation to the specific year, i.e. primarily a list of the projects implemented in the given year (whether completed or not), an overall description of the stage of implementation of the individual projects, a forecast of whether the planned deadlines for the individual projects will be met or not, and the funds invested in the given year.*
* *certification of the information by an independent entity.*

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

The implementation of investments is a necessary condition for the allocation of allowances. If an operator does not implement investments or does not evidence its investments by an independently certified report on the implementation of investments, it will not be allocated any allowances at all.

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

The fundamental legislative document regulating the area of monitoring is Act No. 695/2004 Coll. (Section 10a) and the new Act. The details will be specified in a decree which will be prepared subsequently so as to reflect the requirements of the Commission regarding reports on the implementation of investments, and following approval will immediately be sent to the European Commission (see above).

The Ministry of the Environment will propose adequate indicators for assessing the compliance of the implementation of the intended investments with the conditions set out in the Directive, the Guidance Document and the national plan of the Czech Republic based on the examples of compliance indicators listed in Annex VIII to the Guidance Document.

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

Ministry of the Environment

Department of Energy and Climate Protection

Vršovická 65

100 10 Prague 10

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")

The fundamental legislative document regulating the area of monitoring is Act No. 695/2004 Coll. (Section 10a) adn the new Act. The details will be specified in a decree which will be prepared by the end of the year and following approval immediately sent to the European Commission (see above).

The Ministry of the Environment will propose adequate indicators for assessing the compliance of the implementation of the intended investments with the conditions set out in the Directive, the Guidance Document and the national plan of the Czech Republic based on the examples of compliance indicators listed in Annex VIII to the Guidance Document.

D.2.2. Please identify relevant provisions on field supervision

The relevant provisions are contained in the new Act

 § 12

(2) The facility operator, which makes investments according to the plan specified in the application approved by the European Commission, shall submit to the Ministry a Report on Investments, which are the subject of the approved plan of investments (hereinafter referred to as the "Report"), and shall do so until 30 November of each year in 2012 to 2018, and until 31 December 2019. The Report filed until 30 November 2012 shall specify the investments made in the period after 25 June 2009; only new investments not described in the Reports in previous years shall be specified in the subsequent Reports. Each Report must include the content elements as specified in Annexe No. 2 to this Act. If a Report submitted in a timely manner does not comply with the specified elements, the Ministry will immediately request the facility operator to amend or modify the Report within 15 days. If the operator does not submit the Report in a timely manner, it will be understood that no investments were made.

(3) The Ministry will decide on the quantity of allowances to be allocated free of charge to the individual operators for the respective year on the basis of application approved by the European Commission and the investments specified in the submitted Report. The operator will be the only participant to the proceedings. Appeal against the decision has no effect of suspending.

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

See point D.2.2.

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.

See point D.2.2.

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.

See point D.2.2.

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.

See point D.2.2.

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.

The annual reports will be prepared and submitted by the Ministry of the Environment. This obligation will be established in the new Act on emissions trading:

**(6) Until 31 January of every year, the Ministry shall publish (in a manner allowing remote access) the Reports submitted by operators according to Clause 2, and on the basis of such Reports, the Ministry shall elaborate an Annual Report to be submitted to the European Commission and publish this report.**

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

See D.2.7.

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

*The new Act will introduce an allocation mechanism which will prevent situations occurring where allowances are allocated without operators first implementing investments.*

*The offence of stating incorrect information and the penalty for this case are also set out:*

**PART FIVE**

**ADMINISTRATIVE OFFENCES**

**§ 18**

**Administrative offenses of an operator**

**(1) The operator shall commit an administrative offense if**

**…**

**f) reports an investment according to § 11 paragraph 2 that was not implemented,**

**g) in breach of the obligation under § 11 paragraph 4 does not set from the operation an existing source within two years after putting a new source into operation or does not initiate the process of decommissioning within one year after putting a new source into operation,**

**...**

4) For an administrative offense pursuant to paragraph 1. f) or g), the operator is obliged to pay the amount of money that corresponds to the value of illegally acquired allowances allocated free of charge at the date of their annual allocation, multiplied by total industrial producer price index announced by the Czech Statistical Office. 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.

See point D.3.1.

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

See point D.3.1.

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)

See point D.3.1.

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

See point D.3.1.

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?

Prior to being submitted to the government for approval, the application underwent an interministerial consultation procedure and was published on the web pages of the Ministry of the Environment (<http://www.mzp.cz/cz/euets_emisni_obchodovani>) with a call for comments so that members of the public might have also expressed their opinion. The Ministry thoroughly addressed all comments submitted within the set deadline.**(Emphasis added by ELS).**

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

The provision of the Directive allowing the use of a transitional exemption (Article 10c) has been transposed into Czech law under Act No. 292/2009 Coll., amending Act No. 353/2003 Coll., on excise duties, as amended, and other associated acts, including Act No. 695/2004 Coll. on the conditions for trading in greenhouse gas emission allowances and on the amendment of certain acts and Act No. 164/2010 Coll., amending Act No. 695/2004 Coll.

In line with the legislation of the European Communities, the Czech national legislation enables the allocation of free allowances to electricity generators for a transitional period in exchange for investments into the retrofitting and upgrading of installations and into clean technologies, with the aim of achieving an overall improvement in technological equipment which will be reflected in a reduction in the production of CO2 emissions and diversification of the energy mixand sources of energy supply.

After consultation with the relevant stakeholders (electricity generators, non-governmental organisations), the Ministry published more detailed requirements relating to the use of the exemption (eligible installations, eligible projects etc.) in its Communication regarding the submission of applications for the free allocation of allowances for electricity generation for the period 2013-20 of 2 July 2010.

The currently applicable provisions on free allocation according to Act. 10c of Directive 2003/87/EC as set out in Act No. 695/2004 Coll. :

Section 10a

Transitional allocation of free allowances in connection with the upgrading of electricity generation procedures

 (1) By 31 October 2009 at the latest, the Ministry will call electricity generators which hold permits according to Section 5 of this Act to submit requisite supporting documents for the processing of an application according to the relevant regulations of the European Communities 6b).

 (2) Holders of permits according to subsection 1 will be able to submit the requisite supporting documents to the Ministry until 30 June 2010 at the latest.

 (3) The requisite supporting documents for the purposes of subsection 1 are:

 a) a list of the installations which holders of permits according to subsection 1 expect to be operating in the period from 1 January 2013 to 31 December 2019 and which were in operation, or for which the investment process had been physically initiated, as of 31 December 2008; physical initiation of the investment process shall mean the submission of a notification of a project plan in accordance with Act No. 100/2001 Coll. on environmental impact assessment and amending certain related Acts (the Environmental Impact Assessment Act), as amended,

 b) a draft plan regarding investments into the retrofitting and upgrading of installations, clean technologies etc. with a value corresponding to at least the expected market value of the emission allowances allocated for free, on the proviso that the plan is to propose the investment of the relevant funds by 31 December 2019 and that the investment process is to be physically initiated for at least one project under the submitted plan at the latest by 31 December 2013, whereas investments under the submitted plan initiated from 25 June 2009 may be counted for this purpose; the Ministry of the Environment will publish the expected market value of the allowances in its Official Journal by 31 May 2010 and on the public administration web portal,

 c) a proposal for control checks on the performance of the planned investments according to paragraph b).

 (4) On the basis of the supporting documents it receives, the Ministry will prepare an application for the allocation of free allowances so that as many free allowances as possible may be used for investments into retrofitting and upgrading of infrastructure and clean technologies. This application will state the proposed method for the allocation of the free allowances and the specific individual allocations of free allowances. The Ministry will submit the application for government approval by 30 November 2010 and will publish it in a manner allowing remote access. Immediately after its approval, the government will submit the application to the European Commission for assessment.

 (5) The Ministry will prepare the application according to subsection 4 so as to make the maximum usage of the quantity of free allowances allocated for investments into retrofitting and upgrading of infrastructure and clean technologies. Such investments into the retrofitting and upgrading of infrastructure and clean technologies shall not include projects implemented in order to comply with requirements of legislation in effect as of 25 June 2009.

 (6) Upon approval by the European Commission, the Ministry will then distribute the allocated free allowances among the specific individual operators of installations on the basis of duly submitted supporting documents and the approval of their applications for the allocation of free allowances for the relevant period. An operator of an installation that has received free allowances shall submit a report on the implementation of its investments to the Ministry by the end of each calendar year. The scope of the requisite information in this report will be determined under an implementing legal regulation. If a report submitted within the set deadline is nonetheless incomplete or inaccurate, the Ministry will immediately request the operator of the installation to supplement or revise the report within a period of thirty days… Operators of installations which have received free allowances must implement all the investments into the retrofitting and upgrading of infrastructure and clean technologies based on which they received such allowances by the end of 2019.**(Emphasis added by ELS)**

Section 18

 (1) An operator shall be deemed to have committed an administrative offence if

…

h) it fails to implement all the investments based on which it received free allowances under Section 10a by the end of 2019,

 i) it fails to submit, supplement or revise its report under Section 10a(6).

 (3) An administrative offence according to subsection 1 shall be subject to a fine

…

 c) of up to 500,000 CZK in the case of an administrative offence under paragraphs b) or i),

…

 (5) In the event of an administrative offence under subsection 1(h), the operator will be ordered to transfer funds to the account of the State Environmental Fund equalling the value of the allowances allocated free of charge as of the date of their allocation increased by the industrial producer price index.

However, the new Act will i. a. introduce a mechanism to ensure the investment of the value of the allowances allocated free of charge:

**§ 7**

**Auctioning of allowances and use the proceeds from the auction**

**...**

**(5) 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.**

**...**

**§12**

**Allocation of free emission allowances in relation to electric power production modernisation**

**(1) Free allowances in relation to electric power production modernisation shall be allocated on the basis of applications filed by the facility operators for allocation of free allowances based on the national plan of investments into equipment and modernisation of infrastructure and clean technologies elaborated by the Ministry and approved by government and by the European Commission (hereinafter referred to as the "application approved by the European Commission"). Investments in equipment and modernisation of infrastructure and clean technologies do not include the projects implemented for the purpose of fulfilment of the requirements of legal regulations effective as of 25 June 2009. Free allowances will only be allocated for investments implemented until 31 December 2019.**

**(2) The facility operator, which makes investments according to the plan specified in the application approved by the European Commission, shall submit to the Ministry a Report on Investments, which are the subject of the approved plan of investments (hereinafter referred to as the "Report"), and shall do so until 30 November of each year in 2012 to 2018, and until 31 December 2019. The Report filed until 30 November 2012 shall specify the investments made in the period after 25 June 2009; only new investments not described in the Reports in previous years shall be specified in the subsequent Reports. Each Report must include the content elements as specified in Annexe No. 2 to this Act. If a Report submitted in a timely manner does not comply with the specified elements, the Ministry will immediately request the facility operator to amend or modify the Report within 15 days. If the operator does not submit the Report in a timely manner, it will be understood that no investments were made.**

**(3) The Ministry will decide on the quantity of allowances to be allocated free of charge to the individual operators for the respective year on the basis of application approved by the European Commission and the investments specified in the submitted Report. The operator will be the only participant to the proceedings. Appeal against the decision has no effect of suspending.**

**(4) The investments not taken into account by the Ministry in making decisions on allocation of allowances, because they exceed the quantity specified in the application approved by the European Commission, shall be taken into consideration in deciding on allocation of allowances in the following years. The quantity of free allowances, allocation of which for the respective year will not be decided by the Ministry contrary to the application approved by the European Commission, because the facility operator did not make the investment in the amount corresponding to the value of allowances, which should have been allocated according to the application, shall be allocated to the operator in the following years on the basis of the performed investments documented in the Report according to Clause 2. If the facility operator does not make the investments according to the plan specified in the application approved by the European Commission, such fact must be properly justified to the Ministry. The investments not made by the operator within 2 years from the date provided in the plan referred to in the application approved by the European Commission shall not be taken into account by the Ministry in deciding on allocation of free allowances.**

**(5) When deciding on the quantity of free allowances for allocation, the Ministry shall not take into account the investments that will lead to an increase in the aggregate of the installed electrical capacity of all facilities operated by a single operator when compared with the original aggregate of the installed electrical capacity. It will be understood that an investment will not lead to an increase in the total electrical capacity, if the facility operator binds itself in the Report pursuant to Clause 2 that it will ensure a decrease in a corresponding manner in the capacity of such facility or any other facility within 2 years after the capacity increase. If the operator ensures the decrease in capacity according to sentence two only partially, the Ministry making the decision on the quantity of free allowances shall take into account the value of investment proportionally to the capacity decrease.**

**(6) Until 31 January of every year, the Ministry shall publish (in a manner allowing remote access) the Reports submitted by operators according to Clause 2, and on the basis of such Reports, the Ministry shall elaborate an Annual Report to be submitted to the European Commission and publish this report.**

**...**

**PART FIVE**

**ADMINISTRATIVE OFFENCES**

**§ 18**

**Administrative offenses of an operator**

**(1) The operator shall commit an administrative offense if**

**…**

**f) reports an investment according to § 11 paragraph 2 that was not implemented,**

**g) in breach of the obligation under § 11 paragraph 4 does not set from the operation an existing source within two years after putting a new source into operation or does not initiate the process of decommissioning within one year after putting a new source into operation,**

**...**

**4) For an administrative offense pursuant to paragraph 1. f) or g), the operator is obliged to pay the amount of money that corresponds to the value of illegally acquired allowances allocated free of charge at the date of their annual allocation, multiplied by total industrial producer price index announced by the Czech Statistical Office.**

1. OJ C99 of 31.3.2011, page 9 [↑](#footnote-ref-1)
2. Conservative values ​were used ​for the efficiency of electricity generation at large combustion plants for the specific fuels, and use of BAT was envisaged to such an extent that the efficiency would approach the levels achieved in new installations (bituminous coal 0.43%, brown coal 0.42% , natural gas 0.55%, fuel oil 0.43%, other gases 0.43%). [↑](#footnote-ref-2)
3. The eligibility conditions for the allocation of free allowances set out in Art. 10c(1)(a)-(c) of the Directive. [↑](#footnote-ref-3)
4. *The market price was established in line with European Commission Communication 2011/ C 99/03 of 31 March 2011. According to this Communication, the average price of an allowance over the period 2013-2019 is equivalent to 18.43 EUR.* [↑](#footnote-ref-4)
5. ***The BREF reference documents*** *summarise information about European best available techniques. BREF documents are processed for each sector of industry and contain data on industrial processes, techniques used, the emission limits applied in EU Member States, priority material flows and monitoring. The information they provide is of key importance for deciding whether relevant technology and the method of its operation is in line with the requirements of the legislation on IPPC and whether a permit will be issued for the operation of an industrial installation. The main foundation of each BREF document consists of a description of the relevant BAT and information on future BAT.* [↑](#footnote-ref-5)
6. *This was stipulated on the basis of an evaluation of Operational Programme Enterprise and Innovation during the second call "ECO-ENERGY" of Priority Axis 3 – Effective Energy and the applications accepted by the Ministry.* [↑](#footnote-ref-6)
7. *Potentially, gains resulting from allowances allocated free of charge may be reinvested to supplement investments partially funded from other EU sources (e.g. from the new sources reserve, regional funds, TNE, the European Economic Recovery Plan, the European Energy Agenda for the Economic Recovery Plan, SET, etc.). In such a case, the EU rules on overall funding limits must be adhered to.* [↑](#footnote-ref-7)
8. Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC,

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:052:0050:0060:EN:PDF> [↑](#footnote-ref-8)
9. Guidance paper to identify electricity generators, 20. 10. 2009 [↑](#footnote-ref-9)
10. State aid, Austria, N 295/2008 – Austria Investment Aid for co-generation of electricity and heat (CHP) – Mellach of Verbund Austrian Thermal Power GmbH and Co KG, <http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_N295_2008> [↑](#footnote-ref-10)
11. <http://www.mzp.cz/cz/bezplatne_pridelovani_povolenek> [↑](#footnote-ref-11)