

Brussels, 25 September 2013
Case No: 74289
Event No: 681690
Dec. No: 355/13/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 25 September 2013

on a Norwegian Scheme for the Compensation of Indirect Emission Costs

(Norway)

The EFTA Surveillance Authority (the “Authority”),

HAVING REGARD to:

The Agreement on the European Economic Area (the “EEA Agreement”), in particular Article 61(3)(c) and Protocol 26,

The Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (the “Surveillance and Court Agreement”), in particular Article 24,

Protocol 3 to the Surveillance and Court Agreement (“Protocol 3”), in particular Article 1(3) of Part I and Article 4(3) of Part II,

WHEREAS:

I. FACTS

1. Procedure

- (1) By letter dated 29 August 2013 (Event Nos. 681304, 681305, 681307, 681314 and 681315), received and registered by the Authority on 29 August 2013, and following pre-notification contacts, the Norwegian authorities notified, pursuant to Article 1(3) of Part I of Protocol 3, an aid scheme for the compensation of indirect emission costs (the “Notified Scheme”).

2. Description of the Notified Scheme

- (2) Norway intends to implement an aid scheme which compensates certain energy-intensive undertakings for increases in electricity prices resulting from the inclusion of the costs of greenhouse gas emissions incurred as a result of the EU Emissions Trading System (ETS) (commonly referred to as “indirect emission costs”).

2.1. Objective

- (3) According to the Norwegian authorities, the purpose of the Notified Scheme is to counter “carbon leakage” likely to be caused by increased electricity prices resulting from the EU ETS.
- (4) “Carbon leakage” describes the prospect of an increase in global greenhouse gas emissions when companies shift production outside the EEA because they cannot pass on cost increases resulting from the EU ETS to their customers without significant loss of market share.

2.2. Background

Climate Change and the EU ETS

- (5) The EEA States have committed to combating climate change. One of the cornerstones of this policy decision is the EU ETS. It is the first and most extensive international system for trading greenhouse gas emission allowances.¹
- (6) The EU ETS works on a “cap and trade” principle. A cap, or limit, is set on the total amount of certain greenhouse gases that can be emitted by the factories, power plants and other installations in the system. The cap is reduced over time so that total emissions fall. In 2020, emissions from sectors covered by the EU ETS will be 21% lower than in 2005. Within the cap, companies receive or buy emission allowances which can be traded. Launched in 2005, the EU ETS is now in its third phase, running from 2013 to 2020.²

Carbon Leakage and the ETS Guidelines

- (7) In order to address the competitiveness of industries covered by the EU ETS, production from sectors and sub-sectors deemed to be exposed to a significant risk of “carbon leakage” will receive a higher share of free allowances in the third trading period between 2013 and 2020. This is because they face competition from industries in third countries which are not subject to comparable restrictions on greenhouse gas emissions.
- (8) In addition, pursuant to Article 10a(6) of the ETS Directive, EEA States may grant aid, in accordance with state aid rules, in favour of sectors or subsectors deemed to be exposed to a significant risk of “carbon leakage” due to costs relating to greenhouse gas emissions passed on in electricity prices, in order to compensate for those costs.
- (9) In order to ensure transparency and legal certainty, the Authority has adopted guidelines to explain the compatibility criteria that will be applied to such state aid measures (the “ETS Guidelines”).³

¹ See http://ec.europa.eu/clima/policies/ets/index_en.htm.

² Directive 2003/87/EC of the European Parliament and of the Council of 13.10.2003 established a scheme for greenhouse gas emission allowance trading within the EU (as amended, in particular by Directive 2009/29/EC, which improved and extended the EU ETS with effect from 1.1.2013) (the “ETS Directive”). The ETS Directive has been incorporated into the EEA Agreement in point 21a) of Annex XX.

³ Available at: <http://www.eftasurv.int/media/state-aid-guidelines/Part-III---Aid-in-the-context-of-the-greenhouse-gas-emission-allowance-trading-scheme-post-2012.pdf>.

2.3. National Legal Basis

- (10) According to the Norwegian authorities, the legal basis for the Notified Scheme is the regulation which is subject to the present notification: “Regulation for CO₂ Compensation” (the “Regulation”). The Regulation is based on the fiscal budget provisions adopted each year by the Norwegian Parliament.

2.4. Beneficiaries

- (11) Under the Notified Scheme, companies are eligible for aid if they are involved in one or more of the activities set out in the table below.

	Nace Code ⁴	Description
1	2742	Aluminium production
2	1430	Mining of chemical and fertiliser minerals
3	2413	Manufacture of other inorganic chemicals
4	2743	Lead, zinc and tin production
5	1810	Manufacture of leather cloths
6	2710 272210	Manufacture of basic iron, steel and ferro-alloys Seamless steel pipes
7	2112	Manufacture of paper and paperboard
8	2415	Manufacture of fertilisers and nitrogen compounds
9	2744	Copper production
10	2414	Manufacture of other organic basic chemicals
11	1711	Preparation and spinning of cotton-type fibres
12	2470	Manufacture of man-made fibres
13	1310	Mining of iron ores
14	24161039 24161035 24161050 24165130 24163010 24164040	The following sub-categories within the manufacture of plastic in primary forms (2416): Low-density polyethylene (LDPE) Linear low-density polyethylene (LLDPE) High-density polyethylene (HDPE) Polypropylene (PP) Polyvinyl chloride (PVC) Polycarbonate (PC)
15	21111400	The following sub-category within the manufacture of pulp (2111): Mechanical pulp

- (12) The Norwegian authorities have introduced an additional filter in the Notified Scheme: under the Scheme, an installation is entitled to aid only if the annual amount of electricity consumed from the production of eligible products exceeds 10 GWh in each year of the reference period (assuming the installation operated throughout that period). This threshold is based on historical consumption in order to prevent installations from increasing consumption solely to become eligible for aid under the Notified Scheme.⁵

⁴ According to NACE rev.1.1: http://ec.europa.eu/eurostat/ramon/nomenclatures/index.cfm?TargetUrl=LST_CLS_DLD&StrNom=NACE_1_1&StrLanguageCode=EN&StrLayoutCode=HIERARCHI

⁵ Regulation for CO₂ Compensation, § 4.

2.5. Amount of Aid and Aid Intensity

- (13) According to the Norwegian authorities, the aid intensities under the Notified Scheme will decrease over time as follows.

Period	Aid Intensity
2013-2015	85% of the indirect emission costs
2016-2018	80% of the indirect emission costs
2019-2020	75% of the indirect emission costs

- (14) The total aid amount is expected to amount to NOK 2840 million between 2013 and 2020.⁶ This corresponds to an average annual amount of NOK 355 million.

2.6. Aid Amount Calculation

- (15) Under the Notified Scheme, the maximum aid amount payable per installation for the manufacture of products within the sectors listed in paragraph (11) above will be calculated as follows.
- a. Where electricity consumption efficiency benchmarks (listed in Annex I to the Regulation) are applicable to the products manufactured, the reference amount will be determined by multiplying the applicable CO₂ emission factor of 0.67 (as set out in Annex IV to the ETS Guidelines) by the relevant electricity consumption efficiency benchmark and the average output of the beneficiary in the reference period of 1 January 2005 to 31 December 2011 (the “baseline output”). The reference amount is then multiplied by the relevant EU emission allowance (EUA) forward price and the aid intensity.
 - b. Where electricity consumption efficiency benchmarks are not applicable, the reference amount will be determined by multiplying the applicable CO₂ emission factor of 0.67 by the fall-back electricity consumption efficiency benchmark of 0.8 and the average electricity consumption of the beneficiary in the reference period (the “baseline electricity consumption”). The reference amount is then multiplied by the relevant EUA forward price and the aid intensity.

Significant Capacity Increase or Decrease

- (16) If an installation significantly expands its capacity during the aid-granting period, it may apply for an increase in the baseline output or baseline electricity consumption in proportion to such capacity expansion.⁷ Similarly, if an installation reduces its production level in the year for which aid is being granted by 50% to 75% compared to the baseline output, the amount of aid granted for the year concerned will be reduced to 50% of the original amount; if the reduction amounts to 75% to 90%, the aid will be reduced to 25% of the original amount; and if the reduction is 90% or greater, the amount of aid for the year concerned will be reduced to zero.

⁶ This data is based on EUA (EU emission allowance) forward prices for 2013-2015 (from Carbon Market Daily on 21.2.2013). If these prices increase, the total amount of aid paid out under the Notified Scheme will increase accordingly.

⁷ Regulation for CO₂ Compensation, § 10.

Allocation between Different Products

- (17) Under the Notified Scheme, if an installation has production which is eligible for aid and production which is not eligible for aid, or the installation produces different products eligible for aid, the electricity consumption for each product must be apportioned according to the respective tonnage of each product.⁸

Curtailment Factor

- (18) The Notified Scheme excludes power contracts concluded before 2005, the year in which the EU ETS was established, since such contracts do not include any CO₂ costs. However, the Scheme includes power contracts concluded before 2005 that have been renegotiated on market terms after 1 January 2005. Electricity sold under long-term contracts concluded before 2005 which is exposed to daily market prices in the year for which aid is being granted is also included in the Notified Scheme.⁹
- (19) In addition, self-generated power will be deducted when calculating the amount of individual compensation. However, power generated through energy recovery is not considered as self-generation in this respect, and will not be deducted in the calculation of individual compensation.¹⁰
- (20) In that regard, in respect of installations whose electricity consumption may be wholly or partly covered by long-term electricity supply contracts entered into before 2005 or by power generated by the aid beneficiary, the annual aid amount will be calculated by multiplying the maximum aid amount by a “curtailment factor”:¹¹

$$\text{Curtailment factor} = 1 - \frac{\text{curtailment electricity}}{\text{baseline electricity consumption}}$$

- (21) Curtailment electricity is the sum, in MWh, of power generated by the aid beneficiary and electricity supplied through long-term contracts entered into before 2005.¹² Baseline electricity consumption is the entire installation’s average electricity consumption over the reference period 2005 to 2011.

Ex-Post Adjustment Mechanism

- (22) Under the Notified Scheme, aid will be paid out in the year following the year for which aid is granted.
- (23) The Agency will require the aid beneficiary to repay aid if incomplete or incorrect information has been provided in the application for aid, such that the aid beneficiary has received more aid than it was entitled to under the Scheme, or in the event that the

⁸ Regulation for CO₂ Compensation, § 9.

⁹ Regulation for CO₂ Compensation, § 12.

¹⁰ Power generation owned by the aid beneficiary is defined as electricity from power plants in Norway that are part of the corporation to which the installation belongs, excluding electricity sold to third parties prior to 2005 and electricity that the beneficiary is obliged to supply to local municipalities: Regulation for CO₂ Compensation, § 12.

¹¹ Regulation for CO₂ Compensation, § 8.

¹² Regulation for CO₂ Compensation, Annex II.

aid beneficiary has received too much aid as a result of cumulation with other aid for the same eligible costs.¹³

2.7. Form of the Aid and Means of Funding

- (24) The Notified Scheme will be financed by the Norwegian State. The funds will be administered by the Norwegian Environment Agency. The Agency will disburse the aid in the form of direct grants on an annual basis, usually no later than 15 April of the year following the year for which aid is granted.¹⁴
- (25) The Agency will not grant any aid until the beneficiary has complied with its duty to submit an annual report for the year concerned. This report is required to include the following information.¹⁵

Reporting obligation ¹⁶
a. Output in the year for which aid is being granted
b. Electricity consumption in the year for which aid is being granted
c. Information required to calculate the installation's curtailment factor
d. Information regarding any significant decrease in output
e. Receipts of cumulated state aid

- (26) According to the Norwegian authorities, entitlement for a specific year will lapse if the annual report is not received by 1 June of the following year.

2.8. Duration

- (27) According to the Norwegian authorities, Norway will grant aid for the period starting on 1 July 2013 and ending on 31 December 2020.¹⁷

2.9. Cumulation

- (28) According to the Norwegian authorities, if an installation has received other forms of state aid to cover costs which are eligible for aid under the Notified Scheme, the amount thereof will be deducted from the calculation of aid under the Notified Scheme. However, this applies only to the extent that the total amount of aid exceeds the highest aid ceiling in the applicable rules.¹⁸

II. ASSESSMENT

1. The Presence of State Aid

- (29) Article 61(1) of the EEA Agreement provides that “[s]ave as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it

¹³ Regulation for CO₂ Compensation, § 18.

¹⁴ Regulation for CO₂ Compensation, § 15.

¹⁵ Regulation for CO₂ Compensation, § 15.

¹⁶ Regulation for CO₂ Compensation, § 17.

¹⁷ The duration corresponds approximately to the present trading period under the EU ETS which started on 1.1.2013 and will end on 31.12.2020.

¹⁸ Regulation for CO₂ Compensation, § 14.

affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”

- (30) It follows that a measure constitutes state aid pursuant to Article 61(1) EEA if it fulfils four conditions: (i) the measure must be funded by the State or through state resources; (ii) the measure must confer an advantage on the recipients; (iii) the measure must favour selected undertakings or economic activities; and (iv) the measure must affect trade between Contracting Parties and distort or threaten to distort competition in the EEA.

State Resources

- (31) It is established case law that a measure is financed *by the State or through state resources* if it results in a burden on the budget of a public authority.¹⁹ In the case at hand, the financing of the Notified Scheme results in a burden on the budget of the Norwegian Ministry of the Environment, a public authority. Therefore, the Notified Scheme is financed by state resources within the meaning of Article 61(1) EEA.

Advantage

- (32) It is established case law that state intervention favours an undertaking if it provides the undertaking with an economic advantage that it would not have obtained under normal market conditions.²⁰ The most common form of such an advantage is a subsidy, that is, a payment in cash or in kind made in support of an undertaking other than payment by a purchaser or consumer for the goods or services which the undertaking produces/supplies.²¹
- (33) As noted above (paragraph (14)), the Norwegian authorities estimate that the total aid amount under the Notified Scheme will be approximately NOK 2840 million. Beneficiary undertakings will not provide any consideration to the Norwegian State in return that would directly benefit the State.
- (34) The Authority concludes from the above that payments made under the Notified Scheme will amount to subsidies to the benefit of beneficiary undertakings and, as such, will constitute an economic advantage within the meaning of Article 61(1) EEA.

Selectivity

- (35) According to established case law, a measure is selective if it derogates from the common regime inasmuch as it differentiates between economic operators who are otherwise in the same legal and factual situation.²² In that regard, the Authority notes that the Notified Scheme is only open to companies in selected sectors. These sectors are involved in energy-intensive activities and are deemed to be exposed to a high risk

¹⁹ Case C-248/84 *Germany v Commission* [1987] ECR 4013, paragraph 17.

²⁰ Case C-301/87 *France v Commission* [1990] ECR I-307, paragraph 41; Case 30/59 *De Gezamenlijke Steenkolenmijnen v High Authority of the European Coal and Steel Community* [1961] ECR 50, paragraph 19; Case C-241/94 *France v Commission (Kimberly Clark)* [1996] ECR I-4551, paragraph 34; Case T-109/01 *Fleuren Compost* [2004] ECR II-132, paragraph 53.

²¹ Case 30/59 *De Gezamenlijke Steenkolenmijnen v High Authority of the European Coal and Steel Community* [1961] ECR 50, paragraph 19 *et seq.*

²² Case C-143/99 *Adria-Wien Pipeline* [2001] I-8365, paragraph 41; Joined Cases T-211/04 and T-215/04 *Gibraltar v UK (Gibraltar corporate tax)* [2008] ECR II-3745, paragraph 143.

of carbon leakage.²³ Undertakings from other sectors of the Norwegian economy which are involved in less energy-intensive activities or which are less exposed to international competition are excluded from receiving aid under the Notified Scheme although they are in the same legal and factual situation under Norwegian law. Therefore, the Notified Scheme is not open to all undertakings and is thus selective within the meaning of Article 61(1) EEA.

Effect on Trade and Competition

- (36) According to established case law, a measure distorts or threatens to distort competition in a way that affects trade between Contracting Parties if it strengthens the position of aid recipients compared with other companies²⁴ and the recipients are active in a sector in which trade between Contracting Parties takes place.²⁵ In the case at hand, the aid will strengthen the position of energy-intensive companies in the eligible sectors as compared to companies in related sectors. Moreover, potential beneficiary undertakings are active in sectors which are deemed to be subject to minimum levels of external trade.²⁶
- (37) In that light, the Notified Scheme distorts or threatens to distort competition in a way that affects trade between Contracting Parties within the meaning of Article 61(1) EEA.

Conclusion

- (38) The Authority concludes from the above that the Notified Scheme involves state aid within the meaning of Article 61(1) EEA.

2. Procedural Requirements

- (39) Pursuant to Article 1(3) of Part I of Protocol 3, “*the EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid (...). The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision*”.
- (40) By notifying their intention to introduce the Notified Scheme, the Norwegian authorities have complied with the notification requirement set out in Article 2 of Part II of Protocol 3. The Notified Scheme has not been put into effect and is conditional upon the Authority’s approval. Norway has therefore complied with the standstill obligation.
- (41) The Authority concludes that the Norwegian authorities have respected their obligations pursuant to Article 1(3) of Part I of Protocol 3.

²³ See Explanatory note regarding the methodology for defining the sectors and subsectors eligible for aid (Annex II to the ETS Guidelines).

²⁴ Case 730/79 *Philip Morris Holland BV v Commission* [2005] ECR 2671, paragraph 11.

²⁵ Case 102/87 *France v Commission* (SEB) [1988] ECR 4067; Case C-310/99 *Italian Republic v Commission* [2002] ECR I-289, paragraph 85; Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH (Altmark)* [2003] ECR I-7747, paragraph 77; Case T-55/99 *Confederación Española de Transporte de Mercancías (CETM) v Commission* [2000] ECR II-3207, paragraph 86.

²⁶ See Explanatory note regarding the methodology for defining the sectors and subsectors eligible for aid (Annex II to the ETS Guidelines).

3. Compatibility of the Aid

- (42) The Norwegian authorities have notified the Notified Scheme under Section 3.1 of the ETS Guidelines as aid for indirect emission costs.

3.1. Objective

- (43) For the purposes of the ETS Guidelines, aid must aim to prevent a significant risk of carbon leakage due to EUA costs passed on in electricity prices supported by the beneficiary.²⁷ In that regard, the Authority notes that the stated purpose of the Notified Scheme is to counter carbon leakage due to increased electricity prices resulting from the EU ETS.²⁸ The Scheme is therefore in line with the objectives of the ETS Guidelines.

3.2. Necessity

- (44) It follows from the ETS Guidelines that aid may be necessary where there is a significant risk of carbon leakage due to EUA costs passed on in electricity prices.

Eligible Sectors

- (45) For the purposes of the ETS Guidelines, a significant risk of carbon leakage is considered to exist only if the beneficiary is active in a sector or subsector listed in Annex II.²⁹ In that regard, the Authority notes that the group of eligible sectors under the Notified Scheme does not go beyond the group of sectors listed in Annex II to the ETS Guidelines (see paragraph (11) above).³⁰

10 GWh Threshold

- (46) As described in paragraph (12) above, the Norwegian authorities have also introduced an additional filter in the Notified Scheme: an installation is entitled to aid only if the annual amount of electricity consumed from the production of eligible products exceeds 10 GWh.³¹
- (47) In that regard, the Authority notes that EEA States are not required to grant aid to all eligible sectors; nor are they required to grant the maximum aid to all eligible undertakings. On the contrary, EEA States may restrict the scope of eligible applicants provided any such restriction does not run counter to the ETS Guidelines or any other provision of EEA law, and in particular as long as it is based on objective criteria.
- (48) As regards the case at hand, the Authority observes that the ETS Guidelines themselves use thresholds to determine the eligible sectors. According to the ETS Guidelines, sectors or subsectors listed in the table set out at paragraph (11) above have been deemed, on a quantitative basis, to be exposed to a significant risk of carbon leakage for the purposes of the Guidelines if the intensity of trade with third countries is above 10% and the sum of indirect additional costs induced by the implementation of the ETS

²⁷ ETS Guidelines, paragraph 24.

²⁸ Regulation for CO₂ Compensation, § 1.

²⁹ ETS Guidelines, paragraph 25 and Annex II.

³⁰ Regulation for CO₂ Compensation, § 4.

³¹ Regulation for CO₂ Compensation, § 4.

Directive would lead to a substantial increase in production costs, calculated as a proportion of the gross value added, amounting to at least 5%.³²

- (49) The 10 GWh threshold introduced by Norway merely adds an additional threshold at installation level. According to the Norwegian authorities, the threshold ensures that the administrative costs of the Notified Scheme (both for potential beneficiaries (as compared to the amount of aid that could potentially be granted) and the Norwegian State) are limited by only including installations where the relevant production is of a certain size. The Authority notes that a similar threshold was used in a Norwegian guarantee scheme for the purchase of electric power through long term contracts, which the Authority approved in 2011.³³
- (50) The Authority concludes that the 10 GWh threshold is based on objective criteria and does not run counter to the ETS Guidelines.

Conclusion

- (51) In view of the above, the Authority concludes that the Notified Scheme is designed in such a way that it can be considered necessary to avoid carbon leakage.

3.3. Aid Intensity

- (52) According to the ETS Guidelines, the aid intensity must not exceed 85% of the eligible costs incurred in 2013, 2014 and 2015, 80% of the eligible costs incurred in 2016, 2017 and 2018 and 75% of the eligible costs incurred in 2019 and 2020.³⁴
- (53) In that regard, the Notified Scheme sets the aid intensity at 0.85 for the period 2013-2015, 0.8 for the period 2016-2018 and 0.75 for the period 2019-2020.³⁵ Therefore, the aid intensities in the Notified Scheme do not exceed the maximum aid intensities set out in the ETS Guidelines.

3.4. Maximum Aid Amount Calculation

- (54) According to the ETS Guidelines, the maximum aid amount may be calculated by applying one of two formulae, depending on whether or not an efficiency benchmark is applicable to the products manufactured by the beneficiary.³⁶

Efficiency Benchmark Applicable (Output-Based Calculation)

- (55) Where electricity consumption efficiency benchmarks listed in Annex III to the ETS Guidelines are applicable to the products manufactured by the beneficiary, the maximum aid payable per installation for costs incurred in year t equals:

$$Am_{xt} = A_{it} \cdot C_t \cdot P_{t-1} \cdot E \cdot BO$$

- (56) In this formula, A_{it} is the aid intensity at year t, expressed as a fraction (e.g. 0.8); C_t is the applicable CO₂ emission factor (tCO₂/MWh) (at year t); P_{t-1} is the EUA forward

³² See Explanatory note regarding the methodology for defining the sectors and subsectors eligible for aid (Annex II to the ETS Guidelines), paragraph 1.

³³ Decision No. 53/11/COL – Guarantee scheme for the purchase of electric power on long term contracts (Norway), 2.3.2011.

³⁴ ETS Guidelines, paragraph 26.

³⁵ Regulation for CO₂ Compensation, § 8.

³⁶ ETS Guidelines, paragraphs 27-30.

price at year t-1 (EUR/tCO₂); E is the applicable product-specific electricity consumption efficiency benchmark set out in Annex III to the ETS Guidelines; and BO is the baseline output.³⁷ These concepts are defined in Annex I to the ETS Guidelines.

- (57) As described above (paragraph (15)), in the Notified Scheme the maximum aid payable per installation for costs incurred in year t equals:

$$Am_{xt} = (Ct \cdot E \cdot BO) \cdot (Pt-1 \cdot Ait)$$

- (58) The figure resulting from the first set of brackets (Ct · E · BO) is referred to as the reference amount.³⁸ It represents the amount that the undertaking concerned would emit in the region concerned if it were efficient, taking into account the CO₂ intensity of electricity production in the region (Ct), the MWh consumed by an efficient undertaking to produce one ton of the product concerned (E) and the average output of the beneficiary in the reference period (BO).³⁹
- (59) The reference amount is then multiplied by the CO₂ price (Pt-1) to give the emission costs of the undertaking concerned (if it were efficient), and then by the aid intensity (Ait) to give the maximum aid amount.⁴⁰

No Efficiency Benchmark (Consumption-Based Calculation)

- (60) Where electricity consumption efficiency benchmarks listed in Annex III to the ETS Guidelines are not applicable to the products manufactured by the beneficiary, the maximum aid payable per installation for costs incurred in year t equals:

$$Am_{xt} = Ait \cdot Ct \cdot Pt-1 \cdot EF \cdot BEC$$

- (61) In this formula, Ait is the aid intensity at year t expressed as a fraction (e.g. 0.8); Ct is the applicable CO₂ emission factor (tCO₂/MWh) (at year t); Pt-1 is the EUA forward price at year t-1 (EUR/tCO₂); EF is the fall-back electricity consumption efficiency benchmark; and BEC is the baseline electricity consumption (MWh).⁴¹ These concepts are defined in Annex I to the ETS Guidelines.
- (62) As described above (paragraph (15)), in the Notified Scheme the maximum aid payable per installation for costs incurred in year t equals:

$$Am_{xt} = (Ct \cdot EF \cdot BEC) \cdot (Pt-1 \cdot Ait)$$

- (63) The figure resulting from the first set of brackets (Ct · EF · BEC) is referred to as the reference amount.⁴² It represents the amount that the undertaking concerned would emit in the region concerned if it were efficient, taking into account the CO₂ intensity of electricity production in the region (Ct), the fall-back electricity consumption efficiency benchmark of 0.8 (EF) and the average electricity consumption of the beneficiary in the reference period (BEC).

³⁷ ETS Guidelines, paragraph 27(a).

³⁸ Regulation for CO₂ Compensation, § 7.

³⁹ The reference period runs from 1.1.2005 to 31.12.2011: ETS Guidelines, Annex I.

⁴⁰ Regulation for CO₂ Compensation, § 8.

⁴¹ ETS Guidelines, paragraph 27(b).

⁴² Regulation for CO₂ Compensation, § 7.

- (64) The reference amount is then multiplied by the CO₂ price (Pt-1) to give the emission costs of the undertaking concerned (if it were efficient), and then by the aid intensity (Ait) to give the maximum aid amount.⁴³
- (65) The Authority notes that each methodology employed in the Notified Scheme leads to identical results to the corresponding formula used in the ETS Guidelines. In addition, the Norwegian authorities have confirmed that the elements of the Scheme's two methodologies correspond to the formulae set out in paragraph 27 of the ETS Guidelines and the definitions set out in Annex I thereto. The Norwegian authorities have also confirmed that the maximum regional emission factor of 0.67 tCO₂/MWh set out in Annex IV to the Guidelines will be applied, and that all other factors are identical to those in the ETS Guidelines.
- (66) In that light, the Authority considers that the methodologies established by the Notified Scheme for calculating the maximum possible aid are in line with the ETS Guidelines.

Significant Capacity Increase or Decrease

- (67) According to the ETS Guidelines, if, over the aid granting period, production capacity at an installation is significantly expanded within the meaning of the Guidelines, the baseline output or the baseline electricity consumption (depending on the calculation method) can be increased in proportion to that capacity expansion.⁴⁴ Similarly, if an installation reduces its production level in a given calendar year compared to the baseline output, the aid to the installation will be reduced according to the following key.⁴⁵

Reduction in production level of:	Reduction in aid to: ⁴⁶
50% to 75%	50%
75% to 90%	25%
More than 90%	0%

- (68) Under the Notified Scheme, as described above (paragraph (16)), if an installation significantly expands its capacity during the aid-granting period, it may apply for an increase in the baseline output or baseline electricity consumption in proportion to such capacity expansion.⁴⁷ Similarly, if an installation reduces its production level in the year for which aid is being granted by 50% to 75% compared to the baseline output, the amount of aid granted for the year concerned will be reduced to 50% of the original amount; if the reduction amounts to 75% to 90%, the aid will be reduced to 25% of the original amount; and if the reduction is 90% or greater, the amount of aid for the year concerned will be reduced to zero.
- (69) In that light, the Authority concludes that the method employed in the Notified Scheme is in line with the method described in the ETS Guidelines.

⁴³ Regulation for CO₂ Compensation, § 8.

⁴⁴ See definitions in Annex I to the ETS Guidelines.

⁴⁵ See definitions in Annex I to the ETS Guidelines.

⁴⁶ Reduction in aid compared to the aid amount corresponding to the initial baseline output or baseline electricity consumption (depending on the calculation method).

⁴⁷ Regulation for CO₂ Compensation, § 10.

Allocation between Different Products

- (70) The ETS Guidelines provide that if an installation manufactures both products for which an electricity consumption efficiency benchmark listed in Annex III is applicable and products in respect of which the fall back electricity consumption efficiency benchmark is applicable, the electricity consumption for each product must be apportioned according to the respective tonnage of production of each product.⁴⁸ If an installation manufactures both products that are eligible for aid (i.e. they fall within the eligible sectors or subsectors listed in Annex II) and products that are not eligible for aid, the maximum aid payable must be calculated only for the products that are eligible for aid.⁴⁹
- (71) The Authority notes, as described above (paragraph (17)) that the Notified Scheme distinguishes between eligible production and non-eligible production as well as between production of goods for which an electricity benchmark exists and production of goods for which such a benchmark does not exist.⁵⁰ The relevant provisions of the Notified Scheme are therefore in line with the ETS Guidelines.

Curtailment Factor

- (72) The ETS Guidelines provide that in the case of electricity supply contracts that do not include any CO₂ costs, no state aid will be granted.⁵¹
- (73) In that regard, as described above (paragraphs (18) to (21)), the Norwegian authorities have confirmed that the Notified Scheme will not include power contracts concluded before 2005, the year in which the EU ETS was established, since such contracts do not include any CO₂ costs, unless they have been renegotiated on market terms after 1 January 2005 or exposed to market prices in the year for which aid is being granted.⁵² The Norwegian authorities have also indicated that self-generated power will be deducted when calculating the amount of individual compensation.
- (74) In that regard, the annual aid amount will be calculated by multiplying the maximum aid amount by a “curtailment factor” (see paragraphs (20) to (21) above).⁵³
- (75) The Authority notes that the curtailment factor equals the percentage of electricity consumption that is not self-generated or covered by long-term electricity contracts entered into before 2005. In other words, it describes the percentage of electricity consumption in respect of which the beneficiary actually incurs indirect emission costs.
- (76) The Authority concludes that these provisions are appropriate in order to ensure that electricity consumption which is not subject to CO₂ costs and consumption which is not used for the production of eligible goods is excluded from the Notified Scheme. The provisions are therefore consistent with the objectives of the ETS Guidelines.

⁴⁸ ETS Guidelines, paragraph 28.

⁴⁹ ETS Guidelines, paragraph 29.

⁵⁰ Regulation for CO₂ Compensation, § 9.

⁵¹ ETS Guidelines, paragraph 11.

⁵² Regulation for CO₂ Compensation, § 12.

⁵³ Regulation for CO₂ Compensation, § 8 and Annex II.

Ex-Post Adjustment Mechanism

- (77) According to the ETS Guidelines, aid may be paid to the beneficiary in the year in which the costs are incurred or in the following year. If aid is paid in the year in which the costs are incurred, an ex-post payment adjustment mechanism must be put in place to ensure that any over-payment of aid is repaid before 1 July in the following year.⁵⁴
- (78) In that regard, the Norwegian authorities have confirmed that under the Notified Scheme the Norwegian Environment Agency will not pay out aid in the year in which the costs are incurred, but rather in the year following the year for which aid is granted. In any event, as described above (paragraph (23)), the Norwegian Environment Agency will require the aid beneficiary to repay aid if incomplete or incorrect information has been provided in the application for aid, such that the aid beneficiary has received more aid than it was entitled to under the Scheme, or in the event that the aid beneficiary has received too much aid as a result of cumulation with other aid for the same eligible costs.⁵⁵ The Norwegian authorities have confirmed that any over-compensation in breach of the ETS Guidelines will be required to be paid back.
- (79) In view of the above, the Authority concludes that the provisions of the Notified Scheme as regards an adjustment mechanism are in line with the ETS Guidelines.

3.5. Incentive Effect

- (80) According to the ETS Guidelines, the incentive effect requirement is presumed to be met if all of the conditions in Section 3.1 of the Guidelines are fulfilled.⁵⁶ As demonstrated above, the Notified Scheme fulfils these requirements. The incentive effect is therefore deemed to be fulfilled.

3.6. Proportionality

- (81) The ETS Guidelines require the EFTA States to demonstrate that aid granted to beneficiaries is limited to the minimum necessary.⁵⁷
- (82) In the case at hand, the Norwegian authorities have committed to applying the aid intensities and the efficiency benchmarks set out in the ETS Guidelines. This ensures that the compensation does not cover the totality of indirect emission costs and maintains an incentive for the beneficiaries to reduce their electricity consumption further. Moreover, the benchmarks ensure that only the most efficient beneficiaries will receive the highest possible levels of compensation, that is, representing the highest proportion of their indirect emission costs.
- (83) In view of the above, the Authority concludes that Norway has demonstrated that the aid is proportionate.

3.7. Cumulation

- (84) Pursuant to the ETS Guidelines, aid deemed to be compatible under the Guidelines may not be combined with other state aid within the meaning of Article 61(1) EEA or with other forms of financing from the European Union if such overlap results in aid

⁵⁴ ETS Guidelines, paragraph 30.

⁵⁵ Regulation for CO₂ Compensation, § 18.

⁵⁶ ETS Guidelines, paragraph 31.

⁵⁷ ETS Guidelines, paragraph 45.

intensities higher than those laid down in the Guidelines. However, where the expenditure eligible for aid for measures covered by the Guidelines is eligible in whole or in part for aid for other purposes, the common portion will be subject to the most favourable aid ceiling under the applicable rules.⁵⁸

- (85) In that regard, the Notified Scheme stipulates that if the beneficiary has received other forms of state aid to cover costs which are eligible for aid under the Notified Scheme, the amount thereof will be deducted from the calculation of aid. However, this applies only to the extent that the total amount of aid exceeds the highest aid ceiling in the applicable rules.⁵⁹
- (86) In the light of the above, the Authority concludes that the Notified Scheme is in line with the cumulation rules set out in the ETS Guidelines.

3.8. Annual Reporting, Transparency and Monitoring

- (87) As regards reporting, transparency and monitoring of the Notified Scheme, the Norwegian authorities have committed to following the requirements set out in the ETS Guidelines.⁶⁰

3.9. Conclusion

- (88) For the reasons set out above, the Authority concludes that the Notified Scheme can be considered as state aid compatible with Article 61(3)(c) of the EEA Agreement.

HAS ADOPTED THIS DECISION:

Article 1

The EFTA Surveillance Authority raises no objections to the aid scheme which compensates certain energy-intensive undertakings for increases in electricity prices resulting from inclusion of the costs of greenhouse gas emissions incurred as a result of the EU Emissions Trading System.

Article 2

Implementation of the Notified Scheme is authorised accordingly.

Article 3

This Decision is addressed to the Kingdom of Norway.

Article 4

Only the English version is authentic.

⁵⁸ ETS Guidelines, paragraph 47.

⁵⁹ Regulation for CO₂ Compensation, § 14.

⁶⁰ ETS Guidelines, paragraphs 48-54.

Done at Brussels, 25 September 2013.

For the EFTA Surveillance Authority

Oda Helen Sletnes
President

Sverrir Haukur Gunnlaugsson
College Member