

Brussels, 7 September 2022
Case No: 89101
Document No: 1255057
Decision No 171/22/COL

Ministry of Trade, Industry and Fisheries
PO Box 8090
Dep 0032 Oslo
NORWAY

Subject: The Norwegian CO₂ compensation scheme post 2021

1 Summary

(1) The EFTA Surveillance Authority ("ESA") wishes to inform Norway that, having assessed the notified scheme on compensating undertakings active in certain energy-intensive industries for increases in electricity prices resulting from the EU Emissions Trading System for the period 2021-2030 ("the measure" or "the scheme"), it considers that the measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement. ESA decides not to raise objections to the measure, as it is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c). ESA has based its decision on the following considerations.

2 Procedure

(2) The Norwegian authorities notified the measure on 19 August 2022 and submitted additional documents on 2 September 2022.¹

3 Description of the measure

3.1 Introduction

(3) The EEA EFTA States take part in the European Union Emission Trading System ("the EU ETS"), established by Directive 2003/87/EC ("the ETS Directive").² The EU ETS is a "cap and trade" system that sets a cap for the total volume of greenhouse gas emissions from certain installations and operators³ and allows trading of emission allowances within the cap.⁴ The

¹ Documents No 1310210 (notification form) and 1307940 (notification memorandum) together with annexes.

² Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC ([OJ L 275, 25.10.2003, p. 32](#)), as subsequently amended. Incorporated into the EEA Agreement at point 21aI of Annex XX by Joint Committee Decision No 146/2007 of 26 October 2007.

³ Annex I of the ETS Directive lists the categories of activities to which the Directive applies.

⁴ See the European Commission's EU ETS Handbook, available [here](#).

current fourth phase from 2021 will last until 2030 and is designed to achieve the EU's 2030 emission reduction targets.⁵

- (4) The measure compensates undertakings in certain energy-intensive industries for increases in electricity prices resulting from the pass-on of the costs of greenhouse gas emissions under the EU ETS ("the indirect emission costs") as defined in ESA's Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post 2021 ("the ETS Guidelines"),⁶ as supplemented.⁷ The ETS Guidelines replaced ESA's previous ETS Guidelines ("the 2012 Guidelines")⁸ as of 1 January 2021.

3.2 Legal basis, duration, budget, financing and granting authority

- (5) The legal basis for the measure is a regulation to be adopted by the Norwegian Ministry of Climate and Environment ("the Regulation"). The Regulation is based on the relevant provisions of Norway's budget adopted each year by the Norwegian Parliament (*Stortinget*). The fiscal budget provisions for the 2022 budget, covering compensation for the support year 2021, were adopted by Parliament in December 2021.⁹ The provisions covering the compensation for the support year 2022 were to be included in the budget of 2023, scheduled to be adopted in December 2022.
- (6) The Regulation was also put to a national public consultation where comments could be submitted until 8 January 2022. The comments received on the measure were overall positive. Due to this, the Norwegian Government has decided not to make any changes to the draft, except for a few minor clarifications in § 8 of the Regulation. The consultation documents are published on the website of the Norwegian Environmental Agency.¹⁰
- (7) The measure will be financed from the State budget. The duration of the measure is from 1 January 2021 until 31 December 2030.
- (8) The aid granting authority is the Norwegian Environment Agency, a Government agency under the Ministry of Climate and Environment.¹¹
- (9) Aid applications are to be submitted and aid is paid out as annual grants in the year following the year in which the eligible costs were incurred.

⁵ See the European Commission's websites, where information on the EU Emission Trading System (EU ETS) is available [here](#).

⁶ ESA's [Guidelines](#) on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post 2021. OJ L 130, 15.4.2021, p. 3, and EEA Supplement No 27, 15.4.2021, p. 3.

⁷ [Supplements](#) to ESA's Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post 2021. OJ L 204, 4.8.2022, p. 3, and EEA Supplement No 51, 4.8.2022, p. 3.

⁸ ESA's [Guidelines](#) on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post 2012. OJ L 296, 7.11.2013, p. 25, and EEA Supplement No 62, 7.11.2013, p. 3.

⁹ [Statsbudsjettet 2022](#), chapter 1420, post 74, page 45. The Norwegian authorities plan to increase the budget for the support year 2021 by around NOK 900 million.

¹⁰ Available [here](#).

¹¹ In Norwegian *Miljødirektoratet*. More information available [here](#).

- (10) The estimated total budget is NOK 101 billion for 2021-2030 and NOK 3.65 billion for the support year 2021. As explained by the Norwegian authorities, the budget numbers cannot be estimated with more certainty, since the compensation is based on the industries actual power and production levels each year, which may vary from year to year. The amount of compensation is also closely related to the prices of the ETS allowances.

3.3 Beneficiaries

- (11) Beneficiaries are undertakings active in one or more of the sectors and sub-sectors listed in Annex I to the ETS Guidelines. In principle, the scheme is open to all entities and natural persons carrying out the eligible activities. However, since all these undertakings are set up as companies in Norway, the term “company” will for reasons of simplicity be used to cover all eligible undertakings under the scheme. An eligible company may belong to a larger group of companies, but it is the individual company with an installation where the relevant activities in Annex I is carried out, which is considered the aid applicant. The expected number of beneficiaries is between 51 and 100.
- (12) No aid will be granted under the measure to:
- i) undertakings in difficulty within the meaning of ESA's Guidelines on State aid for rescuing and restructuring firms in difficulty;¹² or
 - ii) undertakings subject to an outstanding recovery order following a previous ESA decision.
- (13) The Norwegian authorities have committed to verifying that beneficiaries that are not considered as a “small or medium enterprise (SME)” conduct an energy audit under Article 8 of Directive 2012/27/EU,¹³ in order to receive compensation, as stated in paragraph 54 of the ETS Guidelines. In addition, the Norwegian authorities commit to monitoring that all eligible companies that are covered by the obligation to conduct an energy audit under Article 8(4) of the Directive 2012/27/EU will carry out at least one of the activities listed in paragraph 55 of the ETS Guidelines.¹⁴

¹² ESA's [Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty](#), as adopted by Decision No 321/14/COL (OJ L 271, 16.10.2015, p. 35, and EEA Supplement No 62, 15.10.2015).

¹³ Directive 2012/27/EU 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and. 1). Pending incorporation into the EEA Agreement.

¹⁴ Under paragraph 55 of the ETS Guidelines, EEA EFTA States commit to monitoring that beneficiaries covered by the obligation to conduct an energy audit under Article 8(4) of Directive 2012/27/EU will:

- (a) implement recommendations of the audit report, to the extent that the payback time for the relevant investments does not exceed 3 years and that the costs of their investments is proportionate; or alternatively,
- (b) reduce the carbon footprint of their electricity consumption, so as to cover at least 30% of their electricity consumption from carbon-free sources; or alternatively,
- (c) invest a significant share of at least 50% of the aid amount in projects that lead to substantial reductions of the installation's greenhouse gas emissions and well below the applicable benchmark used for free allocation in the EU Emissions Trading System.

3.4 Aid amount calculation

- (14) The Norwegian authorities have explained that the maximum aid amount payable per installation will be calculated according to the two formulas outlined in paragraph 28 of the ETS Guidelines. “An installation” refers to the stationary technical unit within the company where activities in Annex I to the ETS Guidelines are carried out.
- (15) Where electricity consumption efficiency benchmarks have been published, the formula in paragraph 28(a) of the ETS Guidelines applies.¹⁵ Where no product-related electricity consumption efficiency benchmarks are published, the formula in paragraph 28(b) of the ETS Guidelines applies.¹⁶
- (16) For an aid calculation under the formula set out in paragraph 28(b) of the ETS Guidelines,¹⁷ a fall-back electricity consumption efficiency benchmark as per in paragraph 15(15) and Annex II of the ETS Guidelines is used.¹⁸
- (17) The Norwegian authorities have confirmed that if an installation manufactures products for which an electricity consumption efficiency benchmark listed in Annex II to the ETS Guidelines is applicable *and* products for which the fall-back electricity consumption efficiency benchmark is applicable, the electricity consumption for each product is apportioned according to the respective tonnage of production of each product. If an installation manufactures products that are eligible for aid and products that are *not* eligible for aid, the maximum aid payable is calculated only for the products that are eligible for aid.
- (18) The maximum aid intensity will be 75 % of the indirect emission costs incurred, as foreseen in paragraph 27 of the ETS Guidelines.
- (19) The measure uses the definitions in paragraph 15 of the ETS Guidelines for all the elements of the formulas, including the electricity consumption efficiency

¹⁵ $A_{max,t} = A_i \times C_t \times P_{t-1} \times E \times AO_t$ In this formula, A_i is the aid intensity, expressed as a fraction (e.g. 0.75); C_t is the applicable CO₂ emission factor or market-based CO₂ emission factor (tCO₂/MWh) (at year t); P_{t-1} is the EUA forward price at year $t-1$ (EUR/tCO₂); E is the applicable product-specific electricity consumption efficiency benchmark defined in Annex II; and AO_t is the actual output in year t . These concepts are defined in section 1.3 of the ETS Guidelines.

¹⁶ $A_{max,t} = A_i \times C_t \times P_{t-1} \times EF \times AEC_t$ In this formula, A_i is the aid intensity, expressed as a fraction (e.g. 0.75); C_t is the applicable CO₂ emission factor (tCO₂/MWh) (at year t); P_{t-1} is the EUA forward price at year $t-1$ (EUR/tCO₂); EF is the fall-back electricity consumption efficiency benchmark as defined in Annex II; and AEC_t is the actual electricity consumption (MWh) in year t . These concepts are defined in section 1.3 of the ETS Guidelines.

¹⁷ That is, aid calculation as regards eligible products referred to in Annex I for which an electricity consumption efficiency benchmark is not defined in Annex II of the Guidelines.

¹⁸ The fall-back electricity consumption efficiency benchmark is applicable for all eligible products referred to in Annex I for which an electricity consumption efficiency benchmark is not defined in Annex II of the Guidelines. According to point 15 (15) of the ETS Guidelines, ‘fall back electricity consumption efficiency benchmark’ means 80 per cent of actual electricity consumption, determined by ESA decision together with the electricity consumption efficiency benchmarks. It corresponds to the average reduction effort imposed by the application of the electricity consumption efficiency benchmarks (benchmark electricity consumption/average electricity consumption). The fall-back electricity consumption efficiency benchmark shall be reduced (as from year $t = 2022$) by 1,09 % on an annual basis, according to the formula established in Annex II under ‘Updated efficiency benchmarks for certain products referred to in Annex I’.

benchmarks defined in Annex II of the ETS Guidelines. As regards the CO₂ emission factor, the Norwegian authorities have submitted a methodology and the resulting CO₂ emission factor, further described in section 3.4.2 below.

3.4.1 The Norwegian power sector

- (20) As explained by the Norwegian authorities, the Norwegian power system is characterised by a high share of renewable power production, with around 88 % stemming from hydropower and close to 10 % from wind power. Only around 1 % of annual production is from fossil thermal generation. As a result, the Norwegian power supply is nearly emission-free. Nevertheless, the EU ETS price affects power prices in Norway, as Norway and the Nordic region are highly interconnected with the power market on the European continent via cross-border transmission cables.
- (21) In addition, Norwegian hydropower facilities have a significant reservoir capacity equivalent to 60 % of the yearly gross electricity consumption in Norway. As explained by Norwegian authorities, the reservoirs' capacity enables the separation in time between inflow of water and production. This means that hydropower plants with reservoirs can choose whether to produce power according to inflow, or to save the water and produce power in the future. Hence, the water in the reservoir always has an alternative value, often referred to as the "water value". To maximize profits, hydropower producers will try to shift as much production as possible to hours when the value of the water is highest, i.e. hours when the power price is high. With interconnectors, the production cost of power plants in areas to which Norway and the Nordics are interconnected represents the alternative value of the water for hydropower producers in Norway. As power generation based on fossil fuels is often price setting in connected markets, the price of purchasing CO₂ allowances affects the Norwegian power price, even without a domestic fossil power production. The only way to avoid price impacts between any markets would be to completely isolate them and to have no exchange of power across borders.

3.4.2 CO₂ emission factor

- (22) As a starting point, the Norwegian authorities emphasise that the CO₂ emission factor, as defined in the ETS Guidelines, *aims to represent the effect of the carbon price on the power price* in a country, rather than the actual CO₂-emissions from domestic power production. With that, the Norwegian authorities further explain that the methodology for estimating the carbon price effect, as set out in paragraph 15(10) of the ETS Guidelines, states that the CO₂ emission factor should be calculated by dividing the CO₂ equivalent emission data of the power industry by the gross electricity generation based on fossil fuels. Such a method, they argue, presuppose a considerable domestic gas or coal power production. At present, power production from fossil fuels in Norway provides only about 1 % of annual production. In general, this production is not price setting in the Norwegian power system, as the existing gas capacity is integrated in industrial processes. Therefore, it is the Norwegian authorities' view that a CO₂ emission factor based on the emission intensity of gas power plants in Norway does not represent a good

approximation for how the power price in Norway is affected by the cost of EUAs.¹⁹

- (23) Furthermore, paragraph 15(11) of the Guidelines sets out the alternative methodology for a 'market-based CO₂ emission factor', which is based on a study of the CO₂ content of the actual margin setting technology in the electricity market. The methodology requires "observed data" on the margin setting technology. According to the Norwegian authorities, such data is not available in Norway. The individual bids are highly confidential and anonymised.
- (24) With reference to paragraph 69 of the ETS Guidelines, the Norwegian authorities therefore propose an alternative method for estimating the indirect price effect involving quantitative modelling of the power system. More specifically, Norwegian authorities propose using the Apollo power market model developed by Sweco Energy Markets (Sweco), which can simulate price formation across the entire interconnected European market. The Apollo model simulates price formation in hourly resolution based on a representation of thermal and RES-E capacity, demand and load profiles, interconnectors, inflow, production profiles and fuel prices. The standard dataset covers 31 countries and 38 bidding zones in the European market and captures the characteristics of 381 generating technology classes and efficiencies.
- (25) With the Apollo model, the Norwegian power price for year t is first calculated with a model setup with a CO₂-price in year t. Next, the power price for the same year t without a CO₂-price is calculated. The CO₂ emission factor is then found by comparing the results of the two scenarios.

$$CO_2 \text{ emission factor} = \frac{\text{Modelled power price year } t \text{ (with } CO_2 \text{ price)} - \text{Modelled Power price year } t \text{ (} CO_2 = 0 \text{)}}{\text{Actual } CO_2 \text{ price year } t - CO_2 \text{ price (} CO_2 = 0 \text{)}}$$

- (26) The modelled power prices are based on installed production capacity data for year t, forecasted demand and assumed fuel prices, as well as CO₂ prices for the period 2021-2025. Other significant factors, such as hydrology, nuclear plant outages and other major plant outages, wind conditions and availability of interconnectors are normalized to avoid under- or overestimating the CO₂ emission factor. The CO₂ emission factor derived from the proposed method describes the total impact from introducing a carbon price in a system with a certain power generation mix. Thus, it describes the entire power price impact faced by eligible industries.
- (27) The CO₂ emission factor in the Norwegian power prices has been calculated as an average for the same period for which the CO₂ compensation scheme will apply, initially for the period 2021-2025. This method will provide a forward-looking estimate of the actual CO₂ emission factor in Norway in the coming 5 years period. This forward-looking method will also give a lower factor than the methods in the Guidelines. Based on the proposed method, the

¹⁹ According to paragraph 15(7) of the ETS Guidelines, EUA or 'European Union Allowance' means a transferable allowance to emit 1 tonne of CO₂ equivalent during a specified period.

average CO₂ emission factor for the period 1 January 2021 - 31 December 2025 is 0.53 in Norway.

3.5 Cumulation, Transparency, Reporting and Monitoring

- (28) The Norwegian authorities have confirmed that the measure will comply with the cumulation requirements set out in paragraphs 33 to 35 of the ETS Guidelines.
- (29) The Norwegian authorities have confirmed further that both the scheme and all individual aid granted under the scheme will comply with the transparency requirements in section 6 of the ETS Guidelines. The information requested under section 6 will be published in the national transparency register.²⁰
- (30) The Norwegian authorities have also undertaken to comply with the reporting and monitoring requirements set out in section 7 of the ETS Guidelines.

4 Presence of State aid

4.1 Introduction

- (31) Article 61(1) of the EEA Agreement reads as follows: “Save 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 affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.”
- (32) The qualification of a measure as aid within the meaning of this provision requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.
- (33) ESA assessed Norway’s previous scheme for the compensation of indirect emission costs (“the 2013 scheme”) in its Decision No 355/13/COL.²¹ ESA concluded that the 2013 scheme constituted State aid within the meaning of Article 61(1) of the EEA Agreement.²²
- (34) ESA does not see any reasons for departing from that conclusion, as the measure is similar to the 2013 scheme. However, ESA finds it appropriate to examine the main features of the scheme, in order to come to the final conclusion as regards the presence of aid.

4.2 Presence of State resources

- (35) The measure must be granted by the State or through State resources.
- (36) The measure will be financed from the State budget, and administered by the Norwegian Environment Agency, a Government agency under the Ministry of Climate and Environment (see paragraphs (7) and (8)).

²⁰ <https://data.brreg.no/rofs/>

²¹ ESA Decision No [355/13/COL](#) of 25 September 2013 on a Norwegian Scheme for the Compensation of Indirect Emission Costs.

²² Decision No 355/13/COL, paragraph 38.

- (37) ESA therefore concludes that the measure involves State resources within the meaning of Article 61(1) of the EEA Agreement.

4.3 Conferring a selective advantage on an undertaking

- (38) The measure must confer on the beneficiary an advantage that relieves it of charges that are normally borne from its budget. Further, the measure must be selective in that it favours “certain undertakings or the production of certain goods”.
- (39) ESA concluded in Decision No 355/13/COL that the payments under the 2013 scheme amounted to benefits only open to companies in selected sectors, which constituted a selective economic advantage within the meaning of Article 61(1) EEA Agreement.²³ ESA considers that this conclusion still holds true as regards the payments made under the measure, that, like the 2013 scheme, are open to a limited number of sectors (see paragraph (11)).

4.4 Effect on trade and distortion of competition

- (40) The measure must be liable to distort competition and to affect trade between the Contracting Parties to the EEA Agreement.
- (41) According to settled case law, the mere fact that a measure strengthens the position of an undertaking compared to other undertakings competing in intra-EEA trade is considered sufficient in order to conclude that the measure is liable to distort competition between undertakings established in other EEA States.²⁴ To categorise a national measure as State aid, it is not necessary that the aid has a real effect on trade between the Contracting Parties and that competition is actually being distorted; it is sufficient that the aid is liable to affect such trade and distort competition.²⁵
- (42) ESA concluded in Decision No 355/13/COL that the aid will strengthen the position of energy-intensive undertakings in the eligible sectors as compared to those active in other sectors. Moreover, potential beneficiary undertakings are active in sectors which are subject to external trade.²⁶
- (43) ESA considers that these arguments are valid also as regards aid granted under the measure and concludes that the measure is liable to affect trade and distorts competition within the meaning of Article 61(1) of the EEA Agreement.

4.5 Aid scheme or individual aid

- (44) ESA notes that the legal basis of the measure is an act (the Regulation, see paragraph (5)) based on the relevant provisions of Norway’s budget adopted each year by the Norwegian Parliament (*Stortinget*), not requiring further implementing measures for the granting of the aid and identifying the

²³ Decision No 355/13/COL, paragraphs 11 and 35.

²⁴ Case E-6/98 *Norway v ESA* [1999] EFTA Ct. Rep. 74, paragraph 59.

²⁵ See, for example, judgment of 14 January 2015, *Eventech*, C-518/13, EU:C:2015:9, paragraph 66; judgment of 8 May 2013, *Libert and others*, C-197/11 and C-203/11, EU:C:2013:288, paragraph 77; and judgment of 4 April 2001, *Friulia Venezia Giulia*, T-288/97, EU:T:2001:115, paragraph 41.

²⁶ Decision No 355/13/COL, paragraph 36.

beneficiaries in a general and abstract manner.²⁷ The aid is therefore granted on the basis of an aid scheme.

4.6 Conclusion

- (45) Based on the above, ESA concludes that the measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

5 Lawfulness of the aid

- (46) 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.”
- (47) The Norwegian authorities have notified the measure and have yet to let the scheme enter into force. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

6 Compatibility of the measure

6.1 Introduction

- (48) ESA can declare State aid compatible with the functioning of the EEA Agreement under its Article 61(3)(c) provided that certain compatibility conditions are fulfilled.
- (49) ESA’s ETS Guidelines set out the conditions under which aid measures in the context of the EU ETS may be considered compatible with the functioning of the EEA Agreement under Article 61(3)(c) thereof.
- (50) ESA assessed the measure’s compatibility on the basis of section 3.1 of the ETS Guidelines, which sets out the conditions under which such aid may be deemed compatible.

6.2 The aid facilitates the development of an economic activity

6.2.1 Contribution to the development of an economic activity

- (51) According to Article 61(3)(c) of the EEA Agreement, ESA may consider to be compatible with the internal market aid to facilitate the development of an economic activity, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (52) The scheme supports companies active in one of the sectors or sub-sectors listed in Annex I to the ETS Guidelines (see paragraph (11)), which corresponds to sectors and sub-sectors deemed to be exposed to a genuine risk of carbon leakage due to indirect emission costs.
- (53) In view of the above, ESA considers that the measure contributes to the development of certain economic activities, namely sectors and sub-sectors deemed to be exposed to a genuine risk of carbon leakage due to indirect emission costs.

²⁷ See Article 1(d) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“Protocol 3”).

6.2.2 *Facilitation of an economic activity and incentive effect*

- (54) Aid can be declared compatible under Article 61(3)(c) of the EEA Agreement, if it effectively facilitates the development of an economic activity.²⁸ State aid has an incentive effect if it incentivises the beneficiary to change its behaviour towards the development of a certain economic activity pursued by the aid and if the change in behaviour would not occur without the aid.²⁹
- (55) According to paragraph 25 of the ETS Guidelines, for the aid to have an incentive effect and actually prevent carbon leakage, it must be applied for and paid to the beneficiary in the year in which the costs are incurred or in the following year.
- (56) Under the measure, aid must be applied for and is paid out in the year following the year in which the eligible cost incurred. Being in compliance with paragraph 25 of the ETS Guidelines, ESA considers that the aid has an incentive effect and facilitates the development of certain economic activities.

6.2.3 *Compliance with other relevant provisions of EU law*

- (57) If a State aid measure, the conditions attached to it (including its financing method when the financing method forms an integral part of the State aid measure), or the activity it finances entail a violation of relevant EEA law, the aid cannot be declared compatible with the functioning of the EEA Agreement.³⁰
- (58) ESA has no indications that the measure, the conditions attached to it, or the activities it finances, is incompatible with EEA law.³¹
- (59) In light of the above, ESA considers that the notified aid measure does not infringe other relevant provisions of EU law.

6.3 **The aid does not unduly affect trading conditions to an extent contrary to the common interest**

6.3.1 *Positive effects of the aid*

- (60) The measure will contribute to the development of sectors exposed to a genuine risk of carbon leakage due to indirect emission costs (see paragraph (4)).
- (61) As explained in paragraph 20 of the ETS Guidelines, addressing the risk of carbon leakage, by assisting beneficiaries to reduce their exposure to this risk, serves an environmental objective, since the aid aims to avoid an increase in

²⁸ Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraphs 19 and 60.

²⁹ See, for instance, judgment of 14 May 2002, *Graphischer Maschinenbau v Commission*, T-126/99, ECLI:EU:T:2002:116, paragraph 34.

³⁰ Judgments of 19 September 2000, *Germany v Commission*, C-156/98, EU:C:2000:467, paragraph 78; judgment of 22 December 2008, *Régie Networks*, C-333/07, EU:C:2008:764, paragraphs 94 to 116; judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44; judgment of 14 October 2010, *Nuova Agricast*, C-390/06, EU:C:2008:224, paragraphs 51–51.

³¹ Judgment of 19 September 2000, *Germany v Commission*, C-156/98, EU:C:2000:467, paragraph 78, and judgment of 22 December 2008, *Régie Networks v Rhone Alpes Bourgogne*, C-333/07, EU:C:2008:764, paragraphs 94 to 116.

global greenhouse gas emissions due to shifts of production outside the EEA, in the absence of a binding international agreement on reduction of greenhouse gas emissions.

6.3.2 *Need for State intervention*

- (62) According to paragraph 20 of the ETS Guidelines, the objective of the aid is to prevent a significant risk of carbon leakage due to EU ETS allowance costs passed on in electricity prices and incurred by the beneficiary, if its competitors from third countries do not face similar CO₂ costs in their electricity prices and the beneficiary is unable to pass on those costs to product prices without losing significant market share.
- (63) Under paragraph 21 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 I. Further, according to paragraph 22 of the ETS Guidelines, if EEA EFTA States decide to grant the aid only to some of the sectors listed in Annex I, the choice of sectors must be made on the basis of objective, non-discriminatory and transparent criteria.
- (64) The measure, for its whole duration, covers all sectors and sub-sectors listed in Annex I to the ETS Guidelines and does not go beyond these sectors (see paragraph (11)). ESA therefore considers that the measure is necessary for achieving its objective. That is, the measure contributes to the development of sectors exposed to a genuine risk of carbon leakage due to indirect emission costs and facilitates avoiding an increase in global greenhouse gas emissions due to shifts of production outside the EEA.

6.3.3 *Appropriateness of the aid*

- (65) According to paragraph 24 of the ETS Guidelines, for the purpose of compensating indirect ETS costs, State aid is considered an appropriate instrument independently of the form in which it is granted. In this context, compensation taking the form of a direct grant is considered an appropriate instrument.
- (66) Under the measure, the form of aid are direct grants (see paragraph (8)). ESA considers that the measure provides for an appropriate aid instrument for addressing the risk of carbon leakage.

6.3.4 *Proportionality of the aid*

- (67) According to paragraph 27 of the ETS Guidelines, the aid is proportionate and has a sufficiently limited negative effect on competition and trade, if it does not exceed 75 % of the indirect emission costs incurred. The electricity consumption efficiency benchmark ensures that support to inefficient production processes remains limited and maintains the incentive for dissemination of the most energy-efficient technologies.
- (68) In line with paragraph 27 of the ETS Guidelines, the maximum aid intensity under the measure is set by the Norwegian authorities at not higher than 75 % of the indirect emission costs incurred (see paragraph (18)). Whereas the maximum aid intensity could be annually set at different levels, the same aid intensity is applied for all beneficiaries.

- (69) According to paragraph 23 of the ETS Guidelines, within the eligible sector, EEA EFTA States need to ensure that the choice of beneficiaries is made on the basis of objective, non-discriminatory and transparent criteria and that the aid is granted in principle in the same way for all competitors in the same sector if they are in a similar factual situation. The eligibility conditions and the procedure laid down in the notified measure comply with those requirements (see paragraphs (8), (11) and (12)). As regards the exclusion of aid to undertakings in difficulty and in case of an outstanding recovery order, the European Commission's case-practice considers these limitations to be in line with paragraph 23 of the ETS Guidelines.³² ESA agrees with this approach.
- (70) Further, the measure complies with paragraph 28 (a) and (b) of the ETS Guidelines that establish the formulas for calculating the maximum aid payable per installation (see paragraphs (14) to (16)).
- (71) ESA notes that in establishing the formulas, the measure uses concepts defined in section 1.3 of the ETS Guidelines. The measure also applies the electricity consumption efficiency benchmarks defined in Annex II of the ETS Guidelines.³³ However, the CO₂ emission factor and its methodology are notified by the Norwegian authorities (see sections 3.4.1 and 3.4.2), and ESA assesses these elements of the scheme in section 6.3.5 of the present decision.
- (72) Under paragraph 29 of the ETS Guidelines, if an installation manufactures products for which an electricity consumption efficiency benchmark listed in Annex II is applicable and products for 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. The measure complies with these requirements (see paragraph (17)).
- (73) The measure is also in line with paragraph 30 of the ETS Guidelines providing that if an installation manufactures products that are eligible for aid (that is to say, they fall within the eligible sectors listed in Annex I) and products that are not eligible for aid, the maximum aid payable must be calculated only for the products that are eligible for aid (see paragraph (17)).

6.3.5 The notified methodology and CO₂ emission factor

- (74) As explained in paragraph 69 of the ETS Guidelines, ESA is responsible for establishing the methodology for setting the CO₂ factors. When duly justified by specific circumstances not prevailing elsewhere in the EEA, and in line with the aims of the ETS Guidelines, ESA may introduce amendments to these Guidelines or take these specific circumstances into account in assessing a relevant aid scheme, including the methodology for setting the CO₂ factor.

³² The Commission Decisions of 16 March 2022 in [SA.100004](#) (2022/N) on compensation for indirect ETS costs in Spain for 2021-2030, OJ C 169, 22.4.2022, p. 1, paragraph 64; and of 16 March 2022 in [SA.100159](#) (2021/N) on compensation for indirect ETS costs in Czechia for 2021-2030, OJ C 155, 8.4.2022, p. 1–12, paragraph 56.

³³ ESA notes that, as set out in paragraph 67 of the ETS Guidelines, ESA will adapt these guidelines to update the electricity consumption efficiency benchmarks. Consequently, the Norwegian authorities may have to adapt the measure in order to bring it into line with the adapted ETS Guidelines as regards the electricity consumption efficiency benchmarks.

(75) As explained in section 3.4.2, the Norwegian authorities consider that the methodologies for estimating the carbon factor as set out in paragraph 15(10) and (11) of the ETS Guidelines are inappropriate for approximating the ETS price transfer effects in Norwegian power prices. As explained, this is due to the specific market circumstances in Norway, where most domestic generation is emission free and to a large extent based on hydropower with significant reservoir capacity. In essence, Norwegian power prices are affected by the EU ETS due to the price convergence effect brought about by interconnection with markets where fossil-fuels based generation often determines prices, an effect which is amplified due to the Norwegian hydropower producer's ability to save water in the reservoirs for later dispatch and sale. This dynamic is not captured by the methodologies in paragraph 15(10) or 15(11) of the ETS Guidelines. The proposed energy market modelling therefore appears to capture the price transfer effect in line with the objective of the ETS Guidelines.

(76) ESA therefore considers that the notified methodology and the resulting CO₂ factor of 0.53³⁴ for the period of 2021 to 2025 is in line with the ETS Guidelines.

(77) ESA also notes that the Norwegian authorities notified the CO₂ factor for the period 2021-2025. As set out in paragraph 67 of the ETS Guidelines, ESA will update the geographic areas and the CO₂ factors in 2025. Consequently, for the period 2026-2030, Norway has to notify the methodology and the resulting CO₂ factor, or adapt the present aid scheme, in order to bring them into line with the adapted ETS Guidelines.

6.3.6 Cumulation and duration

(78) Paragraphs 33 – 35 of the ETS Guidelines set out rules for cumulating aid under these guidelines with other State aid, *de minimis* aid, and combination of funding from resources coming from the EEA not directly or indirectly under the control of an EEA State with State aid.

(79) Norway has committed to complying with the rules set out in paragraphs 33 – 35 of the ETS Guidelines (see paragraph (28)). ESA concludes that the measure is in line with the cumulation rules set out in the ETS Guidelines.

(80) The measure's duration does not exceed the duration of the ETS Guidelines (see paragraph (7)), which is in line with paragraph 36 of the ETS Guidelines.

6.3.7 Energy audits and management systems

(81) As per paragraph 54 of the ETS Guidelines, the Norwegian authorities have committed to verifying that the beneficiaries comply with their obligation to conduct energy audits in the sense of Article 8 of Directive 2012/27/EU (see paragraph (13)).

(82) The Norwegian authorities have also committed to monitoring that beneficiaries covered by the obligation to conduct an energy audit under Article 8(4) of Directive 2012/27/EU, will carry out one of the alternatives set out in point 55 (a) to (c) of the ETS Guidelines (see paragraph (13)).

³⁴ See paragraph (27).

6.3.8 Transparency, reporting and monitoring

- (83) Paragraphs 56-63 of the ETS Guidelines set out the rules for transparency, annual reporting and monitoring. As the Norwegian authorities have committed to following these requirements (see paragraphs (29) and (30)), ESA considers that the measure complies with the requirements set out in paragraphs 56-63 of the ETS Guidelines.

6.3.9 Remaining distortions of trading conditions

- (84) Some EEA States may not introduce aid schemes such as the one in question compensating for indirect ETS costs, resulting in potential distortion of competition between EEA States (intra-sector competition). Further, it is not excluded that products falling under the eligible sectors may compete with certain products outside these sectors and as such, not eligible for aid (inter-sector competition).
- (85) However, ESA considers that compliance with the ETS Guidelines, setting out conditions on the EEA level, such as the list of eligible sectors, a maximum aid intensity, aid calculation formulas and electricity consumption efficiency benchmarks, mitigate such potential risks of distortion of competition.³⁵

6.3.10 Conclusion on distortion of competition and balancing test

- (86) ESA considered above that the measure facilitates the development of sectors exposed to a significant risk of carbon leakage due to indirect emission costs and contributes to avoiding an increase in global greenhouse gas emissions (see paragraphs (60) and (61)).
- (87) The aid granted under the measure is necessary, appropriate and proportionate which limits any impact on competition and trade. ESA concludes that even if an impact on intra-sector and inter-sector competition cannot be excluded, it appears that the negative effects of the aid are sufficiently limited for the overall balance of the scheme to be positive.

7 Conclusion

- (88) On the basis of the foregoing assessment, ESA considers that the measure constitutes State aid with the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that the aid is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c), it has no objections to the implementation of the measure.
- (89) The Norwegian authorities have confirmed that the notification does not contain any business secrets or other confidential information that should not be published.

For the EFTA Surveillance Authority,

³⁵ See also the Commission's decision in [SA.100159](#) (2021/N), paragraph 68.

Yours faithfully,

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This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.