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Decision No 043/23/COL

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

**Subject: Amendments to the Norwegian CO<sub>2</sub> compensation scheme - price floor**

## 1 Summary

- (1) The EFTA Surveillance Authority (“ESA”) wishes to inform Norway that, having assessed the notified amendment to the 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”), 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<sup>1</sup> 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 27 February 2022.<sup>2</sup>

## 3 Description of the measure

### 3.1 Background

- (3) By [Decision No 171/22/COL](#)<sup>3</sup> (“the approval decision”) ESA approved the 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 scheme”).
- (1) The EEA EFTA States take part in the EU Emissions Trading System (“the EU ETS”), established by Directive 2003/87/EC (“the ETS Directive”).<sup>4</sup> 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 operators<sup>5</sup> and allows trading of emission

<sup>1</sup> Reference is made to Article 4(3) of the Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

<sup>2</sup> Documents No 1355118 and 1355116.

<sup>3</sup> OJ C 476, 15.12.2022, p. 32 and EEA Supplement No 84, 15.12.2022, p. 2.

<sup>4</sup> 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 21a of Annex XX by EEA Joint Committee Decision No 146/2007 of 26 October 2007.

<sup>5</sup> Annex I of the ETS Directive lists the categories of activities to which the Directive applies.

allowances within the cap.<sup>6</sup> The current fourth phase from 2021 will last until 2030 and is designed to achieve the EU's 2030 emission reduction targets.<sup>7</sup>

- (2) The scheme 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"),<sup>8</sup> as supplemented.<sup>9</sup>
- (3) The conditions of the scheme are described in [Decision No 171/22/COL](#).

### 3.2 The measure

- (4) As explained in the approval decision,<sup>10</sup> the estimated total budget of the scheme is NOK 101 billion for 2021-2030 and NOK 3.65 billion for the support year 2021.<sup>11</sup> As a result of the increase in the European Union Allowance ("EUA")<sup>12</sup> forward price, the cost of the scheme is expected to rise for the support year 2022 from the NOK 3.7 billion to approximately NOK 7.4 billion.
- (5) The Norwegian authorities estimate that the total cost of the scheme over the period 2021-2030 would be around NOK 104 billion, granted the scheme is prolonged without any limitations.<sup>13</sup> These estimates are based on the relevant power and production levels of 2021 and the estimates of the EUA price over the period 2023-2029 estimated by the market analyst company Refinitiv on 13 October 2022.<sup>14</sup>
- (6) To make the scheme financially sustainable over time, the Norwegian Government and Parliament have decided to implement an EUA price floor in the scheme. The notified amendment introduces a price floor to the scheme at NOK 200 for the remainder of the duration of the scheme, 2022-2030. The introduction of the EUA price floor means that the "Pt-1" element<sup>15</sup> of the aid calculation formulas<sup>16</sup> only takes into account the part of the EUA price at year t-1 exceeding NOK 200.

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<sup>6</sup> See the European Commission's EU ETS Handbook, available [here](#).

<sup>7</sup> See the European Commission's websites, where information on the EU ETS is available [here](#).

<sup>8</sup> 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).

<sup>9</sup> [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).

<sup>10</sup> Paragraph 10 of the approval decision.

<sup>11</sup> As explained in the approval decision, the budget numbers could not 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 EUA allowances.

<sup>12</sup> According to paragraph 15(7) of the ETS Guidelines, EUA means a transferable allowance to emit 1 tonne of CO<sub>2</sub> equivalent during a specified period.

<sup>13</sup> The costs estimates have increased from NOK 101 billion to NOK 104 billion, mainly due to changes in the EUR/NOK exchange rate from 10 to 10.4.

<sup>14</sup> The Norwegian authorities underline that these estimates are uncertain.

<sup>15</sup> Pt-1 is the EUA forward price at year t-1 (EUR/tCO<sub>2</sub>).

<sup>16</sup> The approval decision, paragraphs 14 and 15.

- (7) By way of an example of the effect of the measure, the applicable EUA forward price for the support year 2022 is NOK 548. Following the measure, the beneficiaries will therefore only receive compensation for indirect costs due to an EUA price of NOK 348.
- (8) As the compensation is paid the year after the support year, the EUA price floor will impact the national budgets of 2023-2031. The Norwegian Parliament has budgeted NOK 4.7 billion to the scheme for the 2023 budget. The costs without a price floor would amount to NOK 7.4 billion.

### 3.3 National legal basis

- (9) The legal basis of the amendment is the Norwegian Parliament's budget decision.<sup>17</sup> The Norwegian authorities will further amend Article 6 of the Regulation on CO<sub>2</sub> compensation for the manufacturing industry in Norway for the period 2021-2030 to include the EUA price floor.

### 3.4 Budget and duration

- (10) The amendment is estimated to reduce the total cost of the scheme by approximately NOK 23 billion, from NOK 104 billion to NOK 81 billion. The effect of the price floor is illustrated below:

<b>EUA forward price:</b>	<b>New EUA price to be applied in calculation of compensation (after the application of an ETS price floor at NOK 200):</b>	<b>Reduction for each undertaking in percent:</b>
NOK 1 000	NOK 800	20 %
NOK 800	NOK 600	25 %
NOK 600	NOK 400	33 %
NOK 400	NOK 200	50 %
NOK 200 or less	0	100 %

- (11) The estimated annual cost of the scheme, with and without the EUA price floor is illustrated below:

Support year	2021 <sup>18</sup>	2022 <sup>19</sup>	2023 <sup>20</sup>	2024	2025	2026	2027	2028	2029	2030	Total
Without EUA price floor <sup>21</sup>	3.6	7.2	11	9.5	9.7	10.2	11.2	12.7	13.9	15.2	104
With EUA price floor <sup>22</sup>	3.6	4.6	8.4	6.9	7.1	7.6	8.6	10.2	11.4	12.7	81
EUA price (before)	268,29	548,18	844,28	728	749	790	874	999	1103	1207	N/A

<sup>17</sup> National budget for the year 2023, page 46, post 74. Available [here](#). The budgetary proposal from the Norwegian Government is available [here](#), page 129, under chapter "Post 74 CO<sub>2</sub>-kompensasjonsordning for industrien".

<sup>18</sup> The EUA price floor is not applicable for the first aid year where full compensation was granted.

<sup>19</sup> EUA forward price has already been determined (NOK 548,18).

<sup>20</sup> EUA forward price has already been determined (NOK 844,28).

<sup>21</sup> In billion NOK.

<sup>22</sup> In billion NOK.

EUA price floor)											
Percentage reduction due to price floor	N/A	36%	24%	27%	27%	25%	23%	20%	18%	16%	N/A

## 4 Presence of State aid

### 4.1 Introduction

- (12) 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.”
- (13) 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.
- (14) ESA has concluded that the scheme constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.<sup>23</sup> There is nothing in the current notification which alters this conclusion. The measure only introduces an EUA price floor, which will reduce the aid paid to the beneficiaries but leaves the scheme otherwise unchanged.
- (15) On this basis, ESA concludes that the notified measure constitutes State aid within the meaning of Article 61(1) of the EEA Agreement.

## 5 Lawfulness of the aid

- (16) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (“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.”
- (17) The Norwegian authorities have notified the measure and have yet to let it enter into force. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

## 6 Compatibility of the aid

- (18) 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.
- (19) 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.

<sup>23</sup> Paragraph 37 of the approval decision.

- (20) In its approval decision, ESA concluded that the scheme is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c). ESA assessed the scheme's compatibility on the basis of section 3.1 of the ETS Guidelines, which sets out the conditions under which aid may be deemed compatible.
- (21) The notified measure does not affect the compatibility assessment set out in the approval decision.<sup>24</sup> ESA notes that the EUA price floor introduced to the scheme applies equally to all beneficiaries under the scheme and is therefore in line with paragraph 23 of the ETS Guidelines, which states that 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.<sup>25</sup> There is nothing in the ETS Guidelines which precludes the EEA EFTA States from introducing EUA price floors, which aim at limiting aid paid to beneficiaries under the scheme.

## 7 Conclusion

- (22) 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 this 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.
- (23) 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,

Yours faithfully,

Arne Røksund  
President  
Responsible College Member

Stefan Barriga  
College Member

Árni Páll Árnason  
College Member

Melpo-Menie Joséphidès  
Countersigning as Director,  
Legal and Executive Affairs

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

<sup>24</sup> Section 6 of the approval decision.

<sup>25</sup> Paragraph 69 of the approval decision.