EUROPEAN COMMISSION

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Subject: State aid SA.36103 (2013/N) – Germany  
State aid for indirect CO2 costs (ETS)

Sir,

1. Procedure

(1) By electronic notification dated 14 June 2013, the German authorities notified to the Commission, in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), a scheme to compensate undertakings for a share of their indirect emission costs, that is to say the costs resulting from the EU Emission Trading System (ETS) passed on in electricity prices. The notification followed pre-notification contacts, initiated by Germany in January 2013.

2. Description of the measure

(2) Germany intends to grant State aid to compensate electro-intensive industries that are most at risk of carbon leakage due to the indirect emission costs resulting from the implementation of the ETS. The German authorities take the view that addressing the risk of carbon leakage serves an environmental objective, since the aid aims to avoid an increase in global greenhouse gas emissions due to shifts of production outside the Union, in the absence of a binding international agreement on reduction of greenhouse gas emissions.

Seiner Exzellenz Herrn Dr. Guido WESTERWELLE  
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2.1 Legal basis and granting authority

(3) The scheme will be based on a Directive of the Federal Minister for Economics and Technology on State aid to undertakings in sectors and subsectors deemed to be exposed to a significant risk of carbon leakage due to EU ETS allowance costs passed on in electricity prices (Richtlinie für Beihilfen für Unternehmen in Sektoren bzw. Teilsektoren, bei denen angenommen wird, dass angesichts der mit den EU-ETS-Zertifikaten verbundenen Kosten, die auf den Strompreis abgewälzt werden, ein erhebliches Risiko der Verlagerung von CO₂-Emissionen besteht).

(4) The aid will be granted by the German Emissions Trading Authority (DEHSt) under the joint supervision of the Federal Ministry of Economics and Technology and the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety.

2.2 Budget and duration

(5) The scheme will have a total budget of EUR 756 million. The budget shall cover a period from 2013 to 2015, the annual budget being EUR 350 million for 2013, EUR 203 million for 2014 and EUR 203 million for 2015.

(6) The duration of the scheme, however, shall extend beyond 2015 and cover a period from 2013 to 2020.

(7) As the aid will be granted in arrears for the previous year, aid will begin to be disbursed on 1 January 2014.

2.3 Eligibility

(8) The scheme provides that, in order to be considered for indirect EU ETS compensation, a company must be in one of the sectors listed in Table 1 below, which corresponds to Annex II to the Commission’s Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012 (ETS Guidelines):

<table>
<thead>
<tr>
<th>NACE code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2742</td>
<td>Aluminium production</td>
</tr>
<tr>
<td>1430</td>
<td>Mining of chemical and fertiliser minerals</td>
</tr>
<tr>
<td>2413</td>
<td>Manufacture of other inorganic basic chemicals</td>
</tr>
<tr>
<td>2743</td>
<td>Lead, zinc and tin production</td>
</tr>
<tr>
<td>1810</td>
<td>Manufacture of leather clothes</td>
</tr>
<tr>
<td>2710</td>
<td>Manufacture of basic iron and steel and of ferro-alloys</td>
</tr>
</tbody>
</table>

1 OJ C 158, 05.06.2012, p. 4.
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>272210</td>
<td>Seamless steel pipes</td>
</tr>
<tr>
<td>2112</td>
<td>Manufacture of paper and paperboard</td>
</tr>
<tr>
<td>2415</td>
<td>Manufacture of fertilisers and nitrogen compounds</td>
</tr>
<tr>
<td>2744</td>
<td>Copper production</td>
</tr>
<tr>
<td>2414</td>
<td>Manufacture of other organic basic chemicals</td>
</tr>
<tr>
<td>1711</td>
<td>Preparation and spinning of cotton-type fibres</td>
</tr>
<tr>
<td>2470</td>
<td>Manufacture of man-made fibres</td>
</tr>
<tr>
<td>1310</td>
<td>Mining of iron ores</td>
</tr>
<tr>
<td>2416</td>
<td>The following sub-sectors within the manufacture of plastics in primary forms</td>
</tr>
<tr>
<td></td>
<td>24161039 – Low-density polyethylene</td>
</tr>
<tr>
<td></td>
<td>24161035 – Linear low-density polyethylene</td>
</tr>
<tr>
<td></td>
<td>24161050 – High-density polyethylene</td>
</tr>
<tr>
<td></td>
<td>24165130 – Polypropylene</td>
</tr>
<tr>
<td></td>
<td>24163010 – Polyvinyl chloride</td>
</tr>
<tr>
<td></td>
<td>24164040 - Polycarbonate</td>
</tr>
<tr>
<td>2111</td>
<td>The following sub-sectors within the manufacture of pulp</td>
</tr>
<tr>
<td></td>
<td>21111400 – Mechanical pulp</td>
</tr>
</tbody>
</table>

Table 1 – Sectors and subsectors eligible for aid under the notified scheme

(9) However, undertakings who are subject to insolvency proceedings or certain enforcement measures under national law are not eligible for aid under the notified scheme. The same applies to undertakings who have failed to comply with an aid recovery order based on a Commission decision which has established the existence of unlawful or incompatible aid.

2.4 Aid amount calculation

(10) The maximum aid amount payable per installation will be calculated according to the following two formulae, which correspond to the ones mentioned in point 27 of the ETS Guidelines:

(a) Where electricity consumption efficiency benchmarks have been published for a given product manufactured by the beneficiary, the following formula will apply:

\[ B_a = A_{ia} \times C_a \times P_a \times BM \times PM \]
In this formula, $B_a$ is the maximum aid amount per installation in year $a$, $Ai$ is the aid intensity in year $a$. $C$ is the applicable CO$_2$ emission factor at year $a$. $Pa$ is the EU ETS allowance forward price for year $a$ (which is defined as in Annex I of the Guidelines, i.e. on the basis of the year preceding the year for which the aid is granted). $BM$ is the applicable product-specific electricity consumption efficiency benchmark. $PM$ is the installation’s relevant output.

(b) Where no product-related electricity consumption efficiency benchmarks have been published for those products manufactured by the beneficiary, the following formula will apply:

$$B_a = Ai_a \times C_a \times Pa \times EF \times SV$$

Here, the concepts are the same as defined above under subparagraph (a), except for $EF$, which is the applicable fall-back electricity consumption efficiency benchmark, and for $SV$, which is the installation’s relevant electricity consumption.

(11) In the two formulae mentioned above, the installation’s relevant output ($PM$) and the installation’s relevant electricity consumption ($SV$) are in principle equivalent to the baseline output and the baseline electricity consumption as defined in Annex I of the ETS Guidelines. However, with a view to limit the aid amounts granted under the scheme to the minimum necessary, Germany introduced two exceptions:

(a) If, in the year for which the aid is granted, the installation’s actual figure (i.e. the actual output or the actual electricity consumption) is lower than the baseline figure (be it output or electricity consumption), then, in principle, the actual figure will be used as variable $PM$ or $SV$ to calculate the maximum aid amount instead of the baseline figure provided for in the Guidelines, unless subparagraph (b) applies:

(b) Indeed, if in the first exception described in subparagraph (a), the sum of the installation’s actual figures (output or electricity consumption) of the preceding years, starting in 2013, is higher than the sum of the baseline figures (output or electricity consumption) of these same years, then a higher figure (output or electricity consumption) than the actual figure will be used. The higher figure will be determined by calculating the difference between the sum of the actual figures and the sum of the baseline figures of the preceding years, as explained above in subparagraph (a), and by adding this difference to the actual figure. This higher figure however may never exceed the baseline figure.

(12) In view of the commitment of Germany that neither the actual figure nor the higher figure can exceed the baseline figures in the sense of the Guidelines, it the aid amount would never exceed the maximum aid amount that would result from the calculations using the baseline figures will never be exceeded.
In particular, Germany proposes to apply the aid intensity levels set out in the ETS Guidelines, i.e. 85% of eligible costs in 2013, 2014 and 2015, 80% in 2016, 2017 and 2018 and 75% in 2019 and 2020.

Germany will also apply the electricity consumption efficiency benchmarks defined by the Commission in Annex III of the ETS Guidelines. Germany will also apply the maximum regional emission factor of 0.76 tCO₂/MWh, which is the one found in Annex IV of the Guidelines, with one exception: In case of electricity supply contracts that do not include any CO₂ costs, no State aid will be granted. This corresponds to point 11 of the Guidelines.

2.5 Retention

Under the notified scheme, eligible beneficiaries will have to bear a certain share of their indirect CO₂ costs for which no aid will be paid out (retention, Selbstbehalt). This retention will be operated by deducting from the total amount of aid a beneficiary can claim for all installations an amount of aid corresponding to the CO₂ costs of 1 GWh of electricity consumption per year and per installation. This can mean in practice that beneficiaries with small installations of less than 1 GWh of consumption per year will not receive any aid. The purpose of the retention is to limit the administrative burden in the processing of applications.

2.6 Proportionality

The German authorities take the view that, overall, the proposed ETS compensation scheme is proportional. In particular, they stress that the formulae mentioned above in paragraph (10) and the fact that the aid will in some cases be calculated based on a lesser figure than the baseline figure, as explained above in paragraph (11), subparagraphs (a) and (b), ensure that the aid is limited to the minimum amount necessary.

2.7 Cumulation

It will not be possible to cumulate compensation under the present scheme with aid received from other schemes to cover the same eligible costs.

2.8 Granting modalities

The aid will be paid out in arrears, i.e. after the costs have been incurred, on a yearly basis. It will only be granted within the limit of the available budgetary resources.

2.9 Annual reports, transparency and monitoring

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The German authorities have committed to following the requirements set out in points 52 to 54 of the Guidelines on transparency and monitoring.

3. Assessment of the measure

3.1 Existence of aid

Article 107(1) TFEU defines State aid as ‘any aid granted by a Member State 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 [...], in so far as it affects trade between Member States’.

Under the scheme, certain undertakings that belong to a limited number of sectors and subsectors will receive direct grants from the State budget. It can be assumed that the sectors and subsectors targeted are characterised by competition between undertakings established in various EU Member States. The support granted under the scheme therefore constitutes State aid in the sense of Article 107(1) TFEU.

3.2 Lawfulness of aid

By notifying the scheme before its implementation, the German authorities have fulfilled their obligation according to Article 108(3) TFEU.

3.3 Compatibility with the internal market

According to Article 107(3) TFEU, State aid may in some cases be considered to be compatible with the internal market, including where, according to lit. c), the aid is intended ‘to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest’.

In Article 10a(6) of the ETS Directive3, as amended by Directive 2009/29/EC4, it is said that

‘Member States may also adopt financial measures in favour of sectors or subsectors determined 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 and where such financial measures are in accordance with state aid rules applicable and to be adopted in this area.

Those measures shall be based on ex-ante benchmarks of the indirect emissions of CO₂ per unit of production. The ex-ante benchmarks shall be calculated for a

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given sector or subsector as the product of the electricity consumption per unit of production corresponding to the most efficient available technologies and of the CO₂ emissions of the relevant European electricity production mix.

(25) In 2012, the Commission adopted the ETS Guidelines, which spell out the conditions under which State aid that is granted with regard to the effects of the ETS may be deemed compatible with the internal market.

(26) The Commission has assessed the compatibility of the scheme notified by Germany with the internal market on the basis of Section 3.1 of the Guidelines, which sets out the conditions for aid to undertakings in sectors and subsectors deemed to be exposed to a significant risk of carbon leakage due to EU ETS allowance costs passed on in electricity prices (aid for indirect emission costs).

3.3.1 Objective of the aid

(27) According to point 24 of the Guidelines, aid may be granted ‘to prevent a significant risk of carbon leakage due to EUA costs [i.e. costs of ETS allowances] passed on in electricity prices supported 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’.

(28) Germany’s scheme is directed to this objective, given that the scheme shall support the competitiveness of electro-intensive industries that are most at risk of carbon leakage.

3.3.2 Necessity of the aid

(29) According to point 25 of the 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’ of the Guidelines.

(30) Germany has defined a number of eligible sectors and subsectors, listed in the table in paragraph (8) above, which correspond to the ones found in Annex II of the Guidelines.

(31) Hence, the aid is necessary to realise the scheme’s objective of common interest.

3.3.3 Maximum aid intensity

(32) The ETS Guidelines do not provide for full compensation, as this could remove the incentive for the undertakings concerned to further reduce their consumption of electricity. Point 26 of the Guidelines sets out the maximum aid intensities: For the years 2013 to 2015, the aid may not exceed 85% of the eligible costs. The aid intensity is then gradually reduced to 80% (for the years 2016 to 2018) and to 75% (for 2019 and 2020).
(33) The aid intensities applied in the German scheme are identical to those in the Guidelines.

3.3.4 Maximum aid amount calculation

(34) The maximum aid amount payable per installation is determined on the basis of the formulae spelled out in point 27 of the Guidelines.

(35) The maximum aid amount payable per installation for costs incurred in a given year $t$ is a product of the aid intensity, of the applicable CO$_2$ emission factor, of the EUA forward price at year $t-1$, of the relevant electricity consumption efficiency benchmark and of the baseline output or baseline electricity consumption. Depending on the product, a product-related electricity consumption efficiency benchmark, listed in Annex III of the Guidelines, may exist. Otherwise, a fall-back electricity consumption benchmark needs to be used.

(36) In principle, the German scheme uses these formulae for the calculation of the maximum possible aid amount, and the formulae’s elements are equivalent to the definitions in Annex I of the Guidelines and to the values in Annex III and IV.

(37) However, in order to limit the aid to the minimum necessary, the German scheme will not always apply the baseline output or the baseline electricity consumption defined in the Annex I of the Guidelines. Indeed, in cases described above in paragraph (11), subparagraphs (a) and (b), the calculation will rely on an actual output or consumption figure or on another, higher figure. However, the German authorities confirmed and provided a commitment that neither the actual figure nor the higher figure can exceed the baseline figure in the sense of the Guidelines and therefore this calculation adjustment can only lead to a lower aid amount than what would be a maximum possible aid amount calculated according to the formulae on the basis of the baseline figures.

(38) The Commission further notes that the maximum aid amount will be reduced by the retention operated by the granting authority, described above in paragraph (15), in that all beneficiaries will not be paid any aid for their indirect CO$_2$ costs corresponding to 1 GWh of electricity consumption per installation and per year. For beneficiaries whose electricity consumption does not exceed 1 GWh per installation, the retention will in practice have the effect that they will receive no aid.

(39) In that respect, the Commission recalls that according to Annex II of the ETS Guidelines, an installation may receive aid only if it is active in one of the sectors or subsectors listed. However, a Member State is not obliged to grant aid to all sectors, subsectors or even installations belonging to these sectors or subsectors. Rather, the Member State’s authorities may decide to further restrict the scope of eligible applicants.
Moreover, according to point 27 of the Guidelines, the amounts calculated on the basis of the formulae mentioned are maximum aid amounts. And it is clear from point 45 that ‘Member States may grant aid with lower aid intensities than those mentioned in the Guidelines’. Both these points show that a Member State is not obliged to grant the full aid amount authorised by the Guidelines.

As long as restrictions on the eligibility and limitations of the aid amounts do not contradict or run counter to the ETS Guidelines, nor result in the breaching of any provision of EU law, and in particular as long as they are based on objective criteria, the Member State may opt for such further limitations of aid amounts.

Concerning the alternative output or electricity consumption figures that can be used for the calculation of the maximum aid amount (paragraph (37)), it must be noted that, as committed by Germany, they will never exceed the baseline figures defined in the Guidelines and will always lead to a lower aid amount than what would be the possible maximum aid amount calculated on the basis of the baseline figures defined in the Guidelines. Moreover, these figures constitute objective criteria: This is true for the installation’s actual output or actual electricity consumption. It is also true for the respective higher figure which is calculated on the basis of the preceding years. In that respect, the main purpose of the formulae, namely to ensure that the aid is proportionate and that it maintains the incentives for electricity efficiency and the transition from "grey" to "green" electricity, in accordance with the recital 27 of Directive 2009/29/EC, remains ensured.

Concerning the retention, the German authorities state that the retention’s purpose is to reduce the administrative burden of processing applications from and paying out small amounts of aid. In that respect, the electricity consumption threshold of 1 GWh per year and installation is an objective criterion. Moreover, the aid amounts subject to the retention should be relatively low. Indeed, if one calculates the hypothetical aid value of 1 GWh of electricity consumption, this results in a retention amount of approximately EUR 4,200 per installation5. Overall, this amount is relatively small compared with the amount of administrative resources that would be required to process applications in respect of such small amounts of aid and therefore such restriction can be considered as justified.

Therefore, both the alternative output and electricity consumption figures and the retention constitute objective criteria that are consistent with the underlying objective of section 3.1 of the ETS guidelines on the prevention of a significant risk of carbon leakage.

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5 This calculation is based on the formula in point 27(b) of the ETS Guidelines and on the following values: maximum aid intensity of 85%; CO₂ emission factor of 0.76 tCO₂/MWh; 2012 EUA forward price for 2013 of EUR 8.03; fall-back electricity consumption efficiency benchmark of 80%; 1 GWh (1,000 MWh) of electricity consumption which is the proportion subject to the retention.
3.3.5 Incentive effect

(45) According to point 31 of the Guidelines, if all the conditions set out in sections 3.3.1 to 3.3.4 above are fulfilled, which is the case here, the aid is presumed to have an incentive effect.

3.3.6 Proportionality

(46) Member States are required to demonstrate that the aid granted to the beneficiary is limited to the minimum necessary (point 45 of the Guidelines).

(47) The German scheme relies on the formulae, the aid intensities and the efficiency benchmarks provided for in the Guidelines. This ensures that the compensation does not cover the totality of indirect ETS costs and maintains an incentive for the beneficiaries to further reduce their electricity consumption.

(48) Moreover, the German scheme goes beyond what is required by the Guidelines in keeping the aid to a minimum: Indeed, the granting authority will, under the circumstances described above in paragraph (11), subparagraphs (a) and (b), consider lower output or electricity consumption figures than the baseline figures defined in Annex I of the Guidelines. By further limiting the aid amounts the scheme contributes to minimising competition distortions in the internal market and preserves the objective of the EU ETS to achieve a cost-effective decarbonisation, as required by the Guidelines.

(49) Therefore, the German ETS compensation scheme is proportional.

3.3.7 Cumulation

(50) The German authorities have provided a commitment that cumulation with aid from other schemes regarding the same eligible costs will not be possible.

3.3.8 Annual reporting, transparency and monitoring

(51) With regard to reporting, transparency and monitoring of the proposed scheme, the German authorities have committed to following the requirements set out in points 52 to 54 of the Guidelines.

4. Conclusion

In view of the above and taking into account the commitment of Germany as regards the calculation of the aid amount, the Commission has accordingly decided that the notified measure is compatible with the internal market pursuant to Article 107(3)(c) Treaty on the Functioning of the European Union.

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Directorate-General for Competition
State Aid Registry
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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President