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PUBLIC VERSION

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Subject: State aid SA.37017 (2013/N) - Belgium
Compensation for indirect EU ETS costs

Excellency,

(1) The Commission raises no objections to this measure.

1 PROCEDURE

(2) Belgium notified the measure on 20/09/2013.

2 DESCRIPTION OF THE MEASURE

(3) The measure compensates certain undertakings for increases in electricity prices resulting from the inclusion of the costs of greenhouse gas emissions due to the EU ETS, so called indirect emission costs, as defined in the ETS Guidelines1.

2.1 Legal basis

(4) The legal basis is the "Flemish Government Decree to grant aid to businesses as compensation for indirect emission cost."

(5) The budget is set by the revenues coming from the auctioning of the Belgian emission allowances. The revenues allocated to Flanders will fund the measure. If demand surpasses the budget the allocation will be proportionate. The annual budget will thus fluctuate with the CO2 price, and is estimated to be between EUR 7 million with a CO2-price of 1 EUR/ton to EUR 113 million with a CO2-price of 15 EUR/ton.


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The measure shall cover the period from 2013 to 2020.

2.2 Beneficiaries

The beneficiaries are companies active in one of the sectors listed in Annex II of the ETS Guidelines in Flanders.

In addition the companies wishing to benefit from the aid must have in place an agreement committing them to certain measures to improve energy efficiency. These agreements are not specific to this aid scheme. They are linked to tax reductions on the consumption of energy products that can be granted under Article 17 of the Energy Tax Directive\(^2\) provided companies enter into agreements that must lead to increased energy efficiency. Such agreements are open to all companies but many potential beneficiaries of this measure have them already in place.

Companies can apply for compensation the year following that when costs are incurred.

2.3 Aid amount calculation

The maximum aid amount payable per installation will be calculated according to the two formulae outlined in point 27 of the ETS Guidelines. Where electricity consumption efficiency benchmarks have been published the formula of point 27 sub (a) applies. If no product-related electricity consumption efficiency benchmarks are published the formula of point 27 sub (b) applies.

The measure applies the definitions of Annex I for all the elements of the two formulae. It applies the electricity consumption efficiency benchmarks defined in Annex III,\(^3\) as well as the maximum regional emission factor of Annex IV. The measure applies the aid intensity levels set out in point 26.

It will not be possible to receive aid from other schemes for the same costs.

Only indirect emission costs incurred for an electricity consumption of more than 1 million kWh per year and plant will be compensated. The 1 million kWh represents about EUR 4,000 based on the 2012 CO2-price.

3 ASSESSMENT OF THE MEASURE

3.1 Existence of aid

The Commission has assessed if Article 107 (1) of the Treaty on the Functioning of the European Union (TFEU) applies to the measure. In order for a measure to constitute State aid within the meaning of Article 107(1) TFEU it has to fulfil four conditions. Firstly, the aid is granted by Member State or through State resources. Secondly, the measure confers a selective advantage to certain undertakings or the production of certain goods. Thirdly, the measure must be liable to affect trade between Member States. Fourthly, the measure must distort or threaten to distort competition in the internal market.


\(^3\) Annex III of the ETS Guidelines has been modified by the Communication from the Commission amending the Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012, OJ C 387, 15.12.2012, p. 5.
The measure is funded by the budget of Belgium. It confers an advantage to the beneficiaries by compensating for costs they would have incurred under normal market conditions. The aid is selective since it is granted only to the undertakings active in certain sectors. These sectors are all exposed to international competition as noted in the ETS Guidelines, making it likely the aid can affect trade between Member States and distort competition market.4

The scheme constitutes State aid within the meaning of Article 107 (1) TFEU.

3.2 Lawfulness of aid

By notifying the measure before its implementation, Belgium fulfilled its obligation according to Article 108(3) TFEU.

3.3 Compatibility with the internal market

The Commission has assessed if the measure can be considered compatible with the internal market pursuant to Article 107 (3) c) TFEU.

Aid to undertakings to compensate for EU ETS allowance costs passed on in electricity prices falls within the scope of the ETS Guidelines. The Commission assessed the measure's compatibility on the basis of Section 3.1 that sets out the conditions under which aid may be deemed compatible.

3.3.1 Objective and necessity of the aid

Point 24 of the ETS Guidelines requires that the objective of the aid is to prevent a significant risk of carbon leakage due to EU ETS allowance costs being passed on in electricity prices supported by the beneficiary. 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.

The beneficiaries of this aid scheme are companies active in one of the sectors listed in Annex II of the ETS Guidelines in Flanders (see point 7).

The measure also requires beneficiaries to sign an agreement committing them to certain measures to improve energy efficiency. Belgian authorities justify this requirement as stimulating companies to make even more energy efficiency savings. As explained in point 8, these covenants are not specific to this aid scheme and are open to all potential beneficiaries of the measure under evaluation.

A Member State may restrict the scope of eligible applicants based on objective criteria as long as this does not run counter to the ETS Guidelines nor breaches other provisions of EU law, and in particular as long as it is based on objective and non-discriminatory criteria.

As these agreements are open to all potential beneficiaries, without any restriction, the additional requirement therefore does not unduly restrict the scope of the eligible applicants and is consistent with the underlying objective of section 3.1 of the ETS Guidelines on the prevention of a significant risk of carbon leakage.

4 Annex II of the ETS Guidelines
(25) Hence, it can be concluded that the aid is necessary to realise the scheme’s well-defined objective of common interest.

3.3.2 Incentive effect

(26) Point 31 of the Guidelines notes aid is presumed to have an incentive effect if all the conditions set out in section 3.1 are fulfilled, which is the case here.

(27) Therefore the planned aid will provide for the necessary incentive effect.

3.3.3 Proportionality

(28) Point 45 of the Guidelines requires Member States to demonstrate that the aid granted is limited to the minimum necessary.

(29) The measure applies the aid intensities and benchmarks of the Guidelines.

(30) The maximum aid amount payable per installation is determined on the basis of the formulae spelled out in point 27 of the Guidelines. The measure uses the definitions of Annex I and the values of Annex III and IV of the Guidelines.

(31) The measure does not provide for full compensation, as this could remove the incentive to further reduce electricity consumption.

(32) The aid intensity will be 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, this is in line with the maximum aid intensities set out in point 26 of the Guidelines.

(33) In addition, only indirect emission costs incurred for an electricity consumption of more than 1 million kWh per year and plant will be compensated.

(34) According to Belgium the threshold of 1 million kWh per year and plant aims to reduce administrative costs. The 1 million kWh represents about EUR 4,000 based on the 2012 CO2-price. The additional filter chosen by Belgium authorities is thus justified, due to its limited amount, the aim pursued (reduction of administrative costs) and its application being based on objective criteria.

(35) The aid does not cover all costs and maintains an incentive for beneficiaries to reduce electricity consumption. Moreover, due to the benchmarks the most efficient beneficiaries will get the highest proportion of their indirect ETS costs.

(36) The aid is thus proportional.

3.3.4 Cumulation

(37) Belgium provided a commitment that cumulation with aid from other schemes regarding the same eligible costs will not be possible.

3.3.5 Annual reporting, transparency and monitoring

(38) Belgium committed to follow the requirements of the Guidelines points 52 to 54 on reporting, transparency and monitoring of the proposed scheme.

4 CONCLUSION

(39) As the measure fulfils the conditions of the ETS Guidelines' Section 3.1 it is compatible with the internal market in accordance with Article 107(3)(c) TFEU.
(40) The Commission will publish this letter.\textsuperscript{5} If it contains confidential information, please inform the Commission within fifteen working days of its receipt. Otherwise you will be deemed to agree to publication of the full text.

Yours faithfully,

For the Commission

\textit{Joaquín ALMUNIA}

Vice-President

\textsuperscript{5} On http://ec.europa.eu/competition/elojade/isef/index.cfm