Subject: State aid SA.37084 (2013/N) - The Netherlands
Compensation for indirect EU ETS costs

Excellency,

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

1 PROCEDURE

(2) The Netherlands 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 "Subsidieregeling energie en innovatie" and "Kaderwet EZ-subsidies" and "Kaderbesluit EZ-subsidies" of the Economic Affairs Ministry.

(5) The budget for 2014 and 2015 is EUR 78 million per year. The 2014 budget is based on the 2012 CO2-price of 8 EUR/ton. The 2015 budget will be based on the 2013 CO2-price which is lower and is therefore expected to be less than EUR 78 million. For following years the budget will be set one year in advance.

(6) The measure shall cover the period from 2013 to 2020.

(7) If demand surpasses the budget the allocation will be proportionate.

2.2 Beneficiaries

(8) The beneficiaries are companies active in one of the sectors listed in Annex II of the ETS Guidelines. In addition the companies wishing to benefit from the aid must sign a covenant on energy efficiency. Companies can apply for compensation the year following that when costs are incurred.

2.3 Aid amount calculation

(9) 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.

(10) 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,\(^2\) as well as the maximum regional emission factor of Annex IV. The measure applies the aid intensity levels set out in point 26.

(11) 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.

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

3 ASSESSMENT OF THE MEASURE

3.1 Existence of aid

(13) 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.

(14) The measure is funded by the budget of the Netherlands. 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.\(^3\)

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

3.2 Lawfulness of aid

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

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\(^2\) 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.

\(^3\) Annex II of the ETS Guidelines
3.3 Compatibility with the internal market

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

(18) 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

(19) The measure is targeted at the objective of point 24 of the ETS Guidelines. The measure thus aims at a well-defined objective of common interest.

(20) As required by point 25 of the Guidelines the measure will only support undertakings active in one of the sectors or subsectors listed in Annex II.

(21) The measure also requires beneficiaries to sign a covenant committing to certain measures to improve energy efficiency. These covenants are open to all undertakings, without any restriction.

(22) The additional requirement therefore does not unduly restrict the scope of eligible applicants. 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 a provision of EU law.

(23) Therefore the aid is necessary.

3.3.2 Incentive effect

(24) 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.

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

3.3.3 Proportionality

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

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

(28) 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.

(29) The measure does not provide for full compensation, as this could remove the incentive to further reduce electricity consumption, in line with the maximum aid intensities set out in point 26 of the Guidelines.

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

(31) According to the Netherlands 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 the Dutch authorities is therefore justified, due to its limited amount, the aim pursued...
(reduction of administrative costs) and its application being based on objective criteria.

(32) 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 receive the highest proportion of their indirect ETS costs.

(33) The aid is thus proportional.

3.3.4 Cumulation

(34) The NL authorities have 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

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

4 CONCLUSION

(36) 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.

(37) The Commission will publish this letter. 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

Joaquín ALMUNIA
Vice-President

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4 On http://ec.europa.eu/competition/elojade/isef/index.cfm