EUROPEAN COMMISSION

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PUBLIC VERSION

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**Subject:** **State aid SA.36650 (2013/N) – Spain**
**Compensation for indirect EU ETS costs in Spain**

Sir,

## 1. PROCEDURE

(1) Following pre-notification contacts, by electronic notification dated 30 September 2013, the Spanish 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 part of their indirect emission costs, that is to say the costs resulting from the EU Emission Trading System ("ETS") passed on though the electricity prices.

## 2. DESCRIPTION OF THE MEASURE

(2) Spain intends to establish a scheme 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. Spain reported that the measure has its

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basis on the special and temporary measures for certain undertakings provided for in the ETS Directive[1], as amended by Directive 2009/29/EC[2].

### 2.1 Legal basis, budget and duration

(3) The Spanish authorities intend to establish the scheme through a Royal Decree. a draft of which was provided to the Commission.

(4) The measure will have a total budget of EUR 5 million. The measure will cover eligible costs from 1 January 2013 to 31 December 2015. The indicative annual budget provided by Spain will be EUR 1 million in 2013, EUR 1 million in 2014 and EUR 3 million in 2015.

### 2.3 Beneficiaries

(5) Annex II of the Commission's Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012 ("ETS Guidelines")[3] lists the sectors deemed to be exposed to a significant risk of carbon leakage due to indirect emission costs. The Spanish authorities confirmed that the eligible sectors under the Spanish scheme are the same as those listed in Annex II of the ETS Guidelines, including, for instance, aluminium production, manufacture of leather clothes and manufacture of paper and paperboard.

### 2.4 Aid amount calculation

(6) Spain has reported that the maximum aid amount payable per installation will be calculated according to the formulae provided in points 27 to 29 of the ETS Guidelines. Furthermore Spain has indicated that the maximum aid intensity will be 85% of the eligible costs as required under point 26 of the ETS Guidelines.

(7) If the available budget is insufficient to cover the total eligible aid requested (see Section 2.7. below), Spain will distribute the budget proportionally between the eligible beneficiaries.

### 2.5 Proportionality

(8) The Spanish authorities allege that the proposed ETS compensation scheme is proportional as:

(a) The methodology used to establish the maximum aid intensity and the maximum aid calculation is the one established in the ETS Guidelines.

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1 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

2 Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community, OJ L 140, 05.06.2009, p. 63.

3 OJ C 158, 05.06.2012, p. 4.

(b) The Spanish authorities have estimated that using the methodology in the ETS Guidelines would allow granting annual amounts of aid much higher than the annual budget of the scheme. For instance assuming a price of EUR 6 per tonne $CO_2$, the Spanish authorities have estimated that the ETS Guidelines would allow granting up to EUR 71.69 million each year. Assuming a price of EUR 20 per tonne $CO_2$, the allowed aid would be of EUR 238.96 million per year.

### 2.6 Cumulation

(9) Beneficiaries must report any national or Union's aid received or requested for the same eligible costs. The cumulation provisions in the Spanish scheme are the same as those provided in recitals 46 and 47 of the ETS Guidelines.

### 2.7 Granting mechanism

(10) The Spanish authorities will organise annual calls for interest for companies active in the eligible sectors listed in Annex II of the ETS Guidelines (see section 2.3). The aid will be paid the year when costs are incurred. Beneficiaries will need to submit proof of the costs actually incurred before 31 March of the following year. If the aid granted is higher than the costs incurred, the beneficiary will need to give back the difference.

### 2.8 Annual reports, transparency and monitoring

(11) The Spanish authorities have committed to following the requirements set out in points 48 to 54 of the Guidelines on transparency and monitoring.

## 3. ASSESSMENT OF THE MEASURE

### 3.1 Existence of aid

(12) 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.

(13) Under the scheme, certain undertakings that belong to a limited number of industrial sectors and subsectors referred to in recital 5 will receive direct grants from the State budget, thereby receiving an economic advantage not otherwise available at market conditions and which is also capable of strengthening their competitive position vis-à-vis undertakings which do not receive a similar advantage. The sectors and subsectors in which the potential beneficiaries are active are open to competition between undertakings established in and selling to other EU Member States than Spain. It follows that the scheme distorts or threatens to distort competition and affects trade between Member States. The support granted under the scheme therefore constitutes State aid within the meaning of Article 107(1) TFEU.

### 3.2 Lawfulness of aid

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

### 3.3 Compatibility with the internal market

(15) The Commission has assessed the compatibility of the scheme notified by Spain with the internal market on the basis of Section 3.1 of the ETS 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*

(16) According to point 24 of the ETS 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* $CO_2$ *costs in their electricity prices and the beneficiary is unable to pass on those costs to product prices without losing significant market share*'.

(17) The Spanish 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*

(18) According to point 25 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 II*' of the Guidelines.

(19) All sectors and subsectors eligible under the Spanish scheme and referred to in recital 5 are listed in Annex II of the Guidelines. Hence, the aid is necessary to realise the scheme's objective.

#### *3.3.3 Maximum aid intensity*

(20) 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.

(21) The aid intensities applied in the Spanish scheme are identical to those in the Guidelines.

### *3.3.4 Maximum aid amount calculation*

(22) The Spanish scheme uses the methodology established in points 27 to 30 of the ETS Guidelines.

### *3.3.5 Incentive effect*

(23) According to point 31 of the ETS 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*

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

(25) Spain has committed to applying 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. Moreover, the budget allocated to the scheme is well below the amount of aid that beneficiaries would be entitled applying the formulae provided in the ETS Guidelines. Therefore, the ETS compensation scheme is proportionate.

### *3.3.7 Cumulation*

(26) The Spanish authorities have committed to ensure that cumulation with aid from other schemes regarding the same eligible costs will not exceed the maximum aid amount established in the ETS Guidelines.

### *3.3.8 Annual reporting, transparency and monitoring*

(27) With regard to reporting, transparency and monitoring of the proposed scheme, the Spanish authorities have committed to following the requirements set out in points 48 to 54 of the Guidelines.

## 4. DECISION

The Commission has accordingly decided to consider the aid to be compatible with the internal market in application of the Commission's Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012, pursuant to Article 107 (3) c) of the Treaty on the Functioning of the European Union.

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President