Subject: State aid SA.38630 (2014/N) – Greece
National scheme for the compensation of indirect EU ETS costs

Sir,

1 PROCEDURE

(1) By electronic notification dated 16 April 2014, the Hellenic Republic 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.

2 DESCRIPTION OF THE MEASURE

(2) The Greek authorities intend 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.
2.1 Legal basis

(3) The Hellenic Republic intends to regulate the granting of the aid scheme through a ministerial decision, a draft of which was submitted to the Commission with the notification.¹

(4) The budget for aid will be set by the revenues coming from the auctioning of Greek emission allowances. The budget will be held by LAGIE, the market operator. In the case that annual auctioning revenues do not cover the total amount required for the payment of aid, the aid amount will be reduced or adjusted proportionately for all eligible undertakings. The annual budget will thus fluctuate with the CO2 price, and is estimated to be between EUR 14 million with a CO2-price of 5 EUR/ton to EUR 20 million with a CO2-price of 7.5 EUR/ton.

(5) LAGIE will administer eligibility checks and will notify the registration of beneficiaries to the beneficiaries' electricity suppliers. Electricity suppliers are to charge beneficiaries the agreed retail tariff, including indirect CO2 costs, less the calculated aid amount. Electricity suppliers are then to recover fully from LAGIE the aid amount granted to the beneficiary.

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

2.2 Beneficiaries

(7) The beneficiaries are companies in the Hellenic Republic active in one of the sectors listed in Annex II of Commission’s Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012 (hereinafter ‘ETS Guidelines’)². Companies can apply for compensation the year following that when costs are incurred.

2.3 Aid amount calculation

(8) 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.

(9) The measure applies the definitions of Annex I of the ETS Guidelines for all the elements of the two formulae. It applies the electricity consumption efficiency benchmarks defined in Annex III³, as well as the maximum regional emission factor of Annex IV. The measure applies the aid intensity levels set out in point 25.

¹ The Greek authorities subsequently submitted drafting amendments to the ministerial decision.
² OJ C 158/4, 05.06.2012.
The Greek authorities have stated that 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

The Hellenic Republic considers that the support granted under the scheme constitutes State aid within the meaning of Article 107 (1) of the Treaty on the Functioning of the European Union (TFEU).

The Commission has assessed if Article 107(1) 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.

The measure is funded by revenues from the auctioning of emission allowances, which represent State resources. 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.

Based on the above, the Commission considers that the scheme constitutes State aid within the meaning of Article 107 (1) TFEU.

3.1.1 Granting Methodology

The Greek authorities have clarified that suppliers are to receive no remuneration for acting as intermediaries in the process of granting aid. As a result, electricity suppliers receive no economic advantage. Based on this, the Commission considers that there is no State Aid to electricity suppliers within the meaning of Article 107 (1) TFEU in the methodology for granting aid.

3.2 Lawfulness of aid

By notifying the scheme before its implementation, the Hellenic Republic has fulfilled its obligation according to Article 108(3) TFEU. Further, the Greek authorities have committed to notifying any amendment that would constitute a modification of the present aid scheme.

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.

4 Annex II of the ETS Guidelines
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 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 the Hellenic Republic (see paragraph (7) above).

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.

The agreements in the notified scheme are open to all potential beneficiaries, without any restriction. This is therefore consistent with the underlying objective of section 3.1 of the ETS Guidelines on the prevention of a significant risk of carbon leakage.

Hence, the Commission concludes that the aid is necessary to realise the scheme’s well-defined objective of common interest.

3.3.2 Proportionality

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

The measure applies the aid intensities and benchmarks of the Guidelines. 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.

The maximum aid intensities 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. As noted above (paragraph (4)), the aid intensity may be lower if ETS auction revenues are lower.

The measure does not provide for full compensation, as this could remove the incentive to further reduce electricity consumption. Moreover, due to the
benchmarks the most efficient beneficiaries will get the highest proportion of their indirect ETS costs.

(28) The Commission thus concludes that the aid is proportional.

3.3.3 Incentive effect

(29) According to point 31 of the Guidelines, if all the conditions set out in sections 3.3.1 and 3.3.2 above are fulfilled, which is the case here, the aid is presumed to have an incentive effect.

3.3.4 Cumulation

(30) The scheme's provisions on cumulation are in line with the requirements set out in paragraph 47 of the Guidelines.

3.3.5 Annual reporting, transparency and monitoring

(31) The Greek authorities have committed to following the requirements set out in points 52 to 54 of the Guidelines on reporting, transparency and monitoring of the proposed scheme.

4 Conclusion

(32) As the measure fulfils the conditions of the ETS Guidelines' Section 3.1, the Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union.

(33) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://ec.europa.eu/competition/elojade/isef/index.cfm.

Yours faithfully,
For the Commission

Joaquin ALMUNIA
Vice-President