Hungarian position for the Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post 2021

The Hungarian authorities have the following comments about the draft ETS guidelines as published by the European Commission ("Commission") on 14 January 2020.

1. The list of sectors deemed to be exposed to a genuine risk of carbon leakage due to indirect emission costs as stated in Annex 1 of the draft Guidelines is shorter than the list of sectors considered potentially eligible by the Consultancy Report (Table 1). This is a result of different eligibility criteria used by the two documents, but the Hungarian authorities could not identify an explanation for this difference.

Moreover, the Explanatory Note published by the Commission as part of the consultation states (section 2.1) that the Commission might review the list proposed in the draft Guidelines to include more sectors in the light of the feedback of the public consultation. However, it is not clear from the explanatory note what is required to be proven by/about the relevant sectors to prove their eligibility. Although the Consultancy Report is practically an impact assessment of the draft Guidelines, due to the difference in methodology, it cannot serve its purpose. Due to this, the criteria applied in the draft Guidelines for establishing the list in Annex 1 seem arbitrary.

In addition, the sector fiches referred to in the Consultancy Report have not been published by the Commission. It would greatly help the transparency of how the Commission compiles the Annex 1 list if the sector fiches were published.

The Hungarian authorities therefore request the Commission to include in Annex 1 of the Guidelines more sectors identified by the Consultancy Report as being at risk, to clarify the criteria on the basis of which it would consider the expansion of the list in Annex 1 of the Guidelines, and to publish the sector fiches referred to in the Consultancy Report.

2. Regarding the conditions in the draft Guidelines concerning the optional transitional free allowances for the modernisation of electricity generation in accordance with Article 10c of the ETS Directive, the Hungarian authorities suggest that the following key items should be clarified in the draft Guidelines.

Concerning paragraph 38, the Hungarian authorities suggest that it should be clarified in the Guidelines that the term "*another associated operator*" mentioned in Article 10c (6) of Directive 2003/87/EC can mean any other legal entity that is willing to decommission the corresponding amount of electricity-generation capacity with higher emission intensity, even if it does not belong to the same company group as the beneficiary of the project.

Paragraph 41 states that aid can only be paid out if it is demonstrated that the investment has been carried out. The Hungarian authorities believe that this condition, if interpreted strictly, could mean that free allocation can only be granted after the investment has been completed. This would be difficult in the case of investments that need multiple years to be completed.

As a result, the Hungarian authorities request the Commission to clarify in paragraph 41 that in the case of projects implemented over a number of years, accounts can be settled (aid can be paid out) continuously or on an annual basis, while the implementation of the investment is ongoing.

The Hungarian authorities propose the following amended text to paragraph 41: "*Aid can be paid out in the form of allocations to operators only where it is demonstrated that an investment selected in accordance with the rules of a competitive bidding process has been carried out.* ***In the case of investments that require multiple years for completion, aid can be paid out continuously after the implementation of the investment has started but is still in progress. In the latter case, the free allocation of allowances can be carried out at least once a year, in the following year, based on the relevant costs already occurred.***"

Paragraph 44 uses the term "*relevant costs*" of the investment as the basis of calculating aid intensity. It is unclear for the Hungarian authorities what it exactly entails as the standard state aid terminology is eligible/investment costs. The Hungarian authorities would like the Commission to clarify in the draft Guidelines what relevant costs entail, by changing the term to eligible/investment costs and/or explaining the content/scope of relevant costs. The Hungarian authorities suggest that the definition of the term "*relevant costs*" should cover all costs confirmed to be related to the preparation and execution of the investment.

Finally, there is a translation mistake in the Hungarian version of the document. In Paragraph 14(10), the term "*zone*" should be translated as "*övezet*", not as "*zóna*". This is the terminology consistent with Regulation (EU) 943/2019.