Danish Ministry of Climate,
Energy and Utilities

Danish response to the Commission's public consultation on the draft ETS State Aid Guidelines

In general, the Danish government can support many of the steps taken in relation to modernize the State Aid Guidelines for indirect cost compensation for energy-intensive industries under the EU ETS (ETS Guidelines).

It is important that the revision of the ETS State Aid Guidelines support a cost-effective transition towards climate neutrality in the EU. The objective of the Commission to decarbonise the EU energy systems within the framework of The European Green Deal as a mean to combat climate change and to promote a more sustainable economy and society as a whole could therefore be supported.

Aside from this, the Danish government has some comments to the proposal. The comments that are described more in details below focus on the following topics:
- The "future" of the state aid guidelines
- The list of sectors included in annex II
- Access to renewable energy supply contracts
- Fulfilling the 25 percent target.

The future of the state aid guidelines
While acknowledging the importance and necessity of addressing carbon leakage risks – and ensuring a level playing field with third countries with less climate ambition than the EU – it is still important to emphasise, that the guidelines cannot, and has never been intended to, be used as an opportunity to delay the efforts, Member States should put in place in relation to a transition to energy supplies based on renewable energy. The state aid rules was for that reason in ETS phase III also designed as a transitional measure only.

Denmark and a considerable number of other EU Member States have joined the Powering Past Coal Alliance, a coalition of ambitious states, corporations and organisations who deem it possible and urgent to ban fossil fuels from electricity production within a limited number of years. These ambitions to phase out coal in the electricity production points to the fact that it will be a likely possibility in the European Union to provide electricity supplies based on renewable energy to industries within a period that reaches not very far beyond ETS phase IV.

On those grounds, the Danish government would again urge the Commission to design the guidelines in a way, which prepares the phasing out of ETS state aid as a temporary measure by the end of ETS phase IV in 2030 or soonest possible thereafter – and ensure that aid schemes are devised, conducted and completed on a strict and temporary basis. This can e.g. be achieved by increasing the pace, at which the maximum aid intensity factor is reduced from 75 percent in 2020 to a zero or near-zero percentage by 2030.

A targeted approach for Annex II of the revised guidelines
Denmark has earlier encouraged the Commission to adopt a targeted approach when deciding which sectors/industries should be included in Annex II on sectors deemed to be exposed to a genuine risk of carbon leakage due to indirect emission costs. The Danish government acknowledges that a transparent and targeted approach has been chosen in this matter and fully support the proposal in this respect.

Thus, special attention should be paid to sectors where large and small businesses compete with each other within the internal market. The granting of state aid in these sectors will often provide a disproportional advantage to large industry players over their minor competitors, which may cause risks for business, growth and consumer prices alike.

A restrictive approach will also be appropriate towards sectors that may benefit from horizontal state aid rules, such as the General Block Exemption Regulation (GBER). Such regulations allow for more flexible national state aid schemes and should be given preference in order to limit the number of national aid schemes that companies need to know, understand, apply for and administer.

The Danish Government is aware of the fact that other stakeholders had argued for more sectors to be included in the Annex. However, we would still recommend the Commission to continue to insist that inclusion of more sectors than the present requires thorough documentation.

Access to renewable energy supply contracts
The existing guidelines state that no state aid must be granted in case of electricity supply contracts that do not include any CO2 costs. Energy supply choices for carbon leakage exposed sectors has therefore been deliberately limited to fossil fuelled energy production.

The Danish Government finds it therefore very positive that the proposal now incorporates equal treatment of all sources of electricity by removing existing restrictions on supply contracts for energy from renewable energy sources. This is crucial to ensure that the guidelines are no longer biased towards industry consumption of fossil-fuelled energy, effectively preventing both industry and suppliers the opportunity to promote green energy transition on economic viable terms.

To ensure that this important change will have effect in practice, the Danish government urges the Commission to reject any future proposition of ETS state aid schemes that fail to apply equal conditions for all energy supply contracts, including renewables. The Commission must make sure that Member States will be attentive to this change of rules when seeking approval for aid schemes for the upcoming ETS phase IV. It cannot be up to Member States to decide whether the provisions on equal treatment should be applied to their full extend, nor would it be seem possible to conceive circumstances where exemptions from the rule could be considered justified.

Fulfilling the 25 percent target in article 10a (6) of the ETS directive
For Denmark, it is a matter of considerable concern that the proposal do not give better attention to the explicit objective of article 10a (6) which states, that "*Member States shall also seek to use no more than 25 percent of the revenues generated from the auctioning of allowances for the financial measures*".

It should be noted with severe apprehension that this objective has been subject to growing disregard in recent years. According to the Commission's own data, the volume of state aid measures within Member States has reached surprising and unforeseen levels of up to 60 percent of revenues generated from the auctioning of allowances. Clearly, state aid schemes of such proportions must be considered far beyond the intended scope of article 10a (6).

Recognizing the non-binding character of the target value agreed upon, the Danish government suggests that the Commission reviews the proposal to include measures that will address this issue effectively.

Without prejudice to other approaches that the Commission may want to explore, Member States should be obliged to apply a lower degree of aid intensity than the allowed 75 percent, in cases where this is necessary to bring the volume of aid grants in line with the 25 percent-objective. To avoid unreasonable effects of outlier years, this measure could be applied automatically after averaging e.g. the recent three calendar years of an aid scheme's duration.

In this way, Member States would have a better incentive to make discerning judgements when putting forward envisaged state aid schemes and when assessing a scheme's economic scope and effect. In addition, Member States would be motivated to be more judicious with their decision on when and where to apply aid measures, bringing the schemes in line with the need of a targeted and measured approach to state aid.