Ministry of Economic Affairs
and Employment of Finland

European Commission
DG Competition

Finland's comments on draft ETS State Aid Guidelines

Submitted on March 10, 2020.

Finland welcomes the draft ETS State Aid Guidelines and thanks the Commission for the opportunity to provide written comments. Please find below our comments on the following topics:

1) Conditionality: energy saving obligation in Energy Efficiency Directive,
2) Conditionality: other comments,
3) Maximum level of aid,
4) Calculation of aid,
5) Eligible sectors.

<u>Conditionality: energy saving obligation in Energy Efficiency Directive</u>

Energy efficiency has long been one of the key pillars in Finland´s energy policy. We certainly acknowledge the good purpose that the conditionality provisions are trying to achieve. Given the complexity of the issue, however, we are not yet able to estimate whether the provisions are implementable in a meaningful and practical way. What we can already say, however, is that we are extremely worried about the specifics of the Commission´s proposal.

Our main concern relates to the interaction with Energy Efficiency Directive (EED). Article 7 of EED requires Member States to find a certain amount of new annual energy savings over the period 2021—2030. EED gives Member States two principal options to fulfill the obligation. However, savings stemming from mandatory EU-wide energy efficiency measures (e.g. Ecodesign and Energy Labelling) cannot be counted towards the energy saving obligation of Member States.

One alternative to fulfill the abovementioned energy saving obligation is by way of an energy efficiency obligation scheme (Article 7b of EED). This option is used by Finland. Our Energy Efficiency Agreement Scheme covers a significant part of large industrial installations, including most of the beneficiaries to our current indirect cost compensation scheme.

It is now unclear to us whether the energy savings stemming from investments, which are implemented by beneficiaries to indirect cost compensation scheme as per Paragraph 54(a) or Paragraph 54(c), can be included in the Member States' abovementioned energy saving obligation. In other words, are those savings seen resulting from EU legislation (ETS state aid guidelines) or Member States' own actions?

Since the new ambitious Article 7 target of the revised EED was agreed on by the Member States in a situation where all these savings were eligible, this matter is of utmost importance to us.

We are of the strong view that, regardless of the proposed conditionalities, these energy savings continue stemming from the Member States´ own actions. Firstly, granting indirect cost compensation is purely voluntary to Member States, and thus constitutes a policy measure of that Member State. This is in line with granting subsidies for energy efficiency investments – governed by EU state aid rules, which are purely voluntary to run the national subsidy scheme. Secondly, conditionality provisions would drive the investment decisions only partially, with the Energy Efficiency Agreement Scheme playing a significant role.

Energy efficiency directive has been prone to different interpretations, and therefore the Guidelines need to address this issue explicitly. At the time of possibly adopting a national compensation scheme, it is necessary to have certainty of implications to other policy areas. We need to know in advance that the proposed conditionality provisions do not change the rules of the game for Article 7. Leaving this issue to the compliance checks under EED is simply too late.

Conditionality: Other comments

As mentioned earlier, we are not yet able to estimate whether the provisions are implementable in a meaningful and practical way. For example, option 54 (a) raises questions, such as the fact that the quality of energy auditing reports may vary from one auditor to another (objective and non-discriminatory obligations). Further flexibility in the conditionality provisions might thus be beneficial.

Paragraphs 53 and 54: The length of these obligations should be proportionate to the number of years in which the beneficiary receives aid. If a Member State grants aid only in 2021 and ceases the aid scheme after that, for example, the obligations cannot bind beneficiaries forever.

Paragraph 54: We suggest the below amendment:

> "Member States also commit to monitoring that beneficiaries covered by the obligation to conduct an energy audit **~~under Article 8(4)~~** **under Article 8** of the Energy Efficiency Directive will: […]"
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> Justification: Reference to Article 8(4) of EED is ambiguous and should be avoided. This follows from Article 8(6) of EED, which states that certain enterprises shall be exempted from the requirements of Article 8(4).

Maximum level of aid

It is clear that the Guidelines need to find a delicate balance between the three main objectives: 1) minimising the risk of carbon leakage, 2) minimising competition distortions in the internal market (especially subsidy raises) and 3) maintaining the steering effect of EU ETS.

Finland thinks that the balance, as presented in the draft Guidelines, leans too much towards minimising the risk of carbon leakage. The other two objectives should have a stronger weight, and therefore the maximum aid amounts should be lower. We suggest to reduce the value of maximum aid intensity and to make it degressive. In addition, we support the Commission´s approach to update benchmark values for each five-year period.

The principle of moderate maximum aid should also apply to the possibility to limit indirect costs as a function of gross value added (GVA). The GVA cap should be set at a relatively low level to minimise competition distortions.

Calculation of aid

We support determining the baseline output based on the year in which the indirect costs occurred. This is a significant improvement compared to the 2005—2011 period of the current guidelines.

The CO2 emissions factor is determined for different geographic areas, with the Nordic region comprising only Sweden and Finland. We think that this region – as well as the underlying methodology – does not reflect real market conditions. Finland is part of the Nordic and Baltic power markets consisting of seven countries, which should form one geographic area in the Guidelines. At the very least, the Nordic region should include Sweden, Finland, Denmark and Norway, as is the case in the current guidelines.

Eligible sectors

We think that aid should only be granted to sectors that are truly at risk of significant carbon leakage. We therefore welcome the fact that the draft list of eligible sectors is shorter than in the current guidelines.

It is important, however, that any further assessments of eligible sectors rely on meaningful and representative data. The industrial association representing the manufacture of nickel in Finland has brought up a concern that the data used in the quantitative assessment of the (sub)sector does not include data of Finnish installations. That is hardly meaningful in any further assessments, given that Finland is such a significant manufacturer in the European scale.