Targeted Consultation of Interested sectors on the Revision of the State aid Guidelines in the context of the amended EU Emissions Trading Scheme

Consultation paper

1. INTRODUCTION

In 2005 the European Union Greenhouse Gas Emission Trading Scheme (EU ETS) was introduced to reduce CO_2 emissions in a cost-effective way and combat climate change. Directive 2009/29/EC[1] amending Directive 2003/87/EC[2] (ETS Directive) improved and extended the EU ETS in the third trading period 2013-2020 (phase 3). Phase 3 of the EU ETS is based on a stricter and single EU-wide cap, the allocation of allowances are made on transitional fully harmonised EU-wide basis and wider auctioning of allowances have been progressively introduced.

Article 10a(6) of the ETS Directive foresees that Member States may adopt financial measures in favour of sectors determined to be exposed to a significant risk of carbon leakage due to costs relating to greenhouse gas emissions passed on in electricity prices ("indirect emissions costs"), in order to compensate for those costs and where such financial measures are in accordance with State aid rules.

On that basis, the Commission adopted in 2012 the Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012 ("2012 ETS Guidelines") to allow Member States to compensate some electro-intensive undertakings active in a sector exposed to international trade, for part of the higher electricity costs expected to result from the EU ETS in the period 2013-2020.

The ETS Directive has been revised for its next trading period 2021-2030 (phase 4) with the adoption of Directive (EU) 2018/410[3] to enable it to achieve the EU's 2030 emission reduction targets. The new ETS Directive states in its recitals that *"[i]t would be desirable that Member States partially compensate, in accordance with State aid rules, certain installations in sectors or subsectors which have been determined to be exposed to a significant risk of carbon leakage because of costs related to greenhouse gas emissions passed on in electricity prices […]*."[4]

Under the revised Directive, Article 10a(6) now foresees that "*Member States should adopt financial measures […] in favour of sectors or subsectors which are exposed to a genuine risk of carbon leakage due to significant indirect emissions costs that are*

[1] 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, 5.6.2009, p.63.

[2] 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.

[3] Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (Text with EEA relevance.)

[4] Recital 13 of Directive 2018/410.

actually incurred from greenhouse gas emission costs passed on in electricity prices, provided that such financial measures are in accordance with State aid rules, and in particular do not cause undue distortions of competition in the internal market. Where the amount available for such financial measures exceeds 25 % of the revenues generated from the auctioning of allowances, the Member State concerned shall set out the reasons for exceeding that amount. Member States shall also seek to use no more than 25 % of the revenues generated from the auctioning of allowances for the financial measures referred to in the first subparagraph. […] Those measures shall be such as to ensure that there is adequate protection against the risk of carbon leakage, based on ex-ante benchmarks for the indirect emissions of CO_2 per unit of production. Those ex ante benchmarks shall be calculated for a given sector or subsector as the product of the electricity consumption per unit of production corresponding to the most efficient available technologies and of the CO_2 emissions of the relevant European electricity production mix" At their expiry on 31 December 2020, the 2012 ETS Guidelines will therefore need to be updated, reflecting the new provisions of the ETS Directive 2003/87/EC, as revised by Directive 2018/410/EU.

The abovementioned provisions of the ETS Directive are based on the premise that financial support for indirect emission costs can be highly distortive, if it is not properly targeted to sectors that are at significant risk of carbon leakage due to CO_2 costs passed on in electricity prices and limited to the additional cost stemming from ETS Phase 3 for the most efficient firms. Otherwise, aid would introduce economic distortions within the EU economy and have a detrimental impact on the efficiency of the EU ETS.

Therefore, the primary objective of State aid control in the context of the implementation of the EU ETS is to ensure that State aid measures will address the risk of carbon leakage due to indirect emission costs (thus resulting in a higher overall level of environmental protection) and to ensure that the positive effects of the aid outweigh its negative effects in terms of distortions of competition in the internal market, while preventing overcompensation and ensuring a level playing field across the EU.

The questionnaire is available in English and replies can be submitted in all official EU languages. Given possible delays in translating comments submitted in certain languages, translations of the replies in one of the Commission’s working languages (English, French or German) would be welcome.

2. WHY WE ARE CONSULTING

The purpose of this consultation is to gather the necessary information enabling for the determination of sectors exposed to carbon leakage risk due to the indirect emissions costs they have to bear. The purpose of the consultation is also to gather empirical information enabling for the determination of the level of compensation that should be granted to sectors exposed to carbon leakage risk due to indirect emissions costs.

Any interested stakeholder who may be willing to make a claim that a specific sector should be eligible for the compensation or not is invited to reply to the questions below and to provide as much as possible relevant empirical data. The Commission is primarily interested to receive information on the sectors listed in the Annex 1 to this questionnaire.

The overarching objective is that the data used should have as complete and comprehensive coverage of the sector as possible and provide an accurate representation of the sector, its exposure to carbon leakage risk and its needs as regards compensation of indirect emission costs.

The exposure of a sector to carbon leakage risk will be determines primarily on the basis of its intensity of trade with third countries and its emission intensity. The same data will be used as those used by the Commission to determine the trade intensity and the emission intensity of sectors to establish the Carbon Leakage List for 2021-2030. In addition, the Commission will also evaluate the risk of carbon leakage by assessing the following criteria:

- Market characteristics of the sector, including its ability to pass on higher carbon costs on to customers;
- Profit margins of EU undertakings active in the sector
- Scope for energy efficiency investments in the sector
- Inter- and intra-sectors competition
- Diversity of production processes within the sector with some processes implying higher shares of indirect emissions costs

The quality of the data provided will have an impact on the ability for the Commission to determine the exposure to carbon leakage risk of a given sector. If necessary, the Commission will invite stakeholders for interviews to demonstrate further the risk of carbon leakage faced by a given sector.

Quality criteria for data submission

The quality of data received through this questionnaire is an important aspect for the Commission's decision as to whether a given sector is at risk of carbon leakage, and, if so, to what extent. The following criteria are used to determine the quality of data submitted:

- Representativeness of data:
    - The data used should cover the whole of the 4-digit NACE[5] sector being assessed, and only that sector.
        - If coverage of the whole sector is not possible, the part of the sector that is included should preferably account for 85% of turnover in the EU ETS area.
    - The geographic scope of the data and calculations should be the European Economic Area (EU28 plus Iceland, Liechtenstein, Norway), which covers the same 31 countries participating in the EU ETS.
        - If coverage of the whole EEA is not possible, those countries that are included should preferably account for 85% of sector turnover in the EU ETS area and trade (exports + imports) with non-EU ETS countries.
    - All installations that are covered by the EU ETS, and their direct emissions, should be included.
        - If coverage of all installations is not possible, those installations that are included should preferably account for 85% of direct emissions from the sector.

[5] According to NACE Rev. 2: https://ec.europa.eu/eurostat/ramon/nomenclatures/index.cfm?TargetUrl=LST_NOM_DTL&StrNom=NACE_REV2&StrLanguageCode=EN&IntPcKey=&StrLayoutCode=HIERARCHIC&IntCurrentPage=1

- Robustness of data
  - Data should come from reliable and trustworthy sources, preferably official sources. Official data sources per indicator are listed in Annex 2 below. Where this is not the case, the source and/or derivation of the data should be clear, transparent and traceable.

- Consistency of the data
  - The data should measure the concept/indicator they purport to measure, be consistent with both standard economic definitions and methods, and the other supporting data. Relevant indicators are provided in Annex 2 below.
  - Where multiple sources are combined, their geographic, sector, and installation coverage should be consistent.

- Time period
  - Data provided in support of an application should be for the years 2014, 2015 and 2016[6] (where relevant the data period may be complemented by more recent data) which is the time period to be covered in the qualitative assessments.

- Traceability of calculations
  - A clear description of the method used to calculate the data values for an indicator must be provided. The method must be transparent, easy to follow and replicate, and the data used must be readily accessible.

Non-sectoral respondents are welcome to contribute even if they cannot deliver the same quality of data.

3. How to contribute to the consultation

Interested parties are invited to respond to the questionnaire. Replies can be submitted in all official EU languages. Given possible delays in translating comments submitted in certain languages, translations of the replies in one of the Commission's working languages (English, French or German) would be welcome.

The deadline for the replies is **9 April 2019**. Replies should be sent to the European Commission, DG COMP, State aid registry, 1049 Brussels, with the reference **"HT 582"**, preferably via e-mail to Stateaidgreffe@ec.europa.eu.

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6 This time period mirrors the one set out in Article 10b) of the ETS Directive for determining sectors deemed to be at risk of carbon leakage on the basis of a qualitative assessment.

QUESTIONNAIRE

ABOUT YOU

For the rules on personal data protection on the EUROPA website, please see http://ec.europa.eu/geninfo/legal_notices_en.htm#personaldata

The data and information submitted in reply to this questionnaire will be analysed by Commission's contractors. The Commission's contractors are bound by a specific contractual clause for any processing operations carried out on your data on behalf of the Commission. The contractors shall not disclose confidential information to anyone other than the Commission. The information provided in performance of the contract shall be used solely for the purpose of performing the tasks, duties and obligations specified in the contract.

Please provide your contact details below.

Name	
Organisation Represented	
Location (country)	
E-mail address:	

1. Please describe the main activities of your company/organisation/association, if applicable.

2. Please specify whether you have received indirect emissions cost compensation in the past, and, if so, the amount per year:

2012:	
2013:	
2014:	
2015:	
2016:	
2017:	
2018:	

3. Please also specify how the share of indirect emissions costs over the total energy and operating costs of your undertaking has evolved since 2012 (if applicable).

4. For the sector in which you are active or that you represent, which entity should be the contact point for the Commission at EU level?

If you consider that a specific sector should or should not be on the list of eligible sectors for the Phase 4 of the EU ETS, please fill the following questionnaire. When replying to the following questions, please substantiate your answers with all the data underlying your statement.

Sectoral Eligibility

1. What are the market characteristics of the sector concerned affecting the risk of carbon leakage due to indirect emissions costs? Please substantiate your answer by providing in particular data on output prices compared to input/production costs; expected growth of demand and trade patterns (import levels and trends).

2. To what extent are undertakings in the sector able to pass higher carbon costs on to their customers? Please substantiate your answer by providing in particular data on the bargaining position of the sector, and whether EU producers in the sector should be viewed as price takers.

3. What are the profit margins of EU undertakings in the sector as a potential driver for long-run investment or relocation decisions? Please substantiate your answer by providing in particular projections for future costs/prices/profit margins, data on the investment in the sector in the EU, the net trade balance and the business demography in the sector.

4. To what extent is there a scope for energy efficiency investments in the sector, the incentives for which could be distorted by granting compensation for indirect emissions costs? Please substantiate your answer by providing in particular the electricity consumption intensity of the sector, its indirect emissions intensity, its current fuel mix, the penetration of best available technologies in the sector and the opportunity costs of foregone investment in existing technologies.

5. To what extent are the products of the sector substitutable with other products (inter-sector competition), the producers of which may be eligible for indirect emissions cost compensation?

6. To what extent are companies in the sector competing with undertakings based in other EU Member States? How significant is the risk of competition distortions in the sector if not all of the relevant Member States were to grant compensation for indirect costs or if they do so to a different degree?

7. To what extend do undertakings in the sector diverge as regards their share of direct vs indirect emissions? In particular: are undertakings in the sector using different production technologies which lead to a situation where some undertakings face a higher share of indirect emissions costs (electrification of production processes)?

Aid intensity and degressivity

8. Depending on the sector's overall market characteristics, what level of indirect emission costs compensation would be necessary to address the carbon leakage risk?

9. What level of aid intensity would best maintain the sector's incentives for energy efficiency investments? What parameters besides the efficiency benchmarks[7] should be used to promote sector's incentives for energy efficiency investments?

[7] The calculation formula defined under the 2012 ETS Guidelines refer to electricity consumption efficiency benchmark to establish the level of aid that can be granted to compensate indirect emission costs. These benchmarks represent the product-specific electricity consumption per tonne of output achieved by the most electricity-efficient methods of production for the product considered.

10. What level of aid intensity would best safeguard (minimise) the risk of competition distortions between different undertakings, i.e. due to the fact that some Member States would be able to grant full compensation whilst other may decide to grant no compensation or due to the gap between the treatment of sectors offering substitutable products?

11. How would a degressive indirect emissions cost compensation, e.g. starting at 75% of the aid intensity, affect the risk of carbon leakage in the sector?

12. How would a degressive cost compensation, e.g. starting at 75% of the aid intensity, affect the sector's incentives for energy efficiency improvements?

13. How would a degressive cost compensation, e.g. starting at 75%, affect the risk of competition distortions between different undertakings, e.g. due to the fact that some Member States would be able to grant full compensation whilst others may decide to grant no compensation or due to the gap between the treatment of sectors offering substitutable products?

14. Based on the situation of the sector concerned, what is the likelihood that – following the update of the efficiency benchmarks - further efficiency gains will be possible?

15. What are the merits of modulating the aid intensity based on the different sectors' trade intensity?

16. What was the baseline output of the companies of your sector observed over Phase 3 of the EU ETS? How did it compare to actual output? Please provide output figures.

17. How do you expect the output of the companies of your sector to evolve during Phase 4 of the EU ETS? Please provide output figures.

18. What are the merits of limiting the total amount of indirect emissions costs to be sustained by the beneficiary based on a certain percentage of the beneficiaries' gross value added (GVA) to address a particularly high carbon risk in a limited number of sectors?

OTHER ISSUES

Do you have any additional comments on the above issues?

Please provide copies of any documents or studies which may be relevant to support your submissions. Should you need more space to reply to the questions, do not hesitate to attach annexes.

☐ Please indicate whether the Commission services may contact you for further details on the information submitted, if required (tick box to confirm "Yes").

THANK YOU FOR RESPONDING TO THIS QUESTIONNAIRE.

ANNEX 1: LIST OF SECTORS

NACE-4	Sector name
14.11	Manufacture of leather clothes
24.42	Aluminium production
20.11	Manufacture of industrial gases
20.13	Manufacture of other inorganic basic chemicals
24.43	Lead, zinc and tin production
17.11	Manufacture of pulp
07.29	Mining of other non-ferrous metal ores
08.99	Other mining and quarrying n.e.c.
17.12	Manufacture of paper and paperboard
24.10	Manufacture of basic iron and steel and of ferro-alloys
20.17	Manufacture of synthetic rubber in primary forms
24.51	Casting of iron
20.60	Manufacture of man-made fibres
19.20	Manufacture of refined petroleum products
24.44	Copper production
20.16	Manufacture of plastics in primary forms
13.10	Preparation and spinning of textile fibres
05.10	Mining of hard coal
24.45	Other non-ferrous metal production
23.31	Manufacture of ceramic tiles and flags
20.12	Manufacture of dyes and pigments
13.95	Manufacture of non-wovens and articles made from non-wovens, except apparel
23.14	Manufacture of glass fibres
27.20	Manufacture of batteries and accumulators
20.14	Manufacture of other organic basic chemicals
10.62	Manufacture of starches and starch products
20.15	Manufacture of fertilisers and nitrogen compounds
23.43	Manufacture of ceramic insulators and insulating fittings
10.41	Manufacture of oils and fats
27.31	Manufacture of fibre optic cables
08.91	Mining of chemical and fertiliser minerals
11.06	Manufacture of malt
16.21	Manufacture of veneer sheets and wood-based panels
23.11	Manufacture of flat glass
07.10	Mining of iron ores
05.20	Mining of lignite

ANNEX 2: INDICATORS AND DATA SOURCES

Indicator	Units	Official source	Measure	Sector detail	Time period	Comment
Market characteristics						
Output prices	Index	Eurostat Short-term business statistics	Producer prices -Domestic market -Non-domestic market Import prices	NACE 4-digit (Rev. 2)	2000-18 Pre 2000 data are patchy	
Input prices	Index	Eurostat Short-term business statistics	Producer prices -Domestic market -Non-domestic market Import prices Total purchases of goods and services	NACE 4-digit (Rev. 2)	2000-18 Pre 2000 data are patchy	
	Euros	Eurostat structural business statistics (SBS) Supply and Use tables	Purchases of inputs	NACE 4-digit (Rev. 2)	2008 – most recent year (2018?) Data pre-2008 on NACE	
	euros			NACE 2-digit	annual	Potentially use to weight Eurostat Short-term business statistics to derive input price index
Turnover	Euros	Eurostat Europroms database	Sold production	8-digit Prodcom	1995-2018	First four digits of Prodcom code provide the corresponding NACE sector
		Eurostat structural business statistics (SBS)	Turnover	NACE 4-digit (Rev. 2)	2008-most recent year (2018?) Data pre-2008 on NACE Rev. 1.1	Eurostat SBS used to help fill gaps.
GVA	Euros	Eurostat structural business statistics (SBS)	Value added at factor cost	NACE 4-digit (Rev. 2)	2008-most recent year (2018?) Data pre-2008 on NACE Rev. 1.1	

Indicator	Units	Official source	Measure	Sector detail	Time period	Comment
Imports & Exports	Euros	Eurostat Europroms database	Imports by value or volume	-Combined Nomenclature 8-digit -CPA (2008) 4-digit (correspond to NACE Rev.2)	1988-2018	
Turnover/GVA by firm size	Euros	Eurostat structural business statistics-SMEs	Turnover, by firm size band Value added at factor cost, by firm size band	NACE 2-digit and 3-digit (Rev. 2)	2006-most recent year	
Employment by firm size	Number	Eurostat structural business statistics-SMEs	Persons employed, by firm size band	NACE 2-digit and 3-digit (Rev. 2)	2006-most recent year	
Supply chain	Euros	Eurostat Symmetric Input-Output tables	Purchases of intermediate inputs from other sectors; Sales of output to other sectors	NACE 2-digit	Annual, 2008-18	
Domestic demand	Euros	Eurostat Europroms database	Apparent domestic demand	Presented at NACE 4-digit	1995-2018	Calculated as: Production + Imports-Exports, using data from Eurostat Europroms database
Foreign ownership	Euros, number	Eurostat structural business statistics – Foreign controlled EU enterprises (EU FATS) database	-# enterprise -Turnover -Value added -Persons employed -Various others	NACE 2-digit (Rev. 2)	2008-most recent year	

Indicator	Units	Official source	Measure	Sector detail	Time period	Comment
Profit margins						
Profit margin	%	Eurostat structural business statistics (SBS)	Gross operating rate	NACE 4-digit (Rev. 2)	2008 – Most recent year (2018?) Data pre-2008 on NACE Rev. 1.1	Derived from data on turnover, GVA and labour costs.
Turnover	euros	Eurostat Europroms database	Sold production	8-digit Prodcom	1995-2018	First four digits of Prodcom code provide the corresponding NACE sector
		Eurostat structural business statistics (SBS)	Turnover	NACE 4-digit (Rev. 2)	2008 – most recent year (2018?) Data pre-2008 on NACE Rev. 1.1	Eurostat SBS used to help fill gaps.
GVA	euros	Eurostat structural business statistics (SBS)	Value added at factor cost	NACE 4-digit (Rev. 2)	2008 – most recent year (2018?) Data pre-2008 on NACE Rev. 1.1	
Labour costs	euros	Eurostat structural business statistics (SBS)	Personnel costs	NACE 4-digit (Rev. 2)	2008 – most recent year (2018?) Data pre-2008 on NACE Rev. 1.1	
Investment	euros	Eurostat structural business statistics (SBS)	Gross investment in tangible goods Net investment in tangible goods	NACE 4-digit (Rev. 2)	2008 – most recent year (2018?) Data pre-2008 on NACE Rev. 1.1	Gross investment is also available for the sub-categories that make up "tangible goods", these are: land; existing buildings/structures; construction and alteration of buildings; machinery and equipment
Value to weight ratio	euro per kg/unit	Eurostat Europroms database	Sold production - by value - by weight/volume Exports/Imports - by value - by weight/volume	Prodcom 8-digit - Combined Nomenclature 8-digit - CPA (2008) 4-digit (corresponds to NACE Rev.2)	1995-2018	Where data permit, use value and weight measures to derive value to weight ratio
Domestic demand	Euros	Eurostat Europroms database	Apparent domestic demand	Presented at NACE 4-digit	1995-2018	Calculated as: Production + Imports-Exports, using data from Eurostat Prodcom and Comext database

Indicator	Units	Official Source	Measure	Sector detail	Time period	Comment
Scope for energy-efficiency investments						
Installations involved in production of the 4-digit NACE sector	Number	EUTL (EU ETS registry)	Records each installation covered by EU ETS	NACE 4-digit (Rev. 2)	2013-18 (Phase III (part)) 2008-12 (Phase II) 2005-07 (Phase I)	Provides details on those installations covered by the EU ETS
Direct emissions from each installation	Kg CO_2	EUTL (EU ETS registry)	CO_2 emissions per installation	NACE 4-digit (Rev. 2)	2013-18 (Phase III (part)) 2008-12 (Phase II) 2005-07 (Phase I)	Provides details on verified emissions for each installation covered by the EU ETS
Electricity consumption	Kwh	Member States (e.g. NSO, environment/energy ministry, or other competent authority), sectors.	Net electricity consumption (including auto-production)	Should be NACE 4-digit (Rev. 2)		
Emissions factor	tCO_2/MWh	EC and contractor				
Fuel mix (average emission factor)						
Best available technologies		BREFs				

Links to key sources:

- Eurostat Europroms: http://epp.eurostat.ec.europa.eu/newxtweb/
- Eurostat Structural Business Statistics: http://ec.europa.eu/eurostat/web/structural-business-statistics/overview
- Eurostat Short-term Business Statistics: http://ec.europa.eu/eurostat/web/short-term-business-statistics/overview
- Eurostat Input-Output tables and Supply and Use tables: http://ec.europa.eu/eurostat/web/esa-supply-use-input-tables/overview
- EUTL (ETS): http://ec.europa.eu/environment/ets/welcome.do