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**Directorate-General for Competition  
European Commission  
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**SUBJECT: HT.582 - Public consultation on draft ETS State aid Guidelines**

Following the publication of the draft New Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post 2021<sup>1</sup> ('draft New ETS Guidelines') which is due to replace the the 2012 ETS Guidelines<sup>2</sup>, Grupa Azoty Zakłady Azotowe Kędzierzyn S.A. offers the following observations.

In general, we believe that the following sectors should be included in the list of sectors entitled to compensation for indirect costs:

- 20.14 Manufacture of other basic organic chemicals,
- 20.15 Production of fertilizers and nitrogen compounds,

Achieving climate neutrality will require a strong and competitive industry on a global scale, capable of proposing innovative solutions and improving production processes to achieve low-carbon products. Compensation of indirect emission costs is an indispensable instrument to fight carbon leakage and to support the EU's efforts to electrification at the same time, which will naturally lead to an increase in the share of electricity costs (and associated indirect emission costs) in total production costs (while reducing direct emissions).

#### **I. PERVASIVE LONG-TERM CARBON LEAKAGE IS OCCURRING IN THE EU FERTILIZER SECTOR**

As a preliminary issue, Grupa Azoty Zakłady Azotowe Kędzierzyn SA (Grupa Azoty) believes the consultant and the European Commission massive underestimated the occurrence of carbon leakage in the EU fertilizer industry. The trade data relevant to ammonia, the key building block of all nitrogen fertilizers, as well as to the main types of nitrogen fertilizers, unequivocally shows continued, long-term carbon leakage, i.e, loss of EU industry's export potential and massive increase of imports. For example, as for imports:

<sup>1</sup> [https://ec.europa.eu/competition/consultations/2020\\_ets\\_stateaid\\_guidelines/index\\_en.html](https://ec.europa.eu/competition/consultations/2020_ets_stateaid_guidelines/index_en.html)

<sup>2</sup> Communication from the Commission – Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2012, OJ C 158, 5.6.2012, p. 4.

- Ammonia imports into the EU increased by 62% between 2004 and 2019;
- Urea imports into the EU increased by 59% between 2004 and 2019;
- UAN imports into the EU increased by 537% between 2004 and 2018;
- Ammonium sulphate imports into the EU increased by 204% between 2003 and 2018; and
- Total nitrogen fertilizers imports into the EU increased by 57% between 2005 and 2019.

With respect to EU exports:

- EU ammonia exports decreased by 56% between 2005 and 2019;
- EU ammonium nitrate exports decreased by 29% between 2004 and 2019;
- EU UAN exports decreased by 90% between 2005 and 2019; and
- EU ammonium sulphate exports decreased by 31% between 2003 and 2019.

Overall, there can be therefore no doubt that EU industry is losing market share with respect to both ammonia as well as most types of finished fertilizers, both on the EU domestic market, as well as on export markets.

In addition, the EU industry is losing investments, with most ammonia and nitrogen fertilizer investments occurring outside the European Union. Two European companies: Yara and BASF opened a new 750,000 MT ammonia plant in Freeport, Texas in 2018. Another combination of two European companies, Yara and ENGIE, are installing a green ammonia plant in Pilbara, Australia. The owner of EU fertilizer assets in Antwerp, Belgium and Lifosa, Lithuania: Russian corporation Eurochem, has installed a new 1 mln MT ammonia plant to supply its EU fertilizer plants, but not in the European Union, but in Kingisepp, Russia. Eurochem is working on another ammonia plant in Louisiana, United States.<sup>3</sup> A major supplier of nitrogen & phosphate fertilizers to the European market, Phosagro, is working on a new 760 K MT ammonia plant in Cherepovets, Russia.<sup>4</sup> Acron, another supplier of fertilizers to the European market is investing in expanding its ammonia production in Dorogobuzh, Russia. A number of other companies, including Russian producers KuibyzhevAzot,<sup>5</sup> Shchekinoazot,<sup>6</sup> Kemerovo Azot,<sup>7</sup> and Metafrax,<sup>8</sup> Belarussian producer GrodnoAzot,<sup>9</sup> Uzbek producer NavoiAzot,<sup>10</sup> Tajik producer Azot,<sup>11</sup> and Azeri producer SOCAR,<sup>12</sup> are all involved in various ammonia and urea new plants or expansions or existing plants. This does not include Western Hemisphere, African and Middle East and Asian operations.

With respect to ammonia, the EU share in world production has decreased by 25% over 9 years. Which gives an increase in CO<sub>2</sub> emissions (only from ammonia in the last decade) by 130 million tons. In the future, increases are still planned in the production of ammonia. As a result, in one and a half decade,

<sup>3</sup> <https://www.eurochemgroup.com/media-announcements/eurochem-selects-site-for-louisiana-fertilizer-project/>

<sup>4</sup> <https://www.worldfertilizer.com/phosphates/24082017/phosagro-ceo-shares-company-update-and-forecast/>

<sup>5</sup> <https://www.worldfertilizer.com/project-news/25012019/pjsc-kuibyshevazot-launches-large-scale-modernisation-of-ammonium-nitrate-plant/>

<sup>6</sup> <https://www.syngasrussia.com/en/shchekinoazot-chooses-topsoe-ammonia-technology-for-new-plant/>

<sup>7</sup> <http://www.sds-azot.ru/en/media-center/news/2012-10-11-02-19-32/149-kemerovo-azot-puts-into-effect-a-2-year-repair-cycle>

<sup>8</sup> <http://www.metafrax.ru/en/p/1529>

<sup>9</sup> <https://www.syngasrussia.com/en/grodno-azot-is-about-to-spend-1-3bn-usd-on-a-new-facility/>

<sup>10</sup> <http://www.uzbekembassy.in/three-major-projects-are-being-implemented-in-navoiAzot/>

<sup>11</sup> <https://www.fertilizerdaily.com/20190918-tajikazot-loses-an-investor/>

<sup>12</sup> <https://www.marketwatch.com/press-release/details-of-financing-socar-urea-plant-project-revealed-2018-09-28>

only within one product covered by NACE 20.15, CO<sub>2</sub> emissions will increase by a minimum 150 million tons (minimum because the calculation is made on EU indicators, which are the most effective).

**To conclude, as evidenced by increasing ammonia and fertilizer imports into the EU, decreasing EU exports, and growing investments in ammonia and fertilizer capacities outside the European Union, there already is ongoing and very advanced leakage in the fertilizer industry.**

This of course leads to carbon leakage, as the non EU countries with main production of key raw materials (gas), intermediate products (ammonia, nitric acid), and end products have no comparable costs of climate policy. This distorts competition and leads to a steady increase in amount of global CO<sub>2</sub> emissions connected not only with the production itself but also with the transport and logistics of these products to Europe. Therefore fertilizer producers located in Europe should be supported by EU to have impact on lowering carbon footprint.

**Inability to pass increased costs to customers.** Ammonia and urea are global commodities, which makes their EU producers price-takers on a global market. The business conditions have further deteriorated as producers from Russia, the United States, Middle East and North Africa and China increasingly penetrate the EU market (with import market share in nitrogen fertilizers up to 30% and higher, and still rapidly growing). Consequently, the EU fertilizer sector has no possibility to pass increased costs to their clients (nor should it be forced to even consider such attempts given the role that EU farming plays in the EU social fabric and in the EU food security).

**Distortion of raw material prices.** Moreover, the EU producers of fertilizers and nitrogen compounds struggle every day with distorted prices of its main input: gas, exported at high prices to the EU and sold at low prices domestically to their foreign competitors (dual-pricing). This has been recognized by the European Commission's Trade Directorate in various trade proceedings. Oligopolistic position of third countries' companies in case of critical raw materials i.e. phosphate rock further contribute to the unlevel global playing field in terms of the NACE '20.15 sector. Hence, we fear that in such unfavourable market conditions on both supply and demand side, exclusion of the NACE '20.15 sector from the list of sectors eligible under the revised Guidelines on State Aid for Compensation of Indirect ETS Costs may be last competition distortion that will drive more manufacture of fertilisers and nitrogen compounds out of the EU.

This is actually already happening as illustrated by the mega euro billion investments made by fertiliser producers in i.a. USA, MENA, Russia on the one hand and by the business consolidation in the EU - on the other.

**No Similar Restrictions in 3<sup>rd</sup> Countries.** Given the fact that the key third countries' competitors of the EU NACE '20.15 sector have no comparable GHG reduction schemes (in other words they are fully carbon emitting on their electricity source, production and transport and more NO<sub>x</sub> emitting on their production), their constant expansion and increased market presence increases carbon emissions globally.

To stop carbon leakage manufacture of fertilisers and nitrogen compounds should qualify for compensation of indirect emission costs.

**No conflict with other Guideline objectives.** Allowing for compensation of indirect ETS costs NACE '20.15 sector threatens no other goals addressed by the State Aid ETS Guidelines, i.e. neither maintaining a level playing field in the EU nor preservation of incentives for a cost effective decarbonisation. On the contrary, the exclusion of the fertiliser industry from the list of eligible sectors increases risks in the afore-mentioned perspectives. Finally, there are no viable substitutes to



mineral nitrogen fertilizers, therefore no other sector is disadvantaged by allowing fertiliser industry to continue to be eligible for compensation of indirect emission costs.

EU fertiliser producers are among the most efficient in the world in terms of electricity and raw material consumption. Therefore, increasing EU producers' indirect emission costs will deprive it of cash necessary to fund necessary environmental investments. If the NACE 20.15 sector was eligible for compensation of such costs, the industry could continue its emission reduction efforts. Two thirds of the natural gas that are used as feedstock for ammonia production and the related CO<sub>2</sub> emissions (called process emissions) will remain a strong incentive to invest in decarbonisation.

#### **Code NACE 20.14.**

Code NACE 20.14 includes chemical and petrochemical products significant to the European Union and Poland. They constitute a complex and multidimensional network of connections, which should be considered as a whole, as the deterioration of competitiveness at any stage of production exposes the derivative sectors (such as pharmacy, textiles, transport including aviation, electronics and electrical engineering, construction and many others) and intermediate sectors (intermediates, by-products) to a huge risk of losing access to raw materials of EU origin as a result of deindustrialization.

This is very important because in the chemical and petrochemical industry the individual production stages along the entire value chain are very energy intensive and intermediate products have high emissions, based on electricity and steam. European chemical industry has already put a huge effort into improving energy efficiency. Despite an increase in production volume by 78% in the years 1990-2014, fuel and energy consumption decreased by 22%, and GHG emissions were reduced by 59%.

Following the objectives of climate policy and increasing electrification, it is important that there are still incentives in the form of compensation of indirect cost enabling investment in low-carbon technologies.

**Carbon leakage risk.** Carbon leakage in the NACE 20.14 sector should be looked at more widely, because of interpenetration of semi-finished products from various manufacturing processes and various installations to final products. As a result, for NACE code 20.14 and similar (like 20.15, 20.16, 20.13), before typical carbon leakage occurs in these sectors, other detrimental processes occur earlier, that make subsequent carbon leakage unavoidable, such as:

- developing industry chain downstream and in the second (or parallel) step ,
- upstream reduction and conversion into raw materials and simpler imported intermediates and in the next step,
- reduction of capacity utilization, in favor of competitive imported products or or the sale of assets to companies outside the EU and finally,
- closure of an installation in the production of a given product or in a downstream chain.

The effects of the above are already a fact in the Union industry not only in case of code 20.14. Poland, as one of the countries with a high share of energy-intensive industry in total economic production, is much more exposed to the risk of carbon leakage and investment. The chemical segment is one of the fastest growing sectors of the Polish economy with 17% of the value of Polish industrial production sold (62,15 billion EUR, 2018), 12% of total employment in the entire Polish

industry (315 000 employees) in over 11 000 enterprises. The value of chemical production sold in Poland over the past twenty years has increased by more than six times, and energy consumption has been reduced by almost half.

Despite rising regulatory costs, these sectors are constantly improving their environmental impact. EU policy must be consistent with climate neutrality goals, enabling NACE 20.15, 20.14 producers to transform the processes to electrification and giving them the opportunity to produce pure hydrogen as a gas of the future.

## II. EUROPEAN COMMISSION USED WRONG METHODOLOGY TO ESTABLISH LIST OF ELIGIBLE SECTORS

Grupa Azoty considers that the European Commission misapplied EU law and the ETS Directive in its distorted following of Art. 10b of the Directive, when deciding which sectors are eligible for compensation of indirect emission costs under Art. 10a(6) of the Directive.

By way of introduction, Art. 10a(6) of the ETS Directive:

1. mandates the Member States to compensate indirect emission costs (*“Member States should adopt financial measures...”*);
2. circumscribes the list of eligible sectors to those *“exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred from greenhouse gas emissions costs passed on in electricity prices”*, without specifying which sectors these are; and
3. instructs that such compensation measures must be *“in accordance with State aid rules and in particular do not cause undue distortions of competition in the internal market.”*

Most importantly, Art. 10a(6) of the ETS Directive:

4. does not explicitly authorize the Commission to create a list of sectors eligible for compensation of indirect costs (in stark contrast to Art. 10b(5) of the ETS Directive, which explicitly authorized the Commission to adopt delegated acts concerning the determination of sectors and subsectors deemed at risk of carbon leakage);
5. does not in any way mention the Commission’s role in determining the list of eligible sectors;
6. does not use any of the terms or concepts used in Art. 10b such as “intensity of trade”, “emission intensity”, “gross value added” or others, nor use any of the values referred to in Art. 10b, nor does it suggest that such terms or concepts should be used when determining whsectors are eligible;
7. does not in any way cross-reference Art. 10b, i.e., does not in any way state that the “sectors exposed to genuine risk of carbon leakage due to significant indirect costs” should be defined through use of criteria or thresholds used in Art. 10b.

Grupa Azoty considers that the above analysis leads to the following conclusions.

First, the Directive clearly orders Member States to compensate eligible sectors. It does not provide them an opportunity, but expressly ask them to compensate. This means that compensation is considered by the legislator as an important and quasi-mandatory measure.

Second, as the Directive does not explicitly allow the Commission to prepare a list of eligible sectors and yet provides certain wide criteria (risk of carbon leakage must be “genuine” and due to a specific

factor: significant indirect costs from greenhouse gas emission cost, actually incurred, passed on in electricity prices) this means that the Directive leaves it to Member States to determine which sectors should be eligible. If the Commission wanted the Commission to prepare the list, it would have explicitly said so.

Third, the Directive does not want Member States to be circumscribed in their duty to compensate sectors exposed to risk of carbon leakage by criteria or thresholds set out in Art. 10b, because if it did, it would have explicitly linked the two articles or used similar terms. Yet both articles use different terminology and have a different purpose, which prevents automatic use of concepts and criteria from Art. 10b to limit the list of sectors eligible in Art. 10a(6).

Fourth, the Directive only mandated the Commission not to prepare a list of eligible sectors (misusing criteria from Art. 10b), but to carry out a classical EU state aid analysis to determine whether such measures could be in accordance with State aid rules and not cause undue distortions. Instead of carrying out State aid analysis, the Commission conducted some circuitous indirect carbon leakage analysis, when that was not its job under Art. 10a(6).

Fifth, while leaving it entirely to Member States to individually decide which sectors could qualify for compensation under Art. 10a(6) could pose some challenges (e.g., divergence among Member States) those could have been addressed by the Guidelines, if the Commission applied some State aid concepts or distortion of competition analysis to the list of eligible sectors. However, the list of eligible sectors does not appear to be created based on State aid concepts, but based on indirect carbon leakage concepts, leading to circuitous carbon leakage analysis, but no actual State aid analysis at the end.

This leads to the following conclusions.

First, the Commission should have left it to Member States which sectors qualify.

Second, if the Commission did not want to leave it entirely to Member States, it should have applied a wide, accepting and encompassing analysis that would allow Member wide range of discretion which sectors qualify, relying entirely on a qualitative analysis. However, if the Commission wants to use the methodology of art. 10b, it should do so consistently and apply the qualifying thresholds specified in it for qualitative analysis and assume - specifically - that sectors with an index between 0.15 and 0.2 should be subject to qualitative analysis, which was taken into account in previous Guidelines. In the proposal of new guidelines, European Commission raised the qualification threshold for qualitative analysis 0.2. As a result, both NACE 20.15 and NACE 20.14 fertilizers were deprived of the possibility of qualitative analysis.

Third, when the Commission conducts a quantitative analysis, it should do so using most recent and available data. In the proposed Guidelines, the Commission takes into account the data of individual indicators (e.g. trade intensity, intensity of indirect emissions or GVA) from 2013-2015, which from today's perspective is already old, and at the end of the ETS period will be 15-17 years old. In the decade of application of the guidelines, the data will be deeply outdated.

Fourth, the analysis is static - it does not notice technological changes and their consequences; it does not take into account the exchangeability of indirect emissions for direct emissions during

electrification. In addition, it seems that the adopted methodology does not reflect the purpose of including compensation for products which, due to the specificity of energy-consuming technological processes and international trade in the sector, are exposed to the risk of carbon leakage, including in the form of production leakage (i.e. loss of share in global and European markets) and the so-called investment leakage (i.e. decreasing EU share in global fertilizer production). These defects should be corrected at the qualitative analysis stage.

### III. INTERCHANGEABILITY OF ENERGY IN AMMONIA PLANTS REQUIRES COMPENSATION FOR INDIRECT EMISSIONS TO AVOID DISTORTIONS TO INTERNAL MARKET

Greenhouse-gas emission reduction targets, expected growing electrification of industrial processes and rising EUA-prices make indirect cost compensation crucial for competitiveness. However, if compensation of indirect emissions costs in the fertilizer sector NACE 2015 were removed, this would also affect cross-sectoral competition due to energy interchangeability (ammonia plants can use three energy sources: gas, steam and / or energy electric or any mix of them).

**Fuel and electricity substitutability**, also referred to as: **(inter-) exchangeability of electricity and fuels**, plays an essential role in the production of ammonia, the building block of nitrogen fertilizers. Hydrogen and nitrogen are the key feedstock in ammonia production. Whilst nitrogen is captured from the air, hydrogen is predominantly produced by steam methane reforming, a process in which natural gas is used as input. This process is the main source of **direct CO<sub>2</sub> emissions** in the fertilizer sector.

The production of ammonia also requires energy input, e.g. to power the equipment in an ammonia plant, such as compressors, turbines and motors. Ammonia installations can use three types of energy to power these parts: natural gas, steam or electricity or any mix thereof. They can also be exporter of a certain amount of energy as steam or electricity.

The energy configuration, and the resulting fuel and electricity use proportion in an ammonia installation is set during its design phase of the plant. Changing it later leads to massive costs, making it economically impossible. The choice of energy to power the installation directly affects the ETS costs as direct and indirect emissions and competitiveness of the fertilizer plants.

In other words, different ammonia plants with the same energy efficiency (i.e., relationship to the benchmark) may have different level of direct emissions and different level of indirect emissions. Direct emissions in theory are compensated via free allocation, while indirect emissions are compensated via national compensation schemes.

Therefore, if indirect costs are not adequately compensated, this would create a competitive distortion to the disadvantage of plants with high indirect emissions and preference for plants with high direct emissions.

It would lead to a perverse result in which an ammonia plant that uses only gas as an energy source gets more free allowances for its direct emissions, while an ammonia plant that uses less gas and more electricity gets less free allowances. The latter will furthermore incur an increased ETS costs of indirect emissions due to its reliance on electricity as opposed to gas. In other words, ammonia plants that use electricity and have indirect emission are disadvantaged as compared to gas-based plants that have only direct emissions (and free allowances to cover them). To eliminate this competitive distortion, the ETS directive encourages Member States ("Member States should adopt ...") to compensate fertilizer producers for the cost of CO<sub>2</sub> in the electricity price during Phase 3. The fuel and electricity substitutability in the case of the fertilizer sector was recognized by DG Competition



when The State aid Guidelines for Phase 3 were established. This compensation prevents competitive distortions, it should therefore be continued under ETS Phase 4.

The prevention of competitive distortions is a prime objective of DG Competition, this prevention is also mentioned in the draft State aid Guideline (see introduction point 6), just like in the State aid Guidelines for EYTS phase 3 (see introduction point 5).

In absence of this State aid, the ETS system would place undue advantages on gas-based plants that have direct emissions, which runs counter to EU climate policy objectives. In a carbon free economy by 2015, an ammonia plant will only use electricity. This should be stimulated, not opposed.

#### **IV. CHEMICAL SECTOR REQUIRES COMPENSATION FOR INDIRECT EMISSIONS TO AVOID DISTORTIONS TO INTERNAL MARKET**

On the way to a carbon neutral Europe by 2050, electrification will play an important role. Electrification for the chemical sector NACE 20.15 means the investment and use of electric boilers because chemical production requires steam, next to electricity. The indirect compensation is very important to support electrification. The major issue is the operational cost (OPEX): electricity must be cheap enough to be able to compete with natural gas, which is in recent years relatively cheap.

Without indirect cost compensation (or ability to pass through costs) the chemical industry will face competitive disadvantage. This will as a result slow down or in a worst case, halt investments in electrified processes, the main enablers for the desired industrial transformation.

#### **V. SAFEGUARDING INCENTIVES TO DECARBONISATION EMBEDDED IN THE ETS SYSTEM**

Lack of compensation for indirect ETS costs is against the direction set by the European Green Deal, and more specifically against the drive to promote electrification of EU industry as one of the main pathways for industry decarbonization. Electricity made of low-carbon or carbon-neutral sources can be used to produce hydrogen for ammonia NACE 20.15 and to replace natural gas and steam as energy inputs which could reduce industry's carbon footprint.

When a plant changes for compressions, pumps from steam turbines (with often whole or partly some condensing, thus suppressing the efficiency) to electric motors, there is a direct emission reduction because the plant will then import less steam or the plant will export more steam. In the more dynamic allocation rules for phase 4, the allocation will drop after any such significant electrification. The reason is that there is never an allocation of allowances for the production of heat produced from electricity. Therefore the State aid is of crucial importance because the need for State aid increases with the increased electricity consumption for heat production.

Just like for ammonia in case of absence of eligibility for the ETS State aid, electrification of such heat benchmark manufacturing plants is not even not incentivised, but electrification is de-incentivised. Companies would pay a penalty by losing the allowances instead of getting an incentive for electrification by getting more State aid. A zero and certainly a negative incentive to reduce emissions is of course in conflict with the very objective of the EU ETS Directive.

Chemical processes are on the one hand emission-intensive and electro-intensive while on the other hand chemical products NACE 20.14 are outstanding levers for energy efficiency when used. Today many industrial electricity consumers produce their own electricity in highly efficient CHP-plants with an efficiency factor of up to 90 percent. In contrast to the carbon footprint of the average electricity



mix, electricity production from gas-fired CHP plants saves a large share of carbon emissions per MWh. These assets should not be devalued while developing new technologies. Since most installations are fueled with natural gas, they are perfectly suited to drive the low carbon transformation in case of availability of competitively priced green gas.

The post 2030 industrial transformation challenge means for the Chemical sector high needs of R&D and investments in completely new production technologies changing how Chemistry has been done over past decades.

Through the development of new, low-GHG processes replacing fossil energy / raw materials through electricity, a shift of the cost burden from direct CO<sub>2</sub> emissions costs to CO<sub>2</sub> emissions avoidance costs can be expected (construction of pilot plants etc.). Key prerequisite for the development and roll-out of such new process technologies in a low carbon scenario is the availability of low carbon electricity in large and reliable volumes at competitive costs to enable industrial transformation.

Also, the business case of electric boilers and the use of electric furnaces is being studied, in this case for steam crackers (which are about 50% of the NACE 20.14 volume). Another way for steam crackers to reduce their emissions is to electrify the main compressors (cracked gas compressor, propylene compressor, ethylene compressor) thus increasing their electricity consumption. This is known technology and applied mostly in France. Electrification will often require new builds and significant investments.

With the financial compensation of indirect emissions for the chemical industry, the EU ETS maintains the incentive to overall reduce the GHG emissions, as is enshrined in the objective of the EU ETS Directive (Art. 1). In order to become carbon-neutral, the chemical industry will need to use much more low carbon electricity i.e. in future to reduce the CO<sub>2</sub> footprint of our base chemicals further<sup>13</sup>. This will be a gradual process.

It is also important that the applied technical solutions and installation methods ensure meeting the requirements of Best Available Techniques (BAT) based on European Commission reference documents developed by the European Integrated Pollution Prevention and Control Bureau integrated permits documented by Azoty Group companies detailing individual installations.

We urge Commission to reconsider its proposition on conditionality for beneficiaries. It is valuable to promote energy efficiency and commitments to use clean energy or abate direct emissions. Nonetheless, we are afraid that such a specific wording may turn counterproductive to the Commission's goals of reducing carbon leakage risk while quickly increasing renewable energy sources' (RES) presence in energy mixes of Member States.

Actually, energy audits and energy management systems are already introduced in indirect cost compensation scheme in Poland. However, the proposed condition to have aid invested in energy efficiency measures with the proposed [5 years] payback time should be challenged. Investments in energy efficiency improvements in energy intensive industries often take many years and are conducted in stages. Majority of investments have already been completed (low-hanging fruits) and it becomes more difficult to achieve the proposed payback time. As a possible option we recommend to introduce longer payback time to avoid discrimination against projects that generate substantial cash inflows in later years.

<sup>13</sup> Low carbon energy and feedstock for the European chemical industry, 2017; Roadmap Chemie 2050, 2019

Moreover, the incentives to energy efficiency improvements are already present in sectors with already adopted ambitious product benchmarks reflecting the best performance in the sector (to be further updated for EU ETS phase IV). The use of recent production data and updated benchmarks replace aid degresivity and provide sufficient incentive for energy efficiency investments. However, the dynamic adjustment of aid (based on recent electricity consumption data) is likely to reduce the incentive to energy efficiency improvements in case of beneficiaries manufacturing products where fall-back electricity consumption efficiency benchmark is applied, as improving energy efficiency directly translate into an aid's decrease.

We would like to rebuild our competitiveness on the basis of renewable energy sourcing. The condition to reduce carbon footprint of electricity consumption should nevertheless take into account the specific characteristics of energy intensive industries and energy mixes of different Member States as to speed up energy transition and not to create unduly market distortions.

Industrial on-site renewable energy generation facilities have many advantages when it comes to speeding up Member States' energy transition as they require no political agenda, are likely to get cheaper financing and could be balanced within internal industrial grids, without posing additional burden to the National Power System. However, it is not always viable to install on-site renewable energy generation facility due to various weather-related or land limitations. The proposed threshold of 50% is also too high given high absolute values of electricity volumes consumed and intermittency issues given still prohibitive costs of sustainable energy storage solutions at scale required by industry. We estimate that increasing renewables share in our onsite autoproduction facilities cannot be higher as 20% - and such a share would be an ambitious target.

As to the rest, we would consider entering into cPPAs with renewables but with the aforementioned limitations, the option of so-called virtual PPAs is necessary as well as reconsidering status of such contracts as financial instruments, which bears its own regulatory costs. We would also like to point out that concluding such contracts would be much easier and cheaper for industries in Member States, which are more advanced in their energy transition. Industries in such countries are already enjoying lower energy costs thanks to higher share of renewables in their national energy mixes. With the proposed wording of par. 54 (b) they would have an additional undue competitive advantage of cheaper access to more independent renewables, which they did not finance or decide to build. Therefore, we urge Commission to rephrase par. 54(b) taking into account rather industry-dependent increase versus national share of RES than an absolute value.

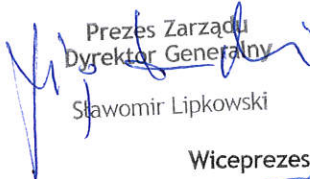
The draft also proposes exceedingly ambitious indication of substantial reduction of direct emissions. Due to the methodology used in benchmarks update, they are reduced to the levels not achievable by the industry at large. It is important to stress that each subsequent emissions reduction achieved costs more and the increasing number of companies reach economic and technological limitations of production assets. Too ambitious benchmarks lose their motivational goal, as the companies not able to meet benchmarks and burdened with increasing direct emissions costs, tend to limit or simply end the production. For example: Grupa Azoty is implementing a project to build a large installation for the production of propylene and polypropylene "POLYMERS POLICE" with an assumed budget of about 1.5 billion euros, also assuming the use of by-product hydrogen formed in the ammonia production plant. The above will reduce the consumption of high-methane natural gas per unit of final production and thus the carbon dioxide emissions resulting from the combustion processes. Even with the


assumption of continuous year-round operation of the ammonia installation, the year-round operation of the designed installations and the use of the entire stream of hydrogen generated, the reduction of carbon dioxide emissions lower than 10%.

In order to support the objectives of the European Green Deal, the ETS State Aid Guidelines should support EU's efforts to reduce global carbon emissions and prevent carbon leakage and relocation of industries. They should encourage key European manufacturing sectors with strategic value chains to implement electrification investments in ETS Phase IV since electrification will require significant process changes.

We hope that the gravity of the current situation caused by the removal of sectors 20.14 and 20.15 from the a/m list will be fully realized by the Commission and action will be taken to allow manufacturers of fertilisers and basic organic chemicals, including Grupa Azoty Zakłady Azotowe Kędzierzyn S.A., to benefit from entitlement to indirect costs compensation under the (corrected) ETS Guidelines.

Respectfully,

  
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