Danish Ministry of Energy, Utilities and Climate

Danish response to the public consultation concerning the revision of ETS State Aid Guidelines

In general it is important that the focus for the revision of the ETS State Aid Guidelines is on aligning the guidelines with the Commission's vision for a climate-neutral Europe[1] in 2050 and on fulfilling the European ambitions for providing Clean Energy for all Europeans.[2]

The aim behind the revision of the guidelines should therefore not only be on ensuring global competitiveness of European industries and minimise the risk of carbon leakage, but also – as the main point – erase any perception that subsidies to fossil energy production would be necessary to achieve this goal. The revised State Aid Guidelines should consequently serve as an instrument for promoting competitiveness by providing industries in risk of carbon leakage with a broader choice of energy solutions. These choices must include industry access to affordable green energy.

Denmark's key priorities for the revision of the ETS State Aid Guidelines

- **Compensation for indirect ETS cost should not be an obstacle for the green transition**
All possibilities should be explored for reforming the State Aid Guidelines in a way, which allows carbon leakage exposed industry sectors to source green energy without injuring the economic benefits, which may be provided by national ETS state aid schemes.

- **Ensuring fair competition, especially in relation to small exposed businesses**
ETS state aid rules must be redesigned in order to ensure fair competition among businesses, and especially minimize harm to small businesses, as well as to sectors, where large and small businesses directly compete with each other within the internal market.

- **Conducting and completing state aid measures on a strict and temporary basis**
The revised guidelines must not counteract the most climate ambitious Member States and businesses. Instead, the guidelines must be formulated in a way that 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.

- **A targeted approach is needed for Annex II of the revised guidelines**
The same level of ambition must be used as when the number of eligible sectors on the Carbon Leakage list was reduced by two thirds from 2021 and onwards.

- **Fulfilling the 25 percent target of article 10a (6)**
The agreed original financial scope of state aid granted under article 10a (6) must be restored without undue delay. The Commission needs to monitor and report the full background for Member States missing the 25 percent target repeatedly and inform about the measures taken to rectify the situation within an acceptable time frame.

In the current State Aid Guidelines, the Commission outlines three explicit guiding objectives:

- minimising the risk of carbon leakage
- preserving the EU ETS objective to achieve cost-efficient decarbonisation
- minimising competition distortions in the internal market.

[1] The Commission's 2050 long-term strategy: https://ec.europa.eu/clima/policies/strategies/2050_en
[2] Including a binding renewable energy target for 2030 of at least 32% and an energy efficiency target of at least 32.5%, with a possible upward revision in 2023: https://ec.europa.eu/energy/en/topics/energy-strategy-and-energy-union/clean-energy-all-europeans

The Danish Government fully supports these goals and is of the opinion that it would be possible in the revised guidelines to target all three objectives in a much more efficient manner.

Compensation for indirect ETS costs should not be an obstacle for the green transition
The current State Aid Guidelines state that no state aid must be granted *in case of electricity supply contracts that do not include any CO_2 costs*. Thus energy supply choices for carbon leakage exposed sectors are deliberately limited to fossil fuelled energy production.

For two reasons, this limitation is not to the advantage of the exposed industry sectors: 1) Whenever renewable energy (clean energy) could be bought at a lower price than fossil energy, exposed industry was denied the full benefit of a state aid scheme, and 2) whenever renewable energy could be bought at the same (or a slightly higher) price than fossil energy, current state aid rules could encourage purchase of fossil energy, disregarding the efforts for a green transition.

As a consequence, globally exporting, energy intensive industry could be slowed down in their efforts to phase out fossil fuelled electricity supply. An example could be a manufacturer of *other organic basic chemicals*, providing more than 2.600 jobs in Denmark and many more globally, whose efforts to make it easier to use 100 percent clean energy have been limited by EU-jurisdictions not granting ETS state aid and to certain non-EU jurisdictions.

The current state of affairs is compromising the objectives of *cost-efficient decarbonisation* and of *minimising the risk of carbon leakage.* Denmark therefore suggests the following:

- The Commission should explore all possibilities for reforming the State Aid Guidelines in a way that allow carbon leakage exposed industry sectors to use clean energy without risking the economic benefits which may be provided to these sectors by national ETS state aid schemes.

Ensuring fair competition, especially in relation to small exposed businesses
State aid schemes in general do often contain administrative burdens for the industries/businesses that are able to receive aid, with the current ETS state aid schemes as no exception. This has time and again been reflected in the guidance documents issued by Member States that have implemented these types of schemes. While it is easier for large businesses to handle this kind of administrative requirements, small businesses will typically be more challenged by requirements put to them for collection, verification, documentation and regular reporting of necessary data.

As an example, energy intensive industry sectors like *manufacturing of pulp, paper and paperboard* in Denmark include both large businesses and businesses with a small, highly specialized production. For such small businesses, state aid schemes would often be perceived as a benefit to larger businesses and competitors. This situation should therefore be avoided since the overall aim of the guidelines to ensure fair competition is not supported by this.

While encouraging the Commission in its efforts to reduce unnecessary administrative burdens, Denmark also recognizes the need for high standards for monitoring and compliance in the field of state aid, which in many cases make administrative requirements inevitable. On those grounds, the following is suggested:

- Avoid wherever possible granting of state aid to sectors, where large and small businesses compete with each other within the internal market, since this could worsen the competitive situation for small businesses. Thus operating against *all three objectives* the Commission has set out for the ETS State Aid Guidelines.

- Exempt sectors from the ETS State Aid Guidelines that may benefit from horizontal state aid rules such as the General Block Exemption Regulation (GBER), since such regulation allows for more flexible national state aid schemes and therefore easily could be given preference in order to limit the number of national schemes that companies need to know, understand, apply for, and administer.

Conducting and completing state aid measures on a strict and temporary basis

While acknowledging the importance and necessity of addressing carbon leakage risks, on behalf of social, economic as well as climate priorities, it is important to emphasise that the ETS State Aid Guidelines cannot, and has never been intended to, be used as an opportunity to delay the efforts that Member States should put in place in the transition to energy supplies based on renewable energy. For that reason, the state aid rules in ETS phase III were designed as a transitional measure only.

The revision of the State Aid Guidelines should therefore focus on maintaining and increasing the incentives for industries as well as Member States to promote the transition to an energy supply based on renewable energy. The guidelines should consequently be balanced and take fair consideration to Member States which have taken a lead in removing fossil fuels from their electricity supply, e.g. instead of allowing their industries access to state aid for the purpose of compensating indirect ETS costs.

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. In Denmark, a country with access to sizable fossil deposits within its own national borders, all the political parties have agreed upon phasing out coal in the electricity production no later than 2030.[3] A number of EU Member States have similar ambitions which 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 time frame that reaches not very far beyond ETS phase IV.

Based on this, the Commission should:

- Formulate the revised ETS State Aid Guidelines in a way that 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. This can be achieved by increasing the pace, at which the maximum

[3] The Danish Energy Agreement of june 2018: https://en.efkm.dk/media/12307/energy-agreement-2018.pdf

aid intensity factor (guidelines section 26) is reduced from 75 percent in 2020 to a zero or near-zero percentage by 2030.

A targeted approach is needed for Annex II of the revised guidelines

Denmark has some reservation in relation to the described policy option of aligning criteria of eligibility for compensation of indirect costs with the criteria of eligibility for free allowances as defined in the Commission's Carbon Leakage list.

The current guidelines are, in accordance with directive 2003/87, stressing the temporary nature of the indirect cost compensation measures. The directive's carbon leakage list is also originated from a different legal basis and intended for a much broader purpose.

Even though an alignment could make it more transparent in relation to sectors receiving direct aid in form of free allowances and/or indirect aid in form of cost compensation measures, it would not be preferable to make such a choice, since an alignment (between Annex II and the Carbon Leakage list) would result in a larger extension of the list of eligible sectors. Unless the conditions for providing legal state aid are tightened and made more stringent, an extension of the list would in our opinion be incompatible with the stated objectives of the revised ETS-Directive.

The following is therefore suggested:

- Use the same level of ambition when *the number of eligible sectors on the Carbon Leakage list was reduced by two thirds* from 2021 and onwards. This would reduce the number of listed sectors in Annex II of the revised State Aid Guidelines to less than five sectors and no more than two subsectors.

Fulfilling the 25 percent target in article 10a (6)

For Denmark, it has been difficult to conceive a satisfying explanation on how state aid measures under article 10a (6) were meant to be implemented, as clearly stated in the article itself. The provision explicitly express 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*".

According to the Commission's own data[4], the volume of state aid measures within Member States has, however, reached much higher levels, e.g. from 34 percent to 60 percent of revenues generated from the auctioning of allowances.

Recognizing the non-binding character of the target value agreed upon, Denmark is suggesting that the Commission should:

[4] Report from the Commission to the European Parliament and the Council on the functioning of the European carbon market, COM(2018) 842 final: http://ec.europa.eu/transparency/regdoc/rep/1/2018/EN/COM-2018-842-F1-EN-MAIN-PART-1.PDF

- Reinstate the agreed original financial scope of aid granted under article 10a (6) without undue delay.
- Emphasize the obligation of Member States under article 10a (6) as from 2018, in any year in which a Member State uses more than 25 percent of its auctioning revenues, to publish a report setting out the reasons for exceeding that amount.
- Exert the Commission’s own reporting tasks in a way that provide full transparency to the reasons why Member States keep missing the 25 percent target as well as to the measures taken to rectify the situation within an acceptable time frame.
- Exhibit a rigorous assessment of future submissions by Member States of national aid schemes under article 10a (6).

Other comments

With the adoption of directive 2018/410/EC for a revised Emission Trading System, the EU ETS is confirmed as one of the cornerstones of the European climate policy. The ETS State Aid Guidelines play a crucial part in the implementation of the directive, and its revision comprises considerable potential to either support or undermine the success of the revised directive.

Denmark is therefore urging the Commission to make every effort possible to ensure a prudent, ambitious and highly targeted approach when revising its ETS State Aid Guidelines.