ESA | EFTA Surveillance Authority

Brussels, 11 December 2024
Case No: 93163
Document No: 1496907
Decision No 214/24/COL

Ministry of Trade, Industry and Fisheries
PO Box 8090 Dep
0032 Oslo
Norway

Subject: **Amendments to the Norwegian CO_2 compensation scheme – introducing an annual compensation cap and requirements of investments in climate mitigation and energy efficiency**

1 Summary

(1) The EFTA Surveillance Authority ("ESA") wishes to inform Norway that, having assessed the notified amendments to the scheme on compensating undertakings active in certain energy-intensive industries for increases in electricity prices resulting from the EU Emissions Trading System for the period 2021-2030 ("the measures"), it considers that the measures constitute State aid within the meaning of Article 61(1) of the EEA Agreement and decides not to raise objections,[1] as they are compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c). ESA has based its decision on the following considerations.

2 Procedure

(2) The Norwegian authorities notified the measures on 29 November 2024.[2]

3 Description of the measures

3.1 Background

(3) In 2022, by Decision No 171/22/COL ("the approval decision"), ESA approved the scheme on compensating undertakings active in certain energy-intensive industries for increases in electricity prices resulting from the EU Emissions Trading System for the period 2021-2030 ("the scheme").

(4) In 2023, ESA approved the introduction of a price floor of NOK 200 into the scheme by Decision No 043/23/COL.[3] The price floor was subsequently amended to NOK 375, as approved by ESA in 2024 by Decision No 046/24/COL.[4]

[1] Reference is made to Article 4(3) of Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.
[2] Document No 1502535.
[3] OJ C 220, 22.6.2023, p. 25 and EEA Supplement No 46, 22.6.2023, p. 4.
[4] OJ C 4621, 18.7.2024, p. 1 and EEA Supplement No 55, 18.7.2024 p. 1.

(5) The EEA EFTA States take part in the EU Emissions Trading System ("the EU ETS"), established by Directive 2003/87/EC ("the ETS Directive").[5] The EU ETS is a "cap and trade" system that sets a cap for the total volume of greenhouse gas emissions from certain installations and operators[6] and allows trading of emission allowances within the cap.[7] The current fourth phase from 2021 will last until 2030 and is designed to achieve the EU's 2030 emission reduction targets.[8]

(6) The scheme compensates undertakings in certain energy-intensive industries for increases in electricity prices resulting from the pass-on of the costs of greenhouse gas emissions under the EU ETS ("the indirect emission costs"), as defined in ESA's Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 ("the ETS Guidelines"),[9] as supplemented.[10]

(7) Reference is made to the approval decision for further details on the conditions of the scheme.[11] Moreover, reference is made to Decision No 046/24/COL for the description of the current price floor.[12]

3.2 The amendments to the CO_2 compensation scheme

3.2.1 Amendment 1

(8) According to the Norwegian authorities, the cost of the CO_2 compensation scheme has increased due to increases in the prices of the European Union Allowances ("EUA"),[13] which has led to the scheme not being economically sustainable. Norway introduced the abovementioned price floor of NOK 200 in 2023 and increased it to NOK 375 to counteract the effects of the increased prices of EUA and limit the aid amount paid out to beneficiaries under the scheme.

(9) According to the Norwegian authorities, the introduction and subsequent adjustment of the price floor has not granted the authorities sufficient predictability when it comes to future State expenses. The price floor adjustments have also led to the scheme being unpredictable for the aid beneficiaries.

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[5] 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), as subsequently amended. Incorporated into the EEA Agreement at point 21al of Annex XX by EEA Joint Committee Decision No 146/2007 of 26 October 2007.

[6] Annex I of the ETS Directive lists the categories of activities to which the Directive applies.

[7] See the European Commission's EU ETS Handbook, page 4 and following, available here.

[8] See the European Commission's website, where information on the EU ETS is available here.

[9] ESA's Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 (OJ L 130, 15.4.2021, p. 3, and EEA Supplement No 27, 15.4.2021, p. 3).

[10] Supplements to ESA's Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 (OJ L 204, 4.8.2022, p. 3, and EEA Supplement No 51, 4.8.2022, p. 3).

[11] See section 3 of the approval decision.

[12] See section 3 of the decision.

[13] According to paragraph 15(7) of the ETS Guidelines, EUA means a transferable allowance to emit 1 tonne of CO_2 equivalent during a specified period.

(10) The Norwegian authorities have therefore notified amendments to the scheme which i) remove the price floor in its entirety and ii) introduce instead an annual compensation cap of NOK 7 billion per year ("amendment 1").[14]

(11) The current price floor of NOK 375 will be removed and will thus no longer apply from the support year 2024.[15] Where the total compensation granted to all beneficiaries under the scheme in a single year exceeds the annual compensation cap of NOK 7 billion, the compensation will be proportionally reduced among the beneficiaries.

3.2.2 Amendment 2

(12) Furthermore, the Norwegian authorities have notified another amendment ("amendment 2") consisting of a requirement for beneficiaries to invest at least 40 percent of the total aid they receive between 2024 and 2030 under the scheme on climate mitigation or energy efficiency measures. The climate mitigation or energy efficiency measures must lead to i) a reduction in greenhouse gas emissions per unit produced, ii) a reduction in the power demand, or iii) the recovery of energy for the eligible company, another company or for power production. The aid may also be used for research and development projects that promote the objectives listed under i) to iii).

(13) The aid may only cover costs incurred for climate mitigation or energy efficiency measures in Norway and must be used towards fulfilling the requirement before the end of 2034. Furthermore, companies receiving aid must prepare a plan which explains how the aid received under the scheme shall be used to fulfil the requirement of amendment 2. The plan must be submitted to the Norwegian Environmental Agency by 1 March 2025. If new measures are planned or measures change, a new plan must be submitted.

(14) A number of changes to introduce a reporting obligation and facilitate enforcement and control of the use of the aid will also be introduced.

(15) According to the Norwegian authorities, amendment 2 will support the manufacturing industry's efforts in reducing greenhouse gas emissions and increasing their energy efficiency.

(16) The Norwegian authorities will include an exception from the requirement introduced in amendment 2 for undertakings with an annual greenhouse gas emission of below 1 000 tonnes of CO_2 equivalents for which no relevant energy efficiency measures exist. The existence of no relevant energy efficiency measures refers to a situation where the beneficiary is only capable of carrying out measures which would lead to a marginal reduction in energy consumption or measures which are extremely costly compared to the reduction in the energy consumption.

(17) Furthermore, a partial or full exemption from the requirement introduced in amendment 2 may be applied if circumstances beyond the company's control make

[14] The annual budget cap will be inflation adjusted by the twelve-month percentage change in the consumer price index from January 1 of the support year to January 1 of the year following the support year.

[15] Under the scheme, aid is paid out as annual grants in the year following the year in which the eligible costs were incurred. The current price floor will therefore not apply to aid granted under the scheme in 2025, for the support year of 2024.

meeting the requirements impossible or unreasonably burdensome. The Norwegian authorities have explained that the exception covers classical force majeure events such as war, natural disasters, strikes etc., but are not limited to only unforeseen events. Exemptions can also be applied in other extraordinary circumstances beyond the control of the company, such as a lack of access to power or other necessary infrastructure. Furthermore, Norwegian authorities have explained that the threshold for using the exception will be high as it will function as a safety mechanism and will not be applied based on discretionary assessments of reasonableness or to retroactively exempt measures that are deemed unrealistic. The requirement in amendment 2 does not apply to specific climate or energy efficiency measures. If alternative measures are available, companies will generally be required to alter their investment plans towards other feasible measures. A full exemption from the requirements of amendment 2 will only be applicable when there is no other relevant use of the compensation for other measures.

3.3 National legal basis

(18) The legal basis of the scheme is the Regulation on CO_2 compensation for the manufacturing industry in Norway for the period 2021-2030 ("the Regulation").[16] The Regulation is based on the relevant provisions of Norway's budget adopted each year by the Norwegian Parliament.

(19) The notified amendment will be reflected in the Norwegian Parliament's budget decision for 2025. The Norwegian authorities will further amend the Regulation to reflect the amendments to the scheme[17] from 1 January 2025.

4 Presence of State aid

4.1 Introduction

(20) Article 61(1) of the EEA Agreement reads as follows: "Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement."

(21) The qualification of a measure as aid within the meaning of this provision requires the following cumulative conditions to be met: (i) the measure must be granted by the State or through State resources; (ii) it must confer an advantage on an undertaking; (iii) favour certain undertakings (selectivity); and (iv) threaten to distort competition and affect trade.

(22) ESA has concluded that the scheme constitutes State aid within the meaning of Article 61 (1) of the EEA Agreement.[18] The notified measures do not alter this conclusion. Amendment 1 will serve as a cap, reducing payments from the scheme

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[16] In Norwegian: Forskrift om CO2-kompensasjon for industrien for perioden 2021–2030 (FOR-2022-11-11-1964).
[17] The Norwegian authorities will amend Article 6 and introduce a number of new sections to the Regulation. For a full overview of the proposed changes, see the draft of the amended Regulation as an appendix to the public consultation here.
[18] See paragraph 37 of the approval decision.

in excess of the cap. Amendment 2 places obligations on the beneficiaries' subsequent use of part of the aid granted through the scheme.

5 Lawfulness of the aid

(23) Pursuant to Article 1(3) of Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("Protocol 3"): "The EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. … The State concerned shall not put its proposed measures into effect until the procedure has resulted in a final decision."

(24) The Norwegian authorities have notified the measure and have yet to let it enter into force. They have therefore complied with the obligations under Article 1(3) of Part I of Protocol 3.

6 Compatibility of the aid

6.1 Introduction

(25) ESA can declare State aid compatible with the functioning of the EEA Agreement under its Article 61(3)(c) provided that certain compatibility conditions are fulfilled.

(26) ESA's ETS Guidelines set out the conditions under which aid measures in the context of the EU ETS may be considered compatible with the functioning of the EEA Agreement under Article 61(3)(c) thereof.

(27) In its approval decision, ESA concluded that the scheme is compatible with the functioning of the EEA Agreement, pursuant to its Article 61(3)(c).[19] ESA assessed the scheme's compatibility on the basis of section 3.1 of the ETS Guidelines, which sets out the conditions under which aid may be deemed compatible.

(28) The notified measures do not affect the compatibility assessment set out in the approval decision nor in the later decisions.

(29) In the approval decision, ESA found the scheme without a price floor to be compatible with the functioning of the EEA Agreement. Furthermore, there is nothing in the ETS Guidelines which precludes the EEA EFTA States from setting an annual compensation cap, which aims at limiting aid paid to the beneficiaries under the scheme. As the introduction of an annual compensation cap applies equally to all beneficiaries under the scheme, it is in line with paragraph 23 of the ETS Guidelines, which states that within the eligible sector, EEA EFTA States need to ensure that the choice of beneficiaries is made on the basis of objective, non-discriminatory and transparent criteria and that the aid is granted in principle in the same way for all competitors in the same sector if they are in a similar factual situation.

(30) Lastly, amendment 2 aims at reducing the risk of carbon leakage, while ensuring that part of the aid granted is used to promote environmental measures. The requirement to invest 40 percent of the aid in climate mitigation and energy efficiency measures applies equally to all beneficiaries.

[19] Section 6 of the approval decision.

(31) The exemptions to the requirement in amendment 2 are applied on the basis of objective, non-discriminatory and transparent criteria. Only companies with a low level of emissions[20] for which no relevant energy efficiency measures exist and companies that are subject to unexpected events outside their own control are exempted from the requirement.

7 Conclusion

(32) On the basis of the foregoing assessment, ESA considers that the scheme with the notified amendments constitutes State aid within the meaning of Article 61(1) of the EEA Agreement. Since ESA has no doubts that aid is compatible with the functioning of the EEA Agreement pursuant to its Article 61(3)(c), it has no objections to the implementation of the measures.

(33) The Norwegian authorities have confirmed that the notification does not contain any business secrets or other confidential information that should not be published.

For the EFTA Surveillance Authority,

Yours faithfully,

Arne Røksund President Responsible College Member	Árni Páll Árnason College Member	Stefan Barriga College Member

Melpo-Menie Joséphidès
Countersigning as Director,
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This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.

[20] The emission limit set by the Norwegian authorities corresponds to the level of a *de minimis* source stream in accordance with Article 19(3)(b) of Regulation (EU) 2018/2066 on the monitoring and reporting of greenhouse gas emissions subject to allowances.