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**Subject: State Aid SA.100004 (2022/N) – Spain
Compensation for indirect ETS costs in Spain for 2021-2030**

Excellency,

1. PROCEDURE

- (1) Following pre-notification contacts, by electronic notification dated 1 February 2022, Spain notified to the European Commission (the “Commission”), in accordance with Article 108 (3) of the Treaty on the Functioning of the European Union (“TFEU”), a scheme to compensate undertakings for a share of their indirect emission costs, that is to say the costs resulting from the EU Emission Trading System (“ETS”) passed on in electricity prices (“the measure” or “the notified scheme”).
- (2) The Commission services requested additional information by emails of 27 January 2022, 22 February 2022 and 7 March 2022. The Spanish authorities replied to those requests by emails of 31 January 2022, 22 February 2022 and 8 March 2022.
- (3) By letter dated 28 January 2022, Spain exceptionally agreed to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/1958 and to have this Decision adopted and notified in English.

2. DETAILED DESCRIPTION OF THE MEASURE

- (4) The measure compensates certain undertakings for increases in electricity prices resulting from the inclusion of the costs of greenhouse gas emissions due to the

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EU ETS, so called indirect emission costs, as defined in the Guidelines on certain State aid measures in the context of the greenhouse gas emission allowance trading scheme post-2021¹ (“the ETS Guidelines post-2021”).

2.1. Legal basis, duration, budget, financing and granting authority

- (5) The legal basis for the measure is:
- the law 1/2005 of 9 March 2005 regulating the scheme for greenhouse gas emission allowance trading; and
 - the draft royal decree establishing the compensation mechanism for indirect greenhouse gas emissions costs for the period 2021-2030 (the “draft royal decree”).
- (6) The draft royal decree provides that no aid will be granted under the measure before the notification of the Commission’s decision approving the measure.
- (7) The measure covers indirect emission costs incurred in years 2021 to 2030.
- (8) The aid, in the form of a direct grant, will be paid to the beneficiary, upon request, in year $t + 1$ for costs incurred in year t . The first payments will be made in 2022 on the basis of the eligible costs for year 2021 and last payments in 2031 for costs incurred in 2030.
- (9) The measure will be financed by the general State budget. The annual budget cannot exceed 25 % of Spain’s EU allowance auctioning revenues. The estimated total budget is EUR 2.9 billion for 2021-2030 and the estimated annual budget is distributed as follows:

Year	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Budget (EUR million)	220	240	255	275	290	300	315	330	340	350

- (10) The granting authority will be the Ministry of Industry, Trade and Tourism.

2.2. Beneficiaries

- (11) Beneficiaries must be active in one or more of the sectors listed in Annex I to the ETS Guidelines post-2021.
- (12) In addition, to be eligible to support under the notified scheme, beneficiaries must:
- a) be validly constituted at the time of submission of the application; and

¹ Communication from the Commission — Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 (OJ C 317, 25.9.2020, p. 5), as supplemented by the Communication from the Commission supplementing the Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 (OJ C, C/528, 30.12.2021, p. 1).

- b) have incurred indirect CO₂ emission costs in the year preceding the call for proposals;
- (13) No aid will be granted under the measure to:
- undertakings in difficulty within the meaning of the Commission guidelines on State aid for rescuing and restructuring firms in difficulty²;
 - undertakings subject to a pending recovery order following a previous decision of the European Commission declaring aid unlawful and incompatible with the common market; and
 - undertakings in a situation described in Article 13(2) of Law 38/2003 of 17 November 2003³ on subsidies.
- (14) In addition, according to Article 5(1) of the draft royal decree, the beneficiaries must maintain the productive activity of the installation for a period of three years, from the granting of the aid in accordance with Article 5 of Royal Decree-Law 20/2018 of 7 December 2018 on urgent measures to boost economic competitiveness in the industry and trade sector in Spain.
- (15) According to Article 21(2) of the draft royal decree, the General Direction for Industry and SMEs in the Ministry of Industry, Trade and Tourism (the “investigating body”) will require the latest energy audit report in force to verify that beneficiaries comply with the obligation to carry out an energy audit under Article 8 of Directive 2012/27/EU of the European Parliament and of the Council,

² Communication from the Commission — Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1–28).

³ Article 13(2) of Law 38/2003 of 17 November 2003 reads as follow: “2. Persons or entities in which one of the following circumstances is present, unless by the nature of the grant is excepted, may not obtain the status of a beneficiary or a contributing entity of the grants covered by this law. for its regulatory regulations:

a) Have been sentenced by a firm sentence to the penalty of loss of the possibility of obtaining grants or public aid.

b) Have requested the declaration of contest, have been declared insolvent in any proceedings, found in contest, be subject to judicial intervention or have been disabled according to the Law without the end of the period of disqualification set out in the qualification judgment of the competition.

c) To have given place, for cause of which they have been found guilty, to the firm resolution of any contract concluded with the Administration.

d) The physical person, the administrators of the commercial companies or those who have the legal representation of other legal persons, in any of the cases of Law 12/1995, of May 11, Incompatibilities of the Members of the Government of the Nation and of the High Charges of the General Administration of the State, of Law 53/1984, of December 26, of Incompatibilities of Personnel to the Service of Public Administrations, or of any of the elective offices regulated in the Organic Law 5/1985, of June 19, of the Regime Electoral General, in the terms established in the same or in the regulations governing these matters.

e) Not to be current in compliance with the tax or social security obligations imposed by the provisions in force, in the form that is determined to be regulated.

f) Having the tax residence in a country or territory regulated as a tax haven.

g) Not to be subject to the payment of grant repayment obligations in terms that are determined to be determined.

h) Have been sanctioned by firm resolution with the loss of the possibility of obtaining grants under this law or the General Tax Law.

The groups provided for in the second subparagraph of Article 11 (3) of this Act may not be granted access to the status of beneficiaries when any of the above prohibitions are met in any of its members.”

either through a specific energy audit, as part of a certified energy management system or environmental management system, such as the EU Eco-Management and Audit Scheme (EMAS) or equivalent.

- (16) According to Article 5(2) of the draft royal decree, beneficiaries that are required to carry out an energy audit pursuant to Article 2 of Royal Decree 56/2016 of 12 February transposing Article 8 of the Directive 2012/27/EU must fulfil alternatively one of the following obligations within a period not exceeding three years from the granting of the aid:
- a) implement the recommendations of the audit report, to the extent that the payback period of those investments does not exceed three years and their investment costs are proportionate; or
 - b) invest a significant share of at least 50 % of the aid amount in projects leading to substantial reductions of the installation's greenhouse gas emissions and well below the applicable benchmark used for free allocation in the EU Emissions Trading Scheme; or
 - c) reduce the carbon footprint of their electricity consumption, so that at least 30 % of their electricity consumption is supplied from carbon-free sources, justified by means of forward instruments, direct or indirect, by means of guarantees of origin, by investments in generation installations for self-consumption of renewable origin electricity or by other similar investments or actions.
- (17) The beneficiaries must include in their application a declaration by which they commit to comply with the obligation chosen and submit the relevant supporting documents (e.g. last audit report, timetable for the implementation of the recommendations, etc.). Those obligations and commitments will be renewed with each new grant of aid in each of the annual calls, leading to the start of a new three-year cycle of verification (see section 2.5).
- (18) The investigating body will verify that the beneficiaries comply with the obligations laid down in Article 5 of the draft royal decree. Such verification will be carried out on an annual basis, during the first half of the year following the granting of the aid and with a three-year follow-up period from the grant.
- (19) If, after the annual verification is carried out, it appears that the beneficiary has not complied with its obligations under Article 5 of the draft royal decree, it will not be eligible for new aid in the next year(s) under the notified scheme. In addition, if the beneficiary fails to comply with its obligations under Article 5 of the draft royal decree within three years from the granting of the aid, it will be required to reimburse the aid already received.
- (20) The expected number of beneficiaries is between 101 and 500.

2.3. Aid amount calculation

- (21) The maximum aid amount payable per installation will be calculated according to the two formulas outlined in point 28 of the ETS Guidelines post-2021.

- (22) Where electricity consumption efficiency benchmarks have been published, the formula of point 28(a) of the ETS Guidelines post-2021 applies. Where no product-related electricity consumption efficiency benchmarks have been published, the formula of point 28(b) of the ETS Guidelines post-2021 applies.
- (23) For the purpose of calculating the aid under the formula set out in point 28(b) of the ETS Guidelines post-2021, a fall-back electricity consumption efficiency benchmark of the baseline electricity consumption will be used, as envisaged by Annex II to the ETS Guidelines post-2021.
- (24) If an installation manufactures both products for which the electricity consumption efficiency benchmark is listed in Annex II to the ETS Guidelines post-2021 and products for which the fall-back electricity consumption efficiency benchmark is applicable, the electricity consumption for each product is apportioned according to the respective tonnage of production of each product. If an installation manufactures products that are eligible for aid and products that are not eligible for aid, the maximum aid payable is calculated only for the products that are eligible for aid.
- (25) The measure adopts the definitions of the ETS Guidelines post-2021 for all the elements of the formulas. Annex II to the ETS Guidelines post-2021 establishing the product-specific electricity consumption efficiency benchmarks and an annual reduction of 1.09 % and Annex III establishing the regional CO₂ emission factors apply.
- (26) The maximum aid intensity will be 75 % of the indirect emission costs incurred. The aid intensity will be the same for all eligible beneficiaries and will be determined for each year by the ratio between the available budget and the total eligible costs incurred by all eligible beneficiaries for the year in question.
- (27) The aid intensity can be increased beyond 75 % for beneficiaries in eligible sectors for which that aid intensity is not sufficient to ensure adequate protection against the risk of carbon leakage. For beneficiaries that, after receiving the aid amounting to 75 % of the eligible costs, are required to bear indirect emission costs exceeding 1.5 % of their gross value added⁴ (“GVA”) in year t, the aid intensity may exceed 75 % up to limiting the remaining indirect costs to 1.5 % of the GVA of the undertaking concerned in year t in accordance with point 31 of the ETS Guidelines post-2021. This rule will apply without restriction to all undertakings in all eligible sectors. This additional amount of aid will be apportioned among all eligible beneficiaries in proportion to their eligible costs. This applies only if there is sufficient budget to achieve first an aid intensity of 75 % for all beneficiaries.

⁴ The gross value added is calculated, by reference to the concepts of the General Accounting Plan, approved by Royal Decree 1514/2007 of 16 November 2007 approving the General Accounting Plan as turnover, plus capitalised production, plus other operating income, plus or minus changes in stocks, minus purchases of goods and services excluding personnel costs, less other taxes on non-deductible turnover-related products and less duties and taxes linked to production. Alternatively, it can be calculated from the gross operating surplus by adding personnel costs. Income and expenditure classified as financial or extraordinary in company accounts is excluded from value added. Value added at factor costs is calculated at gross level, as value adjustments (such as depreciation) are not subtracted.

2.4. Cumulation

- (28) Aid under the notified scheme may be cumulated with:
- other State aid in relation to the different identifiable eligible costs;
 - other State aid in relation to the same eligible costs, partly or fully overlapping, and with other State aid without identifiable eligible costs, only if such cumulation does not result in exceeding the maximum aid intensity or aid amount applicable under the notified scheme.
- (29) Union funding centrally managed by the Commission that is not directly or indirectly under the control of the Member State, does not constitute State aid. Where such Union funding is combined with State aid, only the latter is considered for determining whether notification thresholds and maximum aid intensities are respected, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the maximum funding rate(s) laid down in the applicable rules of Union law.
- (30) In addition, aid must not be cumulated with *de minimis* aid in respect of the same eligible costs if such cumulation would result in exceeding the applicable maximum aid intensity.

2.5. Transparency, reporting and monitoring

- (31) The Spanish authorities undertake to comply with and apply the transparency, reporting and monitoring requirements set out in points 56 to 62 of the ETS Guidelines post-2021.
- (32) Information will be published on the website of the Ministry of Industry, Trade and Tourism (www.mincotur.gob.es).

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid within the meaning of Article 107(1) of the TFEU

- (33) In order for a measure to constitute State aid within the meaning of Article 107(1) TFEU it has to fulfil four cumulative conditions. First, the aid must be imputable to the State and financed through State resources. Second, the measure must confer a selective advantage to certain undertakings or the production of certain goods. Third, the measure must be liable to affect trade between Member States. Fourth, the measure must distort or threaten to distort competition in the internal market.
- (34) The compensation is granted by the Ministry of Industry, Trade and Tourism (see recital (10)) based on a royal decree. The compensation is funded through the national State budget (see recital (9)). Hence, the measure is imputable to the State and financed through State resources. It confers an advantage to the beneficiaries by compensating for costs they would have borne under normal market conditions. The aid is selective since it is granted only to the undertakings active in certain sectors (see recital (11)). Those sectors are all exposed to international competition as noted in point 20 of the ETS Guidelines post-2021,

making it likely the aid can affect trade between Member States and distort competition.

- (35) Based on the above, the Commission considers that the scheme constitutes State aid within the meaning of Article 107(1) TFEU.

3.2. Lawfulness of the aid

- (36) The draft royal decree provides that no aid will be granted under the notified scheme before notification of the Commission's decision approving the measure (see recital (6)).
- (37) By notifying the measure before its implementation, the Spanish authorities have fulfilled their obligations under Article 108(3) TFEU.

3.3. Compatibility

3.3.1. Legal basis for the assessment of the compatibility of the aid

- (38) The Commission has assessed if the measure can be considered compatible with the internal market pursuant to Article 107(3)(c) TFEU.
- (39) Aid to undertakings to compensate for indirect emission costs falls within the scope of the ETS Guidelines post-2021. The Commission assessed the measure's compatibility on the basis of section 3.1 of the ETS Guidelines post-2021, which sets out the criteria under which aid may be deemed compatible.

3.3.2. The aid facilitates the development of an economic activity

3.3.2.1. Contribution to the development of an economic activity

- (40) According to Article 107(3)(c) TFEU, the Commission may consider to be compatible with the internal market aid to facilitate the development of an economic activity, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (41) The scheme supports companies active in one of the sectors or sub-sectors listed in Annex I to the ETS Guidelines post-2021 (see recital (11)), which correspond to sectors and sub-sectors deemed to be exposed to a genuine risk of carbon leakage due to indirect emission costs.
- (42) In view of the above, the Commission considers that the notified scheme contributes to the development of certain economic activities, namely sectors deemed to be exposed to a genuine risk of carbon leakage due to indirect emission costs.

3.3.2.2. Facilitation of an economic activity and incentive effect

- (43) To be declared compatible with the internal market under Article 107(3)(c) TFEU, the aid must effectively facilitate the development of an economic activity. State aid has an incentive effect if it incentivises the beneficiary to change its behaviour towards the development of a certain economic activity

pursued by the aid and if the change in behaviour would not occur without the aid⁵.

- (44) According to point 25 of the ETS Guidelines post-2021, for the aid to have an incentive effect and actually prevent carbon leakage, it must be applied for and paid to the beneficiary in the year in which the costs are incurred or in the following year.
- (45) The notified scheme foresees that the aid will be paid to the beneficiary, upon request, in year $t + 1$ for costs incurred in year t (see recital (8)). This is in line with point 25 of the ETS Guidelines post-2021.
- (46) The Commission therefore concludes that the aid has an incentive effect and facilitates the development of certain economic activities.

3.3.2.3. Compliance with other relevant provisions of EU law

- (47) State aid that contravenes provisions or general principles of EU law cannot be declared compatible with the internal market⁶.
- (48) Beneficiaries must comply with their obligations under Article 8 of Directive 2012/27/EU on energy efficiency.
- (49) In light of the above, the Commission considers that the measure does not infringe relevant Union law.

3.3.3. *The aid does not unduly affect trading conditions to an extent contrary to the common interest*

3.3.3.1. Positive effects of the aid

- (50) The measure will contribute to the development of sectors exposed to a genuine risk of carbon leakage due to indirect emission costs (see recital (42)).
- (51) Moreover, addressing the risk of carbon leakage serves an environmental objective since the aid aims to avoid an increase in global greenhouse gas emissions due to shifts of production outside the Union, in the absence of a binding international agreement on reduction of greenhouse gas emissions, as explained in point 20 of the ETS Guidelines post-2021.

3.3.3.2. Need for State intervention

- (52) Point 20 of the ETS Guidelines post-2021 requires that the objective of the aid is to prevent a significant risk of carbon leakage due to EU ETS allowance costs passed on in electricity prices supported by the beneficiary, if its competitors from third countries do not face similar CO₂ costs in their electricity prices and the beneficiary is unable to pass on those costs to product prices without losing significant market share.

⁵ See judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742.

⁶ See judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.

- (53) According to point 21 of the ETS Guidelines post-2021, a significant risk of carbon leakage is considered to exist only if the beneficiary is active in a sector or subsector listed in Annex I to the ETS Guidelines post-2021. Moreover, according to point 22 of the ETS Guidelines post-2021, if Member States decide to grant the aid only to some of the sectors listed in Annex I, the choice of sectors must be made on the basis of objective, non-discriminatory and transparent criteria.
- (54) The beneficiaries of the notified scheme are undertakings in Spain active in one of the sectors or sub-sectors listed in Annex I to the ETS Guidelines post-2021. All sectors listed in that annex will be eligible for aid under the notified scheme (see recital (11)). Hence, the Commission concludes that the aid is necessary to realise the scheme's objective of developing sectors deemed to be exposed to a genuine risk of carbon leakage due to indirect emission costs and, moreover, avoiding an increase in global greenhouse gas emissions.

3.3.3.3. Appropriateness of the aid

- (55) According to point 24 of the ETS Guidelines post-2021, for the purpose of compensating indirect ETS costs, State aid is considered an appropriate instrument independently of the form in which it is granted. In this context, compensation taking the form of a direct grant is considered an appropriate instrument.
- (56) Under the notified scheme, the support will take the form of a direct grant (see recital (8)). Therefore, the Commission considers the type of aid chosen is appropriate to address the risk of carbon leakage.

3.3.3.4. Proportionality of the aid

- (57) According to point 27 of the ETS Guidelines post-2021, the aid is proportionate and has a sufficiently limited negative effect on competition and trade if it does not exceed 75 % of the indirect emission costs incurred. The electricity consumption efficiency benchmark ensures that support to inefficient production processes remains limited and maintains the incentive for dissemination of most energy-efficient technologies.
- (58) Moreover, according to point 31 of the ETS Guidelines post-2021, given that for some sectors the aid intensity of 75 % might not be sufficient to ensure that there is adequate protection against the risk of carbon leakage, when needed, Member States may limit the amount of the indirect costs to be paid at undertaking level to 1.5 % of the gross value added of the undertaking concerned in year *t*. The gross value added of the undertaking must be calculated as turnover, plus capitalised production, plus other operating income, plus or minus changes in stocks, minus purchases of goods and services (which shall not include personnel costs), minus other taxes on products that are linked to turnover but not deductible, minus duties and taxes linked to production. According to point 32 of the ETS Guidelines post-2021, when Member States decide to limit the amount of the indirect costs to be paid at undertaking level to 1.5 % of gross value added, that limitation must apply to all eligible undertakings in the relevant sector. If Member States decide to apply the limitation of 1.5 % of gross value added only to some of the sectors listed in Annex I, the choice of sectors must be made on the basis of objective, non-discriminatory and transparent criteria.

- (59) The measure does not provide for full compensation, as this could remove the incentive to further reduce electricity consumption. The maximum aid intensity will be 75 %, in compliance with point 27 of the ETS Guidelines post-2021. The aid intensity may be lower depending on the available budget (see recital (26)).
- (60) Moreover, if there is sufficient budget to achieve first an aid intensity of 75 % for all other beneficiaries, a higher aid intensity would apply up to limiting the amount of the remaining indirect costs to be paid at undertaking level to 1.5 % of the gross value added of the undertaking concerned in year t (see recital (27)), in line with point 31 of the ETS Guidelines post-2021. This rule will apply without distinction to all eligible undertakings in all eligible sectors. The scheme therefore complies with point 32 of ETS Guidelines post-2021.
- (61) The formulas for the calculation of maximum aid payable under the notified scheme are in line with point 28 of the ETS Guidelines post-2021 (see recital (21)).
- (62) The notified scheme also complies with points 29 and 30 of the ETS Guidelines post-2021 for the following reasons. The draft royal decree provides that if an installation manufactures products for which a product-specific electricity consumption efficiency benchmark is applicable and products for which the fall-back electricity consumption efficiency benchmark is applicable, the electricity consumption for each product must be apportioned according to the respective tonnage of production of each product. If an installation manufactures products that are eligible for aid and products that are not eligible for aid, the maximum aid payable shall be calculated only for the products that are eligible for aid (see recital (24)).
- (63) The measure adopts the definitions of point 15 of the ETS Guidelines post-2021 for all the elements of the formulas. The measure also applies the electricity consumption efficiency benchmarks defined in Annex II to the ETS Guidelines post-2021, as well as the maximum regional emission factor of Annex III to the ETS Guidelines post-2021 (see recital (25)).
- (64) According to point 23 of the ETS Guidelines post-2021, within the eligible sector, Member 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. The additional eligibility conditions and the procedure laid down in the notified measure comply with those requirements (see recitals (12) to (14)).
- (65) The duration of the notified scheme does not exceed the duration of the ETS Guidelines post-2021 (see recital (7)). Therefore, the notified scheme complies with point 36 of the ETS Guidelines post-2021.

3.3.3.5. Cumulation

- (66) The measure's provisions on cumulation are in line with the requirements set out in points 33 to 35 of the ETS Guidelines post-2021 (see recitals (28) to (30)).

3.3.3.6. Energy audits and management systems

- (67) The notified scheme foresees that beneficiaries must comply with their obligation to conduct an energy audit pursuant to Article 2 of Royal Decree 56/2016 of 12 February 2016 transposing Directive 2012/27/EU (see recital (15)).
- (68) In addition, beneficiaries subject to the above obligation must fulfil alternatively one of the following obligations:
- a) implement the recommendations of the audit report, to the extent that the payback period of those investments does not exceed three years and their investment costs are proportionate; or
 - b) invest a significant share of at least 50 % of the aid amount in projects leading to substantial reductions of the installation's greenhouse gas emissions, well below the applicable benchmark used for free allocation in the EU Emissions Trading Scheme; or
 - c) reduce the carbon footprint of their electricity consumption, so that at least 30 % of their electricity consumption is supplied from carbon-free sources, justified by means of forward instruments, direct or indirect, by means of guarantees of origin, by investments in installations for self-consumption of renewable origin electricity or by other similar investments or actions.
- (69) The Spanish authorities will monitor compliance with those obligations annually based on a three-year verification cycle (see recitals (17) to (19)). The Commission considers that a reasonable period of time for implementing one of these obligations is in line with point 55 of the ETS Guidelines post-2021. The Commission considers that the period of three years provided for under the notified scheme for implementing one of these obligations is reasonable and in line with point 55 of the ETS Guidelines post-2021.
- (70) Therefore, the notified scheme complies with points 54 and 55 of the ETS Guidelines post-2021.

3.3.3.7. Transparency, reporting and monitoring

- (71) The Spanish authorities committed to comply with the requirements set out in points 56 to 62 of the ETS Guidelines post-2021 on transparency, reporting and monitoring (see recital (31)).

3.3.3.8. Remaining distortions of trading conditions

- (72) Compensation for indirect ETS costs risks distorting competition between companies within the same sector active in different EU Member States (intra-sector competition). This is because only some countries may put a compensation scheme in place for the fourth EU ETS trading period from 2021 to 2030⁷.

⁷ See the impact assessment report for the ETS Guidelines post-2021, p. 13 (available at: https://ec.europa.eu/competition/state_aid/what_is_new/2020_ets_revision/impact_assessment_report_ets_2021_en.pdf).

- (73) Moreover, the notified scheme may create a limited risk of competition distortions to the extent that products of certain eligible sectors may compete with products manufactured in sectors that are not eligible for indirect cost compensation (inter-sector competition).
- (74) Those risks are however mitigated by the fact that the notified scheme complies with all the conditions laid down in both ETS Guidelines post-2021, which set a list of eligible sectors, a maximum aid intensity, aid calculation formulas and electricity consumption efficiency benchmarks at Union-level. Moreover, under the notified scheme, the same aid intensity will be applied to all beneficiaries depending on the available budget, subject to the application of a higher aid intensity based on the undertaking's GVA (see recitals (23) and (24)).

3.3.3.9. Conclusion on distortion of competition and balancing test

- (75) As explained above, the measure will facilitate the development of sectors exposed to a significant risk of carbon leakage due to indirect emission costs and will contribute to avoid an increase in global greenhouse gas emissions (see recitals (41) and (51)).
- (76) Moreover, the necessity, appropriateness and proportionality of the aid limits its impact on competition and trade. The Commission concludes that even if an impact on intra-sector and inter-sector competition cannot be excluded, it appears that the negative effects of the aid are sufficiently limited for the overall balance of the measure to be positive.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President