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**Subject: State Aid SA.107885 (2023/N) – Austria  
Compensation for indirect ETS costs in Austria for 2022**

Excellency,

## 1. PROCEDURE

- (1) Following pre-notification contacts, by electronic notification of 8 August 2023, Austria 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 European Union (“EU”) Emission Trading System (“ETS”) passed on in electricity prices (the “measure or the “scheme”).
- (2) By letter dated 10 August 2023, Austria exceptionally agreed to waive its rights deriving from Article 342 TFEU, in conjunction with Article 3 of Regulation 1/19581 <sup>(1)</sup> and to have this Decision adopted and notified in English.

## 2. DETAILED DESCRIPTION OF THE MEASURE

- (3) 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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<sup>(1)</sup> Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

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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-2021 <sup>(2)</sup> (“the ETS Guidelines post-2021”). The objective of the measure is to prevent a significant risk of carbon leakage <sup>(3)</sup> due to indirect emission costs, in particular in light of the significant increase in electricity prices in 2022.

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

- (4) The legal basis of the measure is:
- the Federal Act on the temporary granting of support to compensate for the increase in electricity prices as a result of the inclusion of the costs of greenhouse gas emissions from European emissions trading of 14 June 2023 (SAG 2022) <sup>(4)</sup> (the “Electricity Cost Compensation Act 2022”); and
  - the support guidelines for electricity cost compensation 2022 (the “support guidelines”).
- (5) The support guidelines were adopted on the basis of Section 9 of the Electricity Cost Compensation Act 2022 by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology, in agreement with the Federal Ministry of Finance, on 27 July 2023. The support guidelines are published on the website of the promotional bank of the Austrian federal government (*Austria Wirtschaftsservice Gesellschaft* – “AWS”) <sup>(5)</sup>.
- (6) According to Section 13 of the support guidelines, aid may be granted under the measure only after the Commission has approved the measure under State aid rules.
- (7) The measure covers indirect emission costs incurred in 2022.
- (8) The aid, in the form of a direct grant, will be paid to the beneficiaries, upon request, in 2023 for costs incurred in 2022.
- (9) The measure will be financed by the federal budget.
- (10) The total budget of the measure estimated by the Austrian authorities is EUR 233 million.

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<sup>(2)</sup> 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).

<sup>(3)</sup> According to point 15(3) of the ETS Guidelines post-2021, carbon leakage is defined as the prospect of an increase in global greenhouse gas emissions when companies shift production outside the EU because they cannot pass on the cost increases induced by the EU ETS to their customers without significant loss of market share.

<sup>(4)</sup> BGBl. I No 58/2023.

<sup>(5)</sup> <https://www.aws.at/stromkosten-ausgleich-2022/>.

- (11) The granting authority will be the Federal Ministry of Climate Action, Environment, Energy, Mobility, Innovation and Technology. The management of the measure is entrusted to AWS<sup>(6)</sup>. The Austrian authorities explained in particular, that AWS will examine the applications received based on the Electricity Cost Compensation Act 2022 and the support guidelines, and submit a proposal of decision on the eligible beneficiaries to the Federal Minister of Climate Action, the Environment, Energy, Mobility, Innovation and Technology, which will take the final decision on the eligible beneficiaries. AWS will conclude the grant agreements with eligible beneficiaries in the name and on behalf of the Federal Government.

## 2.2. Beneficiaries

- (12) The beneficiaries are undertakings producing products in the sectors or sub-sectors listed in Annex 1 of the Electricity Cost Compensation Act 2022. The Austrian authorities submitted that the sectors and subsectors listed in Annex I of Electricity Cost Compensation Act 2022 are identical to those listed in Annex I of the ETS Guidelines post-2021, with the exception of one sector that is not eligible under the measure (NACE 19.20 Manufacture of refined petroleum products) although it is listed in Annex I of the ETS Guidelines post-2021.
- (13) The Austrian authorities explained that sector NACE 19.20 Manufacture of refined petroleum products is not eligible under the measure because the undertakings active in this sector benefit massively from high energy prices and can thus [partly] offset the indirect emission costs by the surplus profits thus generated. Although a share of the surplus profits are collected and redistributed, in accordance with the Federal Act on the Energy Crisis Contribution Fossil Energies (EKBF<sup>7</sup>) and Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices<sup>(8)</sup>, these companies can partly offset the indirect emission costs by the uncollected excess profits. In this context, the risk of actual relocation of production activities is considered to be relatively low and the incentive effect and proportionality of the support is considered insufficient for this sector. Moreover, according to the Austrian authorities, support for such installations would be counterproductive in terms of achieving national and EU energy and climate policy objectives, in particular in terms of reducing CO<sub>2</sub> emissions and switching to renewable energy sources.
- (14) According to Annex 1 of the Electricity Cost Compensation Act 2022, the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology may, in agreement with the Federal Ministers or the Federal Minister for Finance, extend the list of eligible sectors on the basis of the relevant State aid

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<sup>(6)</sup> AWS is the promotional bank of the Austrian federal government. It supports companies in implementing their innovative projects by offering soft loans, grants and guarantees, particularly in cases where the funds required cannot be obtained sufficiently through alternative funding. It is 100% owned by the Republic of Austria. The Federal Ministry of Labour and Economic Affairs and the Federal Ministry of Climate Action, Environment, Energy, Mobility, Innovation and Technology act as owners' representatives. AWS performs its services under a public contract.

<sup>(7)</sup> BGBl. I No 220/2022.

<sup>(8)</sup> OJ L 261, 7.10.2022, p. 1.

rules, in so far as undertakings in these sectors are particularly affected in 2022 by significant indirect emission costs. The Austrian authorities confirmed that any extension to other sectors based on this procedure is subject to the applicable State aid rules, and not part of the present notification.

- (15) The Austrian authorities submitted that 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 difficulty <sup>(9)</sup>;
  - undertakings subject to a pending recovery order following a previous decision of the Commission declaring aid unlawful and incompatible with the common market.
- (16) The Austrian authorities further indicated that all beneficiaries, regardless of their size, must carry out an energy audit within the meaning of Article 8 of Directive 2012/27/EU <sup>(10)</sup>, by 30 September 2023, either as a stand-alone energy audit or within the framework of a certified Energy Management System or Environmental Management System, for example the EU eco-management and audit scheme (EMAS).
- (17) The obligation described in recital (16) may be waived if the beneficiary submits in its aid application an energy audit report or a report from the Energy Management System carried out in 2022. In this case, the energy audit or Environmental Management System submitted in the aid application shall comply with the provisions of Section 41 et seq. of the Federal Act on the Improvement of Energy Efficiency in Households, Enterprises and the Federal Government and Energy Consumption Survey and Monitoring (Federal Energy Efficiency Act – EEffG) <sup>(11)</sup>, as amended, which transposes the provisions of Directive 2012/27/EU.
- (18) In addition, the Austrian authorities explained that all beneficiaries must implement the recommendations of the audit report within 12 months of the granting of the aid, provided that the payback period does not exceed three years and that the investment costs of the investments are proportionate. Undertakings must submit the list of the measures to be implemented as part of their application, when the beneficiary submits in its aid application an energy audit report or a report from the energy management system carried out in 2022. Investment costs are deemed proportionate if they do not exceed the aid amount. The deadline for the implementation of the investments may be extended to 18 months if an authorised and independent advisory body confirms that, for reasons beyond the control of the beneficiary, prior completion is not possible. No further extension of the implementation deadline is possible.

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<sup>(9)</sup> Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p.1).

<sup>(10)</sup> Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

<sup>(11)</sup> BGBl. I No 72/2014.

- (19) Where measures are taken to purchase electricity from renewable energy sources for the implementation of the recommendations of the audit report described in recital (18), the share of electricity from renewable energy sources must be at least 30 % of the undertaking's electricity consumption at the plant's site.
- (20) Beneficiaries must provide the necessary evidence to prove that they comply with the obligations described in recitals (16) to (19). The beneficiaries must notify AWS of the completion of the measures described in recital (18) within two weeks of completion. The AWS will verify that the beneficiaries comply with those obligations. If, after verification, it appears that the beneficiary has not complied with its obligations, the aid received has to be reimbursed with interests in accordance with Section 8 of the Electricity Cost Compensation Act 2022.
- (21) The Austrian authorities expect between 100 and 200 beneficiaries.

### **2.3. Aid amount calculation**

- (22) The maximum aid amount payable per installation will be calculated on the basis of the two formulas outlined in point 28 of the ETS Guidelines post-2021. The formulas are reproduced in Annex 2 of the Electricity Cost Compensation Act 2022. Consequently, 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) The Austrian authorities also submitted that the definitions of the ETS Guidelines post-2021 are applicable for all the elements of the formulas. Annex II of the ETS Guidelines post-2021 establishing the product-specific electricity consumption efficiency benchmarks and annual reduction rates and Annex III establishing the regional CO<sub>2</sub> emission factors also apply.
- (24) 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 of the ETS Guidelines post-2021.
- (25) 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 under the measure, the maximum aid payable is calculated only for the products that are eligible for aid.
- (26) The Austrian authorities submitted that the maximum aid intensity will be 75% of the indirect emission costs incurred. The aid intensity will be the same for all eligible beneficiaries.
- (27) In addition, Austria submitted that it further limits the maximum aid amount in accordance with Section 4(3) of the Electricity Cost Compensation Act 2022, namely as follows: an amount corresponding to the indirect emission costs of 1

GWh of electricity consumption <sup>(12)</sup> is deducted from the maximum aid amount per installation calculated on the basis of the formula laid down in point 28 of the ETS Guidelines post-2021. The Austrian authorities explained that this approach is based on cases of low electricity use (below 1 GWh per installation), where the effort involved in filing an aid application would exceed the aid amount. Considering those associated administrative costs for the applying company, such an application would not be worthwhile for the company and would produce unnecessary costs for the administrative body <sup>(13)</sup>.

- (28) The Austrian authorities submitted that if the total amount of compensation requested by the eligible beneficiaries exceeds the available budget of the measure, the individual compensation amounts will be reduced proportionally for all beneficiaries depending on the available budget. The aid intensity will be the same for all eligible beneficiaries.

#### **2.4. Cumulation**

- (29) The Austrian authorities confirmed that the scheme will comply with points 33 to 35 of the ETS Guidelines post-2021, so that the aid may be cumulated with:
- (a) any other State aid in relation to different identifiable eligible costs;
  - (b) any other State aid, in relation to the same eligible costs, partly or fully overlapping, and any other State aid without identifiable eligible costs, only if such cumulation does not result in exceeding the maximum aid intensity or aid amount applicable to the aid under the measure.
- (30) 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.-
- (31) The Austrian authorities submitted that aid under the measure will not be cumulated with *de minimis* aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that laid down under the measure.

#### **2.5. Transparency, reporting and monitoring**

- (32) The Austrian authorities undertake to comply with, and apply, the transparency, reporting, and monitoring requirements set out in points 56 to 62 of the ETS

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<sup>(12)</sup> This amount is obtained by multiplying the EU Allowance (“EUA”) forward price calculated for the year 2022 (54.06 EUR/tCO<sub>2</sub>) and the maximum regional CO<sub>2</sub> emissions factor (0.72 tCO<sub>2</sub>/MWh) for 1 GWh, which results in EUR 38 923.20.

<sup>(13)</sup> According to the Austrian authorities, the administrative costs for companies to prepare the aid application, as well as the costs of the energy audit system or certified energy management system or environmental management system, are estimated to be between EUR 15 000 and EUR 20 000.

Guidelines post-2021. The information listed in point 56 of the ETS Guidelines post-2021 will be published on [www.aws.at](http://www.aws.at).

### **3. ASSESSMENT OF THE MEASURE**

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

- (33) In order for a measure to constitute State aid within the meaning of Article 107(1) TFEU it has to fulfil four conditions. First, the aid must be imputable to the State and involve 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 Federal Ministry of Climate Action, the Environment, Energy, Mobility, Innovation and Technology and the management of the measure is entrusted to AWS, the promotional bank of the Austrian federal government (see recital (11)). The measure is based on the Electricity Cost Compensation Act 2022 and the support guidelines that were adopted by the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology (see recitals (4) and (5)), and financed by the federal budget (see recital (9)). Hence, the measure is imputable to the State and financed through State resources. It confers an advantage to its 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 (12)). Those sectors are all exposed to international competition as noted in point 20 of the ETS Guidelines post-2021, which makes it likely that the aid can affect trade between Member States and distort competition.
- (35) Therefore, the Commission considers that the measure constitutes State aid within the meaning of Article 107(1) TFEU.

#### **3.2. Lawfulness of the aid**

- (36) The support guidelines provide that aid may be granted under the measure only after the Commission has approved the measure under State aid rules (see recital (6)).
- (37) By notifying the scheme before its implementation (recital (6)), the Austrian 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 aimed at compensating for EU ETS allowance costs passed on in electricity prices incurred by undertakings from sectors or subsectors deemed to be exposed to a significant risk of carbon leakage 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

conditions under which such aid may be deemed compatible with the internal market within the meaning of Article 107(3)(c) TFEU.

### 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 measure supports undertakings producing products in the sectors or sub-sectors listed in Annex I to the Guidelines post-2021 (except for sector NACE 19.20 Manufacture of refined petroleum products – see recital (12), which correspond to sectors and sub-sectors deemed to be exposed to a genuine risk of carbon leakage due to indirect emission costs.
- (42) Therefore, the Commission considers that the measure 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 aid <sup>(14)</sup>.
- (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 measure foresees that the aid will be paid to the beneficiary in costs incurred in 2022 (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 <sup>(15)</sup>.

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<sup>(14)</sup> Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742.

<sup>(15)</sup> Judgment of 22 September 2020, *Austria v Commission*, C-594/18 P, EU:C:2020:742, paragraph 44.



(48) The Commission has no indications of any possible breach of Union law that would prevent the notified measure from being declared compatible with the internal market. In addition, the Commission notes that beneficiaries of the measure must comply with their obligations under Article 8 of Directive 2012/27/EU on energy efficiency (see recital (16)).

(49) Therefore, the Commission considers that the measure does not infringe other relevant provisions of EU 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) 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) In accordance with point 20 of the ETS Guidelines post-2021, the objective of aid measures addressing indirect emission costs is to prevent a significant risk of carbon leakage due to EU ETS allowance costs passed on in electricity prices and incurred by the beneficiary, if its competitors from third countries do not face similar CO<sub>2</sub> costs in their electricity prices and the beneficiary is unable to pass on those costs to product prices without losing significant market share.

(53) According to point 21 of the ETS Guidelines post-2021, for the purposes of those guidelines, 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. Moreover, point 22 of the ETS Guidelines post-2021 requires that, if a Member State decides 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 measure are undertakings producing products in the sectors or sub-sectors listed in Annex I of the ETS Guidelines post-2021, with the exception of sector NACE 19.20 Manufacture of refined petroleum products (see recital (12)).

(55) According to the Austrian authorities (see recital (13)), this exclusion is justified by the fact that the sector benefits massively from high energy prices and therefore the actual risk of carbon leakage is considered to be relatively low. The Commission agrees that, for the year 2022, which is the relevant year for the measure, undertakings active in sector NACE 19.20 Manufacture of refined petroleum products can be considered to be in a different factual situation compared to undertakings active in other sectors listed in Annex I to the ETS Guidelines post-2021. As stated in recital 50 of the Council Regulation (EU) 2022/1854, without substantially changing their cost structure and increasing their

investments, Union companies and permanent establishments generating at least 75% of turnover with activities in the crude petroleum, natural gas, coal and refinery sectors, have seen their profits spike due to the sudden and unpredictable circumstances of Russia's war of aggression against Ukraine, reduced supply of energy and increasing demand due to record high temperatures.

- (56) Therefore, the exclusion of sector NACE 19.20 Manufacture of refined petroleum products is based on objective, non-discriminatory and transparent criteria, in line with point 22 of the ETS Guidelines post-2021.
- (57) Hence, the Commission concludes that the aid is necessary to realise the measure'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

- (58) 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 and, in this context, compensation taking the form of a direct grant is considered an appropriate instrument.
- (59) In the measure, the support will take the form of a direct grant (see recital (8)). Therefore, the Commission considers that the type of aid chosen is appropriate to address the risk of carbon leakage.

#### 3.3.3.4. Proportionality of the aid

- (60) According to point 27 of the ETS Guidelines post-2021, for the purpose of compensating indirect ETS cost, State 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. This point also provides that the electricity consumption efficiency benchmark ensures that support to inefficient production processes remains limited and maintains the incentive for dissemination of the most energy-efficient technologies.
- (61) The measure does not provide for full compensation, as that could remove the incentive for beneficiaries to further reduce electricity consumption. In compliance with point 27 of the ETS Guidelines post-2021, the maximum aid intensity under the measure is set at 75%, (see recital (26)).
- (62) The formulas for the calculation of maximum aid payable under the measure are in line with point 28 of the ETS Guidelines post-2021 (see recital (22)).
- (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 of the ETS Guidelines post-2021, as well as the maximum regional emission factor of Annex III of the ETS Guidelines post-2021 (see recital (23)).
- (64) The measure also complies with points 29 and 30 of the ETS Guidelines post-2021 for the following reasons. 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 (see recital (25)).

- (65) 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 eligibility requirements under the measure referred to in recitals (12) to (20) comply with those requirements. Moreover, the aid intensity will be the same for all beneficiaries (see recital (28)).
- (66) The duration of the measure does not exceed the duration of the ETS Guidelines post-2021 (see recital (7)). Therefore, the measure complies with point 36 of the ETS Guidelines post-2021.

#### 3.3.3.5. Cumulation

- (67) 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 (29) to (31)).

#### 3.3.3.6. Energy audits and management systems

- (68) The Austrian authorities committed to verify that all beneficiaries will comply with their obligation to conduct an energy audit within the meaning of Article 8 of Directive 2012/27/EU, by 30 September e2023, either as a stand-alone energy audit or within the framework of a certified Energy Management System or Environmental Management System, for example the EU eco-management and audit scheme (EMAS) (see recital (16)). This obligation may be waived if the undertaking can submit an energy audit report or a report from the energy management system concerning carried out in 2022, as part of its aid application (see recital (16)). The measure therefore complies with point 54 of the ETS Guidelines post-2021.
- (69) Moreover, the Austrian authorities committed to verify that all beneficiaries must implement the recommendations of the audit report described in recital [x](68) above within 12 months of the granting of the aid (with a possible extension to 18 months), provided that the payback period does not exceed three years and that the investment costs of the investments are proportionate (see recitals (18) and (20)). The Commission considers that the period of time for implementing this obligation is in line with point 55(a) of the ETS Guidelines post-2021. The Commission considers that the deadline foreseen by the measure is reasonable. The additional requirement where measures are taken to purchase electricity from renewable energy sources as described in recital (19) is objective, non-discriminatory and transparent in line with point 23 of the ETS Guidelines post-2021. The measure therefore complies with point 55 of the ETS Guidelines post-2021.

### 3.3.3.7. Transparency, reporting and monitoring

- (70) The Austrian 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 of the measure (see recital (32)).

### 3.3.3.8. Firms in difficulty or subject to an outstanding recovery order

- (71) Under the measure, no aid will be granted to (i) undertakings in difficulty within the meaning of the Commission guidelines on State aid for rescuing and restructuring firms in difficulty and to (ii) undertakings subject to a pending recovery order following a previous decision of the Commission declaring aid unlawful and incompatible with the common market (see recital (15)).
- (72) Therefore, the measure complies with points 10 and 11 of the ETS Guidelines post-2021.

### 3.3.3.9. Remaining distortions of trading conditions

- (73) Austria's compensation for indirect ETS costs risks distorting competition between the beneficiaries and undertakings active the same sector but in different EU Member States (intra-sector competition). This is because only some countries may put a compensation measure or scheme in place for the fourth EU ETS trading period from 2021 to 2030 <sup>(16)</sup>.
- (74) Additionally, the measure may create a limited risk of competition distortions between the beneficiaries and undertakings active in other sectors not covered by the measure 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).
- (75) Those risks are however mitigated by the fact that the measure 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 measure, the same aid intensity will be applied to all beneficiaries depending on the available budget (see recital (28)).

### 3.3.3.10. Conclusion on distortion of competition and balancing test

- (76) 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 avoiding an increase in global greenhouse gas emissions (see recitals (46) and (51)).
- (77) Moreover, the necessity, appropriateness and proportionality of the aid limit its impact on competition and trade. The Commission concludes that even if an

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<sup>(16)</sup> 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](https://ec.europa.eu/competition/state_aid/what_is_new/2020_ets_revision/impact_assessment_report_ets_2021_en.pdf)).

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

Didier REYNDERS  
Member of the Commission