

## European Commission consults on State aid guidelines related to the EU Emission Trading Scheme

The EU Emission Trading Scheme (“EU ETS”) was established in 2005 for the purpose of limiting the CO<sub>2</sub> emissions in the EU. It allocated allowances to economic operators and provided the possibility to trade these allowances. In 2008, Directive 2009/29/EC amended the EU ETS resulting in a further expansion of its scope and setting an overall EU cap. Under this Directive, EU Member States could provide state aid to concerned sectors in order to reduce the risk of so-called carbon leakage, i.e. industry sectors shifting production to non EU countries due to higher electricity costs (so-called indirect emission costs). The European Commission (“Commission”) intends to publish guidelines on these EU ETS related state aids.

In essence, the consultation will feed into the Commission’s official stance on which industry sectors will be eligible for potentially millions of state aid and which criteria will have to be complied with. Next to the obvious questions in the consultation as to the eligible sectors, the Commission also seeks views on whether other industry sectors might be disadvantaged as a consequence and whether companies face similar burdens resulting from indirect emission costs in other countries.

Among other things, the Commission asks why businesses would not be able to pass on electricity price increases to consumers. Furthermore, the consultation requests detailed information regarding the factors that would drive a possible shift of production to non-EU countries. In this regard the Commission both asks for specific CO<sub>2</sub> prices and their impact on profitability as well as which countries companies would relocate facilities to.

It is evident that the Commission does not intend to easily allow state aid. Therefore, the Commission expects stakeholders in the consultation to describe their activities and products in detail. The Commission will also look into how far businesses could adapt to the consequences of the EU ETS by changing inputs, introducing new technologies and how price setting

mechanisms work at a global level. Thus, the Commission seeks a clearer picture on how likely shifts in production are compared to what industry had claimed at the time of the adoption of the new EU ETS framework in 2008.

In addition to sector specific inquiries, the Commission is also interested in views regarding the level of financial support. The aim is to find the balance between reducing potential disadvantages for European industries on the one and not to undermine the EU ETS on the other. Furthermore, it wants to ensure that sufficient incentives are given to invest in more efficient technology and that sectors do not become dependant on aid. Finally, a benchmark for each sector needs to be found indicating the electricity consumption per unit of production based on the best available technologies and the mix of electricity used in terms of CO<sub>2</sub> emissions.

Finally, the Commission welcomes input to the debate on how the emissions factor, i.e. the CO<sub>2</sub> emissions per electricity unit is to be set. Here, several alternatives are possible, ranging from an average factor for the whole of the EU, a factor according to marginal power production in the relevant electricity market or a geographic area or the installation.

For energy intensive industries, this consultation provides a key opportunity to make their case in the debate regarding carbon leakage that has been ongoing ever since the EU agreed on its first climate and energy goals. The consultation is open until 11 May 2011.

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