

Brussels, September 2025

## **Technical updates of the Emissions Trading Scheme State aid guidelines**

*Business & Science Poland position*

Business & Science Poland (BSP) welcomes the initiative of the European Commission to update the State aid guidelines in the context of the EU ETS, with the aim of adjusting the technical parameters and the list of sectors eligible for compensation of indirect costs. This is a step towards better reflecting current market realities, strengthening protection against the risk of carbon leakage, and maintaining the competitiveness of European industry.

The current functioning of the EU ETS reveals serious structural limitations, particularly felt in industrial sectors most exposed to the risk of losing competitiveness. The mechanism proposed under the Green Deal, based on steadily increasing emission prices, imposes significant costs on industry. Although the EU ETS contributes to the reduction of CO<sub>2</sub> emissions, in many energy-intensive sectors the risk is growing that production and emissions will be reduced or relocated outside the European Union, rather than genuinely reduced. This phenomenon has both economic and environmental dimensions.

The sharp increase in allowance prices and regulatory uncertainty make it difficult for companies to plan the modernisation of installations and to secure financing. Funds that could otherwise be directed towards investments in low-emission technologies are largely used for the purchase of allowances. High energy and carbon costs, the complexity of the system and unequal access to support instruments reduce the effectiveness of EU climate policy. This problem is particularly severe for energy-intensive sectors, including manufacturing and agri-food processing, which are characterised by seasonal production and limited investment flexibility.

An additional challenge is the growing burden of administrative obligations, in particular in the field of reporting and monitoring of emissions. At the same time, it is important to maintain the technological neutrality of support instruments and to ensure their availability for high-emission regions, where modernisation is associated with high infrastructure costs and the risk of job losses.

The decarbonisation of industry requires effective financial support mechanisms covering both investment costs (CAPEX) and operating costs (OPEX). Existing support instruments often do not correspond to the actual needs of companies – they are too complex, and the time required for decisions and disbursements is disproportionate to the pace of the transition and market volatility. There is a need for fast, predictable and accessible forms of support, including for large industrial companies, which will help to maintain competitiveness and accelerate emission reductions.

Based on the experience of some of the largest Polish energy-intensive companies, BSP identifies three key directions for change that should be reflected in the updated guidelines:

1. **Extension of the list of eligible sectors** to include codes 20.11 (manufacture of industrial gases), NACE 20.14 (manufacture of other basic organic chemicals), 20.15 (manufacture of fertilisers and nitrogen compounds), 20.16 (manufacture of plastics in primary forms) and 07.29 (mining of other non-ferrous metal ores), in line with the actual level of exposure to indirect costs and the risk of carbon leakage,
2. **Adjustment of technical parameters and eligibility criteria in the ETS guidelines** – taking into account the real indirect costs in high-emission energy mixes and in price-taking sectors by updating emission and efficiency factors and revising eligibility criteria, so that they better reflect the actual risk of carbon leakage and cost differences across the EU,
3. **Consistency of the ETS guidelines with other State aid frameworks** (CISAF, CEEAG, GBER, IPCEI), in order to facilitate the combination of different forms of support for beneficiaries and reduce administrative burdens.

In the following sections of the document, we present a detailed justification of the above recommendations, based on an analysis of the effects of the current guidelines and the experience of sectors most exposed to indirect costs.

### 1. Extension of the list of eligible sectors

An important element in safeguarding the competitiveness of EU industry under the EU ETS is the compensation of indirect costs of greenhouse gas emissions. The guidelines adopted in 2020, based on analyses carried out at a time when electricity prices were significantly lower than in subsequent years, defined the list of sectors eligible for compensation for the period 2021–2030 and introduced an unjustified change whereby the sectors classified under NACE codes 20.14 (manufacture of other basic organic chemicals), 20.15 (manufacture of fertilisers and nitrogen compounds), 20.16 (manufacture of plastics in primary forms) and 10.81 (manufacture of sugar) were excluded from eligibility for compensation of indirect CO<sub>2</sub> costs. This decision had a negative impact on the competitiveness of the EU chemical industry, increasing the risk of loss of market share to producers from third countries.

An illustrative example is the nitrogen fertiliser sector, the production of which requires significant amounts of energy for the synthesis of ammonia from atmospheric nitrogen and natural gas. The high energy intensity of this process exposes the sector to a loss of competitiveness, which has been reflected in above-average imports of fertilisers from outside the EU, where production is not subject to environmental charges. In addition, by 2034 the complete phase-out of free CO<sub>2</sub> allowances under the EU ETS is planned for sectors covered by the CBAM mechanism. The CBAM, as an instrument designed solely to equalise the costs of industrial emissions between the EU and third countries, does not take into account other cost-generating factors. In particular, it disregards the high environmental standards in force in the EU, labour costs, investment expenditure and subsidies granted by third countries to enterprises exporting to the European market. In view of the above, and of the EU's ambitious decarbonisation objectives, it is essential to restore indirect cost compensation for the fertiliser sector as an instrument to safeguard fair competition and, consequently, Europe's food security.

We also draw attention to the need to include the industrial gases sector (NACE 20.11), which constitutes an essential element of industrial decarbonisation. The production of industrial gases is highly dependent on electricity prices, which represent the largest share of production costs. In addition, industrial gases are used to reduce emissions in the steel, chemical and energy sectors. Due to their wide application in energy-intensive processes, the industrial gases sector is a strategic infrastructural node of the entire EU industrial economy. Their availability and price have a direct impact on the competitiveness of other sectors, and disruptions in this segment affect the rest of industry. Including the industrial gases sector in the mechanism for compensation of indirect costs would ensure a level playing field for European enterprises and operators from third countries. At the same time, it would eliminate the economic incentive for current end-users to produce industrial gases themselves in an energy-inefficient manner. This would increase the energy efficiency of industrial gas production and prevent an increase in greenhouse gas emissions linked to potential in-house production by less efficient operators.

A similar situation applies to the non-ferrous metal mining sector (NACE 07.29 – mining of other non-ferrous metal ores), which was also excluded only in the final version of the guidelines. In recent years, activities in the field of non-ferrous metal extraction (NACE 07.29) have undergone significant electrification, which has made the sector even more exposed to indirect CO<sub>2</sub> costs. Electricity is the main energy carrier, accounting for around 70% of the sector's total energy consumption. At the same time, holding *price-taker* status due to the globally determined exchange price, this sector cannot pass on the indirect CO<sub>2</sub> costs reflected in electricity prices to consumers, which places it under increasing competitive pressure from exporters from third countries to the EU.

In order to mitigate this unfavourable situation, to encourage further decarbonisation of the mining industry and to achieve the EU extraction target of 10% set out in the Critical Raw Materials Act, it is necessary to extend the list of sectors in Annex I to the Guidelines on certain State aid measures in the context of the GHG emission allowance trading scheme post-2021 (2020/C 317/04) to include non-ferrous metal mining. The sector's increasing rate of electrification entails greater exposure to indirect costs and justifies a renewed sectoral assessment and the inclusion of code 07.29 among those eligible for indirect cost compensation.

Indirect emission costs, arising mainly from electricity consumption, represent a significant share of operating costs. The direct electrification of mining production is intensifying as mining machinery becomes increasingly electrified. The sector has already achieved what was possible in terms of improving energy efficiency – the remaining emission reduction options require significant investment expenditure and are costly to operate, to the extent that gains in energy efficiency do not offset the loss of competitiveness resulting from high costs. This applies to electrification, CCS and CCU, as well as other technologies.

Given that electrification is the main method of decarbonisation – which is particularly important for the non-ferrous metal mining sector (NACE 07.29), forming the starting point of virtually all strategic raw material value chains – exposure to high electricity prices (including CO<sub>2</sub> costs) undermines the competitiveness of the sector, placing it in a situation faced by no other mining activity outside the EU. The sector's engagement in the decarbonisation process depends on the availability of affordable electricity from non-fossil sources, and considering the 70% electrification rate of operations, the exclusion of this sector is unjustified. In the original impact assessment of 2020, a scenario including mining in the list was envisaged – however, in the Commission's final decision this was arbitrarily narrowed, accompanied by an

impact assessment and justification that do not reflect the actual exposure of the sector to carbon leakage (e.g. its price-taker status and the potential relocation of production outside the EU).

Meeting 10% of the EU's demand for critical raw materials by 2030 will require continuous investment in the extraction of non-ferrous metals (copper, nickel, aluminium, silver, gold, tin, zinc, etc.). The expansion of existing mines or the opening of new ones will largely depend on the availability of affordable electricity as a key energy input necessary for viable operations. The extraction of non-ferrous metals, supplying raw materials for many industrial sectors such as renewable energy, automotive including electromobility, defence and ICT, constitutes a pillar of the EU's strategic autonomy.

## 2. Adjustment of technical parameters and eligibility criteria in the ETS guidelines

BSP notes that the current design of the ETS guidelines, based on EU-wide electricity efficiency benchmarks and average CO<sub>2</sub> emission factors assigned to a given market area, results in an underestimation of compensation in countries with a high-emission energy mix – such as Poland – compared to the actual costs incurred by industry.

Indirect ETS costs represent a major burden, particularly for industries operating as *price-taking* sectors – including refining, chemicals and non-ferrous metal mining – which compete on global markets without the ability to reflect additional costs in product prices. With EUA prices at 80–100 EUR/t CO<sub>2</sub> and the carbon intensity of the Polish power mix at 0.6 t CO<sub>2</sub>/MWh, the additional electricity cost amounts to 48–60 EUR/MWh, which for petrochemicals and fertilisers corresponds to 20–30% of operating margins. The absence of full compensation leads to a risk of carbon leakage and deindustrialisation, especially in countries with a high-emission energy mix, such as Poland.

In these countries, emissions associated with electricity generation – and thus indirect costs – are significantly higher than the values applied in the methodology. As a result, the level of support is disproportionately low compared to the actual burden, which weakens the ability to compete with companies operating in Member States with a cleaner energy mix, for which the current parameters are relatively more favourable.

The current values of electricity emission factors (Annex III) require revision. Poland reached approximately 600 g CO<sub>2</sub>/kWh in 2022, while in France it was around 50 g CO<sub>2</sub>/kWh. It is therefore proposed to update the CO<sub>2</sub> factors on the basis of the most recent EEA data or notifications from Member States (2022/2023).

We call on the European Commission, in the context of the 2025 update of technical parameters, to review the CO<sub>2</sub> emission and efficiency factors in a way that better reflects the actual conditions of energy production in individual Member States, so that compensation more effectively offsets cost differences resulting from geographical circumstances. Until precise values are established, a fallback approach should be applied, namely a temporary energy consumption factor set as a fraction of the average consumption.

In order for the compensation mechanism to more effectively cover sectors genuinely exposed to high indirect costs, we call for an adjustment of the eligibility criteria through the following changes:

- **lowering the electro-intensity threshold from 20% to 15% of GVA** – in order to cover sectors with high exposure, low margins and a high risk of carbon leakage, which are currently excluded despite actual burdens,
- **lowering the trade intensity requirement from 20% to 15%** – to include sectors operating under strong international competition but not formally meeting the current threshold,
- **introducing a combined risk criterion** = electro-intensity × trade intensity × price-taking – allowing for a more comprehensive assessment of risks for sectors which individually do not exceed the thresholds but are collectively highly exposed,
- **taking into account the share of electricity costs in OPEX** – this indicator better than %GVA reflects the actual cost burden and the sector's sensitivity to energy prices,
- **introducing a sensitivity test assessing the impact of changes in the EUA price on energy and production costs** – to determine how quickly an increase in CO<sub>2</sub> prices translates into actual operating costs in individual sectors,
- **analysing the correlation between product prices in the EU and global prices, and assessing the pass-through rate** – to take into account the situation of typical *price-taking* sectors which cannot reflect higher ETS costs in their product prices,
- **introducing a criterion of strategic importance in EU value chains** – to protect sectors critical for the Green Deal and the EU's resource security (e.g. those identified in the CRMA, IPCEI),
- **applying a correction for process electrification** – temporary higher support in cases where electricity consumption per tonne of product increases as a result of replacing fossil fuels with cleaner technologies.

### 3. Consistency of the ETS guidelines with other State aid frameworks

We underline the need for better coordination of the ETS guidelines with other State aid frameworks, such as CISAF, CEEAG, GBER and IPCEI. At present, beneficiaries, in particular in energy-intensive sectors, face inconsistencies regarding the eligibility of costs, the definition of incentive effect, project durability requirements and reporting procedures. Harmonising and simplifying the rules – including application, reporting and accounting procedures – would enable a more effective combination of different forms of support, such as indirect cost compensation and investment aid. As a result, this would enhance the effectiveness of EU climate policy and improve industry's access to instruments supporting the transition process.

#### Summary

BSP supports the direction of the European Commission's work on updating the ETS guidelines, stressing that this is a key opportunity to introduce solutions that genuinely support the competitiveness of European industry in the energy transition. The current rules on indirect cost compensation do not fully

reflect the actual economic and cost conditions, in particular in countries with a high-emission energy mix and in sectors excluded from the mechanism, even though they remain exposed to high indirect costs and competition from third countries, as in the case of the fertiliser sector. Moreover, the exclusion of the mining sector from eligibility for compensation of indirect CO<sub>2</sub> costs under the State aid guidelines linked to the ETS amounts to a penalty for a sector currently undergoing costly electrification and decarbonisation processes and intending to pursue these efforts in the future. Without such an incentive for industrial consumers, future investments will stagnate, competitiveness will be weakened and the security of supply of domestic strategic and critical raw materials will be at risk.

The implementation of the three recommended directions for change – extending the list of eligible sectors, adjusting technical parameters to the actual conditions in Member States, and ensuring consistency with other State aid frameworks – would more effectively protect industry from the risk of carbon leakage, level the playing field on the single market and accelerate the decarbonisation process.

## **About BSP**

*Business & Science Poland (BSP) combines the experience of leading Polish enterprises with the European Union's agenda. We represent the knowledge and interests of Polish companies employing over 180,000 people in Poland, the EU, and worldwide. Our goal is to support the EU Single Market, taking into account the need for its responsible and effective transformation.*