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## **Norway's National Allocation Plan for the emissions trading system in 2008-2012 – comments from the Confederation of Norwegian Enterprise**

### **Introduction**

Reference is made to the draft Norwegian National Allocation Plan (NAP), which was published for public consultation by the Ministry of the Environment on 21 December 2007, with a deadline for comments today. This is an extraordinarily short deadline for comments, particularly since no account has been taken in the present draft of the comments submitted by a broad range of stakeholders, to the effect that Norway's method of allocating emissions allowances is in breach of the EEA Agreement and deviates from the methods applied by all other countries participating in the EU Emissions Trading Scheme.

The Confederation of Norwegian Enterprise (NHO) refers to its position paper in the public consultation of the 2007 amendments to the Norwegian Greenhouse Gas Emission Trading Act of 17 December 2004, and to its subsequent Complaint to the EFTA Surveillance Authority regarding the discriminatory provisions of the said Act. For the sake of good order, both documents are enclosed hereto.

NHO maintains that the allocation of emissions allowances provided for in the present NAP violates the EEA Agreement, because allowances are to be allocated according to discriminatory criteria which cannot be justified on grounds of environmental protection. This is in breach of Article 11.3 of the ETS Directive, and of the Criteria for National Allocation Plans in Annex III of the Directive, in particular criterion 5. These provisions require that allocation of allowances shall be in conformity with the requirements of the EEA Agreement, in particular Articles 61 and 62, and that EFTA Member States shall take into account the need to provide access to allowances for new entrants.

### **Discriminatory allocation criteria impede competition**

Section 3.2 of the draft NAP confirms and details Norwegian Authorities' intention of applying overtly discriminatory criteria for allocating allowances to undertakings in Norway. Land based industries will only receive allowances free of charge if they had emissions during the base period 1998-2001. Consequently, all installations that have been established relocated or expanded after this period, will not be granted allowances free of charge.

One practical implication of this scheme is that existing undertakings in Norway may be put at a competitive disadvantage, based on whether their installations were set up etc. before or after the expiry of the base period, irrespectively of whether the production technology may

be cleaner than that of older installations. The other implication is that all new entrants face a significant barrier to entry in Norway during the 2008-2012 trading period because they face higher costs than they would in other EEA countries, and higher costs than existing undertakings with installations set up before or during the base period. Again, the fact that new entrants face strict requirements to use best available technology, and the fact that a new entrant always will be able to establish operations elsewhere (“carbon leakage”), has had no consequence on Norwegian policy.

### **Discrimination is not justified on environmental grounds**

No new arguments are presented in the draft NAP as to why the discriminatory treatment has any direct or indirect positive effects on combating climate change. This observation should in itself suffice to prove that no such effects exist. NHO and many others have demonstrated that there are specific and well documented examples to prove that Norwegian policy is likely to create severe carbon leakage from Norway to other countries in the EEA, resulting in a net increase in global emissions of CO<sub>2</sub>.

Section 6 of the NAP has specific comments on several criteria in Annex III of the ETS Directive, but conveniently avoids the requirements in criterion No. 5. This criterion states that the NAP “shall not discriminate between companies or sectors in such a way as to unduly favour certain undertakings or activities in accordance with the requirements of the Treaty, in particular Articles 87 and 88 thereof” is – interestingly – not commented upon in the draft NAP.

In the draft NAP, an estimated reserve of 6.8 Mt (or 7.7 Mt according to the table on page 1) will be set aside for auctioning by the Ministry of Finance on an annual basis. Such a sale from the Norwegian Government leads to emissions equalling the volume of allowances that are sold. As pointed out in Section 4.3 of NHO’s Complaint to the EFTA Surveillance Authority, the vast negative effects for the environment of such a sale neutralises any imaginable benefits of the discrimination laid down in the allocation scheme, and thus precludes a finding by the EFTA Surveillance Authority that the Norwegian allocation scheme is objectively justified within the meaning of Section 3 c) of Article 61 of the EEA Agreement, cf. Article 11 (3) of the ETS Directive.

NHO estimates that the necessary volume of allowances needed to achieve equal treatment for all existing undertakings in line with the ETS Directive, is limited to 1,0 – 1,5 Mt. Further, an increased new entrants reserve to include Norway’s land based process industry would need a mere 0.9 Mt, which would represent an average new entrants reserve in the ETS. This volume can easily be reallocated from the reserve intended for sale, as was also pointed out by the Ministry of Finance in the 2008 Fiscal Budget (cf. *St.prp. nr 1 (2007-2008)*, chapters under the Ministry of Finance, at Section 2.2, page 14-15), and thus no increase in Norway’s total volume of allowances is needed to comply with the EEA Agreement. Whether these allowances are sold or allocated free of charge has no effect on the emissions of greenhouse gases.

Norwegian Policy is also, as pointed out in Section 4.2 of NHO’s Complaint to the EFTA Surveillance Authority, incoherent in that a general new entrants reserve is to be distributed among new gas-fired power plants based on CCS technology and highly efficient combined heat and power plants. This demonstrates that the Norwegian Government has no real objections towards granting new installations access to allowances free of charge. The

intention seems to be to allocate free allowances at the same level as in other European countries. NHO support this principle, but question whether the actual model chosen are securing this ambition. The allocation for CHP heat production needs to be increased to the same level as is other countries.

#### **Free allocation is likely to be maintained also in the third ETS trading period**

One central part of Norway's discriminatory policy regarding allocation of emissions allowances has been that the Norwegian Government has the political ambition of convincing the EU that all allowances should be auctioned after 2012. Although this political ambition – however legitimate as such – does not merit making an exception from the ETS Directive and the State Aid rules, it now seems clear that the EU will ignore Norway's position on this issue. It is yet far from clear which amendments will be made to the ETS Directive regarding the 2012-2020 trading period, but based on statements from officials of the Commission, it seems clear that the proposal to be published on 23 January will not be based on auctioning of all allowances.

#### **Allocations of CDM/JI credits**

The Norwegian allocation of free allowances is smaller than in any other country participating in the ETS. On this background, the annual volume of 3 million tonnes of JI/CDM credits is very low (13 % of emissions). The distribution between sectors as proposed in the draft NAP is acceptable, but in order to secure optimal allocation of credits among undertakings, a system to enable interested sectors/undertakings to take advantage of other undertakings' unexploited credits should be established.

#### **Proposed amendments to the NAP**

NHO propose certain changes to the draft NAP, in line with the arguments above, and those presented in our documents at annex to this position paper.

Firstly, NHO asks that the use of the base period should be supplemented in such a way that all installations which have been established, expanded or relocated after the expiry of the base period, be granted free allowances on the same terms as older installations. Other deficiencies in the allocation scheme, resulting from extraordinary circumstances during the base period, have been detailed by Norsk Industri in their position paper, and should also be corrected.

Secondly, NHO asks that the new entrants reserve be increased, so that substantial entry barriers are avoided in all sectors of Norway's land based economy that participate in the ETS scheme. Allocation of allowances from such a reserve should be conditioned strictly upon the use of best available technology. This will encourage establishment in Norway of undertakings that could otherwise have chosen to establish themselves in jurisdictions with less strict environmental policies.

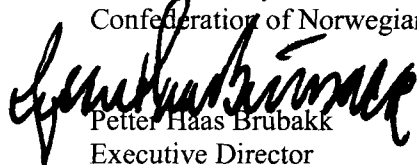
Thirdly, NHO asks that the allocation for CHP heat production is increased to the same level as in other countries participating in the ETS.

Making such changes in the allocation scheme cannot possibly create any increase in emissions of greenhouse gases. The only effect of this proposal is to ensure equal treatment of the undertakings concerned, compared to their competitors. As pointed out above, the allowances needed for these changes in the allocation scheme can easily, and without any

increase in emissions of greenhouse gases, be reallocated from the quantity of allowances set aside for annual sales by the Ministry of Finance.

As a final remark, NHO would like to point out that the text of the NAP needs to be revised in order to increase accuracy and consistence.

Yours sincerely  
Confederation of Norwegian Enterprise



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Executive Director

Encl.