

Government Response to Consultation on Transposition of EU Directive (2009/29/EC) revising EU Directive (2003/87/EC) and relating to Greenhouse Gas Emissions Data and National Implementation Measures



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Welsh Assembly Government



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Government Response to Consultation on Transposition of EU Directive 2009/29/EC revising EU Directive 2003/87/EC and relating to Greenhouse Gas Emissions Data and National Implementation Measures

1. Introduction

1.1 The first stage transposition of the revised EU ETS Directive is to transpose Article 9(a)2 and Article 11 by the deadline of 31 December 2009 that the Directive has set out. These Articles lay the groundwork for Phase III through the calibration of the Community-wide cap for the new Phase, and the compilation of Member State National Implementation Measures (NIMs). Data needs to be collected by each Member State in respect of its industry covered by the EU ETS in order to successfully complete these tasks.

1.2 The responses to the consultation on this transposition exercise have been helpful in informing the Government's views on many of the issues involved, and in suggesting amendments to the draft Regulations to enhance their functionality and lighten the burden on industry. Government thanks all those who had taken the time to respond.

1.3 This document sets out the Government's position on the key issues highlighted through the consultation process, and describes the major amendments that have been made.

1.4 A consultation will take place in 2011 on the content of the UK's National Implementation Measures. The Devolved Administrations of Scotland, Wales and Northern Ireland will be fully consulted with during the process of putting together, publishing, and submitting the NIMs to the European Commission.

2. Data for Adjustment of the Community-Wide Cap

2.1 Historic emissions data for the calendar years 2005-2008 is required from installations new to the EU ETS in Phase III to comply with Article 9(a)2. An issue that stood out in the consultation responses was a lack of certainty amongst respondents over whether incumbent installations — those in the EU ETS in Phase II — must submit these emissions data for 9(a)2 compliance. DECC does not seek emissions data from these installations, only from those installations which will be in the EU ETS for the first time in Phase III. The Regulations have been amended in order to clarify this. This is in line with the Directive's requirements and reduces the administrative burden on installations.

2.2 A second issue that was highlighted in relation to emissions data collection under Regulation 3 was that the proposed fee was considered too high. Government has determined that operators will not have to submit a fee alongside the emissions data.

2.3 Thirdly, consultation respondents were concerned that the level of penalties was too high. Government has determined to lower the penalty for non-compliance from £5,000 to £1,500

2.4 Some respondents argued that the deadline of 30 April 2010 is unrealistic, as the installations concerned will not yet be in the EU ETS and so will require longer to make the submission of the emissions data. The deadline of 30 April 2010 for operators to submit these data to the competent authority is explicitly set out in the revised Directive in Article 9(a)2 and so the UK has no discretion on this matter. In the consultation document, Government had suggested that operators should attempt to submit the data by 31 December 2009 if possible. Although we still encourage the early submission of data, the legal requirement is to submit by 30 April 2010. Government plans to have guidance issued for both Articles 9(a)2 and 11 compliance by the end of this year. This will include guidance on the verification of these data.

2.5 Some respondents correctly noted that page eight of the consultation document erroneously suggests that combustion units of 3MW or less will be excluded from the EU ETS. To confirm, the 3MW de minimis threshold refers to the threshold under which combustion units are not counted towards the 20MW threshold. Above this 20MW limit, an installation—including those combustion units under 3MW—will be included in the EU ETS.

2.6 On the proposal to notify to the European Commission a lower amount of emissions according to the emission reduction potential of those installations with activities new to Phase III that emit greenhouse gases other than carbon dioxide, some respondents requested more clarity on how the emission reduction potential of these installations will be determined. Although Government has not yet determined in full detail the most suitable approach, it maintains the view that full inclusion in the adjustment of the cap of sectors with potential for cheap emission reduction creates the possibility that the Community-wide cap could be increased more than would be appropriate. Government therefore intends to notify to the Commission a lower amount of emissions for these gases.

3. Data for Determining Installation-level Allocations for Phase III

3.1 The consultation asked a series of questions in relation to the collection of what was named ‘activity data’ from those installations eligible for free allocation in Phase III, which is required under Article 11 of the revised Directive. That Article requires Member States to compile National Implementation Measures (NIMs) containing a list of installations included in the EU ETS in that Member State’s territory in Phase III, and the free allocations to each of those installations.

3.2 Phase III, free allocation to installations will be determined through allocation methodologies with product-based benchmarking being the preferred approach. Where product benchmarks are not considered feasible, alternative allocation methodologies, often referred to as ‘fallback approaches’ will be used. To meet the Article 11 requirement, the Regulations must enable the collection of all the data required to determine the free allocations each installation is eligible for. Each allocation methodology requires a different type of data. In addition, for a limited number of cases, correction factors will need to be applied, requiring the collection of further data. For example, in the case of mineral wool installations we may request that an installation confirm whether it has an electrically heated or fuel fired furnace. Finally, additional data will be required such as NACE or PRODCOM codes to apply the correct carbon leakage factor and allocation methodology to each installation. In January 2010, we expect to issue a formal data request. This will be accompanied by detailed guidance outlining what data will be required, from whom and the verification standards that will be required.

3.3 In accordance with respondents to the consultation who asked for the definition of ‘activity data’ to be expanded, the Regulations now differentiate between the types of data required to calculate installations’ allocations. Regulation 4 makes reference to ‘Production data’ (for benchmarks) and ‘other relevant data’ (for the other allocation methodologies). This latter is split further, as described in table 1 below.

Table 1 Allocation methodologies referred to in the Regulations		
Methodology	Description	Data required
Product benchmark (Regulation 4(2))	A product benchmark level representing the top 10% most efficient production (e.g. x tonnes of CO ₂ / tonne product) is applied to historical production	Production data for the baseline period – a record of historical annual product output levels
Heat benchmark (Regulation 4(4)a)	For the combustion activity and also for sectors where product benchmarks have been deemed inappropriate; where heat output has been metered.	A record of the amount of heat produced for the baseline period
Fuel input (Regulation 4(4)b)	For other combustion processes not covered by a heat benchmark, where heat output	A record of the quantity of fuel used for the baseline period

	has not been metered	
Historic Emissions Allocation (Regulation 4(4)c)	A methodology based on historic non-fuel related process emissions that are not encompassed by other allocation methodologies.	A historical record of emissions for the baseline period

3.4 Whilst the majority of respondents answered the question on **the activity data deadline** (12) by stating that they were confident of submitting by the deadline, a significant number expressed concern over achieving it. In order to respond to these concerns, Government has moved the deadline for the submission of these data back one month to 30 April 2010, and has introduced a deadline of 30 June 2010 for the submission of a verifier statement confirming that the production data or other relevant data have been verified to the appropriate standard. Of those who were not confident of achieving the deadline, the main concern was over verifier capacity, and so Government has sought to respond by allowing for the data to be verified two months after submission. Other responses called for the deadlines for the two data requests to be aligned on 30 April 2010, and Government has sought to satisfy this as well.

3.5 Respondents to the consultation were concerned that **the proposed fee** for the submission of activity data is too high. Government has decided to remove this fee.

3.6 On the issue of **penalties**, a majority of respondents expressed concern that these penalties are too high. Upon consideration, Government has halved the penalty amount from £20,000 to £10,000. For Regulation 5, the penalty amount is now dependent on whether the infraction has been in relation to data for adjustment of the Community-wide cap, or data for the calculation of installation level allocations.

4. Other Issues

4.1 There were concerns expressed in the consultation responses that the **Impact Assessment assumptions** in relation to operator costs were too low. DECC has re-examined these costs in the Impact Assessment and has published a revised version which takes these concerns into account.

4.2 Many respondents called for the measures that the UK is taking in these Regulations to be harmonised across the European Union in the interests of fair competition. Government is working in Europe to ensure that there is a harmonised approach to the submission of these two sets of data, particularly in relation to the verification standards for the data used to determine installation level allocations, which is considered the highest priority for harmonisation.

4.3 The Government thanks those who responded with suggestions for refining the list of installations new to the EU ETS in Phase III which was set out in Annex B of the consultation document. The changes made to the document as a result of the consultation are set out in Annex A below. It is an important challenge faced by Government to ensure that all the installations in the UK that will be part of the EU ETS in Phase III are duly accounted for, notified of their obligations, and granted any free allocation they are entitled

to. Government will continue to refine this list through engagement with industry. Continued cooperation on this matter is greatly appreciated. Detailed queries about this list, or requests for inclusion or exclusion from it should be referred to the Environment Agency at **ethelp@environment-agency.gov.uk**.

Annex A		Changes to list of installations new to the EU ETS in Phase III as a result of consultation responses
Installations that should be included in list	Installations that should be removed/their inclusion checked	
Alcan, Lochaber, Fort William	Singleton Birch	
Aylesford Newsprint	Palm Paper	
BOC Gases, BOC Teeside	SABIC Petrochemicals, North Tees	
INEOS Vinyls (UK) Ltd., PVC8 Plant, Runcorn Site	Tarmac Ltd., Sandside Quarry Asphalt Plant	
Tarmac Ltd., Eaton Hall Quarry	Tarmac Ltd., Dene Quarry Asphalt	
Tarmac Ltd., Linford, Essex	Tarmac Ltd., Hightown Asphalt	
Tarmac Ltd., Cross Green Asphalt, Cross Green Quarry	Tarmac Ltd., Bellhouse Asphalt	
Tarmac Ltd., Bredbury Asphalt	Tarmac Ltd., Ipswich Asphalt	
Tarmac Ltd., Clitheroe Asphalt	Diageo Global Supply, IBC Ltd.	
Tarmac Ltd., Pant Asphalt		
Tarmac Ltd., Cauldon Low Asphalt		
Tarmac Ltd., Ballidon Asphalt		
Tarmac Ltd., Mancetter Asphalt		
Tarmac Ltd., Bayston Hill Asphalt		
Tarmac Ltd., Cornelly Asphalt		
Tarmac Ltd., Hayes Asphalt		
Tarmac Ltd., Hothfield Asphalt		
Tarmac Ltd., Halecombe Asphalt		
Tarmac Ltd., Stancombe Asphalt		
Tarmac Ltd., Dolyhir Asphalt		
Tarmac Ltd., Cairneyhill Asphalt		

Tarmac Ltd., Teesport Asphalt	
Tarmac Ltd., Barrasford Asphalt	
Tarmac Ltd., Coxhoe Asphalt	
Tarmac Ltd., Santon Coated	
Tarmac Ltd., Parkstone Asphalt	
Tarmac Ltd., Torcoed Asphalt	
Tarmac Ltd., Harlow Asphalt	
Tarmac Ltd., Hillwood Asphalt	

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