

**23RD MEETING OF THE INFORMAL TECHNICAL WORKING GROUP ON
BENCHMARKS FOR THE ETS**

Subgroup of Working Group 3 under the Climate Change Committee

**Brussels
13 April 2011, 10:00 – 17:00**

REPORT

1. Adoption of agenda and minutes

The Commission welcomed the participants and the agenda of the meeting was adopted after some slight changes in order.

- 2. Draft final Guidance Document 1 on general principles**
- Draft final Guidance Document 5 on carbon leakage**
- Draft final Guidance Document 3 on data collection**
- Draft final Guidance Document 6 on cross-boundary heat flows**
- Draft final Guidance Document 9 on sector-specific issues**

The Commission gave a presentation on the main changes to the final versions of GDs 1, 5, 3, 6 and 9.

Concerning GD 3, Three Member States ("MS" henceforth) asked for the introduction of more flexibility within the method where 'measured efficiency' is a parameter in the determination of net measurable heat flows, aiming in particular at simplifying the procedure for small heat consumers which might face some problems in deriving the measured value of efficiency. The Commission and participants agreed on introducing a footnote stating *'If proved through technical documentation, efficiency measurements on technically identical devices carried out by the suppliers of the heat producing device are also acceptable'* together with introducing a reference to the definition of 'useful efficiency' pursuant to Directive 92/42/EC. On the same GD 3, a MS pointed out that the definition of 'useful efficiency' should then not only relate to heat transmitted to 'boiler' water. The Commission and participants agreed on deleting the word 'boiler' from that definition.

Concerning GD 6, a MS asked for a revision of para 3.5 using the wording of para 3.3 concerning the carbon leakage status of heat consumers. The Commission and participants agreed.

On the same GD 6, another MS pointed out that in some specific cases the heat producers will have to provide evidence about the exposure status of their heat consumers, even though they sometimes do not know who the final consumers are. The Commission emphasized that this exercise is voluntary and that it is also the task of independent verifiers to check the data sup-

plied. The Commission and participants agreed to add the specification about the necessary "independent verification" relating to all data "including those on or provided by non-ETS entities" related to cross-boundary heat flows.

Concerning GD 9, another MS enquired about the change in the interpretation of the definition of products covered by the lime benchmark and proposed the deletion of the reference to the PCC production. The Commission and participants agreed on introducing a modification in section 26.

GD 1 and GD 5 were agreed without modifications.

Following the discussion within the Technical Working Group, the Commission presented the drafting changes to GDs 3, 6 and 9 to the participants.

3. Draft final Methodology Report template

The Commission presented the final version of the Methodology Template and explained that it will not be translated as it is supposed to serve as an example for Member States rather than really requiring Member States to use the same format.

The document was considered complete for the final endorsement by the Climate Change Committee.

4. Draft final Guidance Document 4 on Verification of NIMs Baseline Data Reports and Methodology Reports

The consultant presented the text of GD 4, including some new proposals which related to comments received after the draft final version 2 was sent out on 8 April 2011. The new proposals included mostly clarifying text, a new paragraph on "Data assessment", as well as a compromise text including a quantitative threshold with reference to which a statement should be regarded as material. Also some examples of material "non-conformities" were added.

A MS enquired about footnote 8 on page 3 where the verifier was given the task to ensure that the relevant requirements set by the relevant legislation are complied with in each assignment: the participant argued that this should not be among the verifier's tasks but that it is competence of the relevant Competent Authority. The Commission explained that the assessment in the footnote is only meant as a pre-assessment and that the Competent Authority always has the right of checking whether the relevant legislation was complied with.

Another MS argued that in section 4.3 the evidence that verifiers should seek from operators relating to the operator also having submitted data to the sector associations for the calculation of the product benchmarks or not, would not seem relevant with regard to the baseline data collection. The consultant and the Commission stressed the importance of cross checks with all possible sources of information in order to properly verify data. The operator shall always provide evidence on data he is providing. Another MS explicitly supported the current wording.

A participant declared it could accept the compromise text related to the materiality level insofar as it provides a common approach for all Member States.

The Commission announced that the final version of the guidance including these changes would be sent out after the meeting.

5. Draft final Guidance Document 2 on allocation methodologies Draft final Guidance Document 8 on waste gases

The Commission gave a presentation on specific comments received from Member States on GD 2 on allocation methodologies, including some feedback.

The first issue discussed concerned the evaluation of the 10% threshold for significant capacity increases/decreases. Three MS claimed that the assessment of the 10% increase of capacity should not refer to the initial installed capacity calculated before the start of changed operation but to the one before the physical change. Another MS supported the remark pointing out that otherwise some significant increases would not be recognised as such because in some cases they are made in slow and small subsequent steps. The delegation therefore also proposed to use a *design* capacity value for the "new" capacity when assessing the threshold of significant capacity increases. Other participant expressed some concerns. One of them expressed concerns with regard to using a design capacity, and proposed as alternative to extend the 6-month period in which the "new" capacity was calculated. The Commission took note of the arguments raised, indicating that using a *design* capacity value as the "new" capacity when evaluating the 10% threshold cannot be justified on the basis of the relevant provisions.

Secondly, the issue of eligibility of heat used for office heating and fuel used for waste treatment was discussed. Some MS requested some more clarifications (e.g. on the treatment of thermal oxidisers, data requirements when heat consumed in office buildings is eligible and how one should treat excess heat from production processes that then is used for heating of office buildings). 'Late' capacity changes and the determination of the start of changed operation were also mentioned by the Commission in its presentation.

The Commission also gave a presentation on the definition of process emissions sub-installation which is relevant for both GD 2 and 8.

A participant enquired about the allocation methodology in case of waste gas production with and without energy recovery. The Commission explained that any recovered heat would be taken into account as 'Type c' process emission and allocated consequently.

Another MS proposed taking into account existing differences among different Member States. In the ferro-alloy sector of the respective MS, the applied technology (without energy recovery) is highly affected by the fact that energy has a very low cost because of the abundant availability of renewable sources. The Commission emphasised that one of the main principles of the benchmarking methodology was that no differentiation is made on the basis of technologies. Two MS expressed support to the position of the Commission. Another MS also expressed its support pointing out that a default value for the CO₂ content should not be higher than 50% in order to maintain the incentive for energy recovery. These concerns were shared by another delegation.

A MS proposed a new, narrower wording concerning the definition of safety flaring in GD 8. Another MS underlined that the definition was sufficient. The Commission further explained the definition of safety flaring contained in the GD and concluded that no drafting changes to the guidance were needed.

A delegation raised the issue of the classification of emissions stemming from lime production in the sugar sector, particularly relating to emissions from the coke used in the process, as coke is used to provide for an excess carbon dioxide that is needed in the specific process of sugar production. Another delegation, supported by two other MS, argued that these should be regarded as process emissions. The Commission explained that in order to consider those emissions among the process emissions it is necessary to look at the primary purpose of the use of coke in the lime kiln, which is to provide energy to the process. Therefore, the Commission underlined that the emissions from coke use cannot be considered under the definition of process emission sub-installation.

A participant proposed to exclude emissions from the decarbonisation of carbonates in the lime production for the sugar making process from monitoring and reporting obligations as well as from the definition of process emission in the splitting into sub-installations exercise. The Commission agreed on introducing a footnote in GD 2 clarifying the allocation rules when it comes to the lime production process and PCC production process in case they are carried out within the sugar making process.

Another participant enquired about the treatment of pilot fuels in case of VOC oxidisers, as from the discussion it appears not to get allowances. The Commission explained that the pilot fuels in case of thermal oxidisers could only be allocated if they were classified as pilot fuels in safety flaring processes, but that this would not be the case. The Commission also explained that, in case the treated gases could be classified as waste gases they could maybe receive an allocation. Nevertheless, the definition of waste gases should be applied correctly.

6. Baseline data Collection Template

The Commission gave a presentation on the latest changes made to the a MS's version of the baseline data collection template. Another MS asked for more guidance on how multiple physical changes would have to be entered.

A MS asked when the Commission intended to proceed with publication of the final version. The Commission replied that this would be very soon. Also the translated versions of the template are in preparation.

7. Progress on the NIMs implementation process

The Commission asked for information from those Member States which did not attend the previous meeting.

A MS declared that it would be difficult to have legislation in place in the very near future. It would also be extremely difficult to provide all data before 30 September 2011.

Another participant stated that it would not be possible to prepare an amended act before the end of 2011 but anyway it would be possible to gather the data by end of July 2011. Workshop with industry associations and verifiers were planned.

Another MS planned to have a new law in force by the following year. Data collection had already started and verifiers were waiting for templates. The final date for the data collection is set to 1 July 2011. Concerning the small emitters issue, it announced a meeting with industry.

A participant declared that the transposition of the relevant legislation was not yet finalised. Concerning the exclusion of small installations still discussions were going on but no final decision had been taken yet. The data collection should start at the beginning of June, ending in September. The results would be submitted to the Commission by the end of the year.

Another delegation declared that workshops with verifiers concerning the accreditation process were ongoing. It stated that the relevant legislation would be in place by 1st June. The foreseen deadline for data collection would be possibly extended to end of August. After the data collection, 6 weeks would be needed for the NIMs preparation and the public consultation would follow. The submission on the NIMs was foreseen for the end of the year.

8. Any other business

The next Technical Working Group on Benchmarks was scheduled for 18 May 2011.

The Commission reminded Member States that the CCC of 14 April 2011 will partly be dedicated to the endorsement of the guidance documents.