

**24TH MEETING OF THE INFORMAL TECHNICAL WORKING GROUP ON  
BENCHMARKS FOR THE ETS**

**Subgroup of Working Group 3 under the Climate Change Committee**

**Brussels  
17 May 2011, 10:00 – 17:00**

*REPORT*

**1. Adoption of agenda and minutes**

The Commission welcomed the participants and adopted the agenda. The Commission communicated that the Decision 2011/278/EU had been published in the Official Journal.

**2. Draft Guidance paper 7 on new entrants and closure rules**

The Consultant gave a presentation on the Draft Guidance paper 7 on new entrants and closure rules.

A Member State ("MS" henceforth) suggested to reconsider the title of chapter 2 to clarify that it relates only to "greenfields". It also suggested to address cases in which the cessation of operations of an installation leads to "falling outside the scope of the ETS" The Commission mentioned the comments would be taken on board.

Another MS pointed out that the guidance should clarify it considers partial cessations of operations taking place as from 30 June 2011. The participant also asked why an experimental verification of capacity is not possible for new entrants. With respect to partial cessations of operation, it also mentioned a timing issue. Concerning the first point, the Commission underlined that the provisions on cessations of operation also apply for cases where the cessation occurred before 1 January 2013. Concerning the second issue, the Commission explained that there is no legal basis to carry out an experimental verification for new entrants and therefore capacity needs to be determined based on the monthly activity data. Concerning the timing issues for the notification of the closures, those can be solved either by the Member States or could be addressed within the debate on the Monitoring and Reporting Regulation.

Another participant criticised the fact that the calculation of capacity would be based only on 90 days and argued that the experimental verification should be allowed to determine the capacity. The participant called for more guidance on this issue, especially concerning the way the two highest months should be considered (if calendar months or other). The Commission reiterated that legally the experimental verification is only possible in case the application of the standard method was not possible, and that this is not the case for a new

entrant. The consultant nevertheless agreed to provide more guidance and information on this topic.

A delegation pointed out that the wording on partial cessations and their link with physical changes should be further clarified as the partial cessation rules foresee that operators can get allocated allowances later again in case the activity levels restore, while the capacity reduction rules do not foresee that. The Commission took note of the comment and asked Member States to submit their comments in written form as well.

The same MS pointed out that Art. 20 does not mention anything about the number of days needed for the capacity determination in case of extensions. The Commission stated that it would dedicate further discussions to this issue.

Another MS highlighted that the rules on partial cessation and capacity increase may lead to distortions given that the partial cessation foresees the possibility of reducing the allowances without physical change, while the capacity increase always implies a physical change: this could potentially affect those installations moving the production from one product to another within the same production line without any physical change. The Commission answered that this is, however, what the Commission Decision provides.

Another delegation asked for more details related to the future procedures that will be needed to "install" a queuing system within the new entrants' reserve. The Commission considered that it is too early to discuss the details of a potential queuing system and that the main priority now was to finalise the Guidance paper.

The Commission also reminded that 27 May 2011 was the deadline for written comments.

### **3. Member State Workshops**

The consultant gave a presentation on Member States Workshops.

Three MS asked the Commission and the consultant to provide a list of Q&As already answered by the Helpdesk and to make them public. The Commission stated that it would consider the possibility of publishing the most relevant and general FAQs.

A delegation raised the issue related to the amount of time needed by Helpdesk to deal with enquiries presented by the Member States. The consultant replied that five working days should be considered reasonable time to reply to those enquires. However, more time might be needed to deal with more complex issues. In addition, the Commission reminded that the Helpdesk will be "closed" for operators as they should first refer to national authorities.

### **4. NIM process**

The Commission gave a presentation on NIMs process: Preparatory phase (until September 2011).

A MS asked for more information on the timetable related to the study contract to support the NIMs assessment in particular concerning the determination of the cross-sectoral correction

factors. The Commission replied that these factors should be available prior to the start of the 2013-2020 trading period as they will be calculated once all NIMs have been positively evaluated. The MS also underlined the commercial sensitivity of the data provided.

The Commission clarified a potential misunderstanding related to the methodology templates. Indeed, two different methodology report templates exist. The first one is related to methodology reports to be submitted by operators to the Competent Authorities. The second one is related to the methodology report accompanying the NIMs prepared by the MS for the submission to the Commission.

## **5. Data collection template**

The Commission and the consultant gave a presentation on data collection template. A MS asked when the translated version of the template will be sent. The consultant replied that this would be done on the next day.

## **6. Exclusion of small installations / Equivalent measures under Article 27 of the Directive**

The Commission gave a presentation on the exclusion of small emitters

A MS asked for more information on how to prove that the equivalent measure would reduce the administrative burden and costs, as it understood that monitoring and reporting should be the same whether the installation is excluded or not.

The Commission declared that simplifying "monitoring and reporting" is not the only way to reduce administrative burden. It is certainly possible to include other simplifications, e.g. on permitting or verification.

A delegation declared having some difficulties in implementing equivalent measures in national legislation within the timeframe and that the outlined approach looked less favourable to installations. The participant asked whether it would be possible for the Commission to accept a proposal where only one of the minima mentioned on slide 6 was used, i.e. for example only using a linear path.

The Commission replied that using only a linear path would not seem sufficient.

A participant considered that carbon leakage exposure must be taken into account when developing an equivalent measure and asked how to deal with the changes of the carbon leakage list. Furthermore it expressed a shared concern with another MS concerning the timeframe for transposition and implementation of Art. 27.

The Commission recalled that the need to prove that the equivalent measure reduced the burden to operators in terms of administrative costs can be deduced from Recital 11 of the Directive. Through its implementation other principles of the Directive, like the provisions on the carbon leakage, should, however, not be undermined.

A MS declared having set a target of -21% with reference to 2005 for small emitters and asked whether it could be considered as equivalent. Concerning the monitoring and reporting, the excluded operators would be allowed to monitor every second year. Concerning the monitoring requirements, the Commission explained that the simplification that a MS would

allow was not in line with the Directive according to which, when an installation exceeds the thresholds in any one calendar year, it should be re-introduced in ETS.

Another MS pointed out that Art. 27 did not explicitly refer to reporting or verification requirements. In reply, the Commission referred to Art.27(1), point b. The participant stated that the outlined measure was too stringent compared to the ETS as the equivalent measure foresaw to apply the reduction path to emissions at installation level.

A delegation asked if measures related to hospitals could have been considered in the same way. The Commission confirmed.

The Commission said that this issue would be further discussed and concluded this agenda point.

## **7. Progress on the NIMs implementation process**

A MS stated that the draft law was under official public consultation until the week after, before the official decision of government and parliament. Moreover, the regulation for the Benchmark Decision was prepared and data collection would have started before the draft will be approved.

Another delegation declared that no particular changes occurred since the last TWG meeting. Data would be submitted by operators by September 2011 followed by three months of consultation. However, verifiers might not have enough capacity to finish their work in time.

A participant stated that a regulation was under preparation and would enter into force by the end of June. Deadline for data collection would most likely be end of August. Currently, the Guidance documents are translated.

Another MS would start data collection in June. The deadline to submit templates was scheduled for the 1 August 2011. Afterwards, two weeks would be needed to approve or reject data.

A delegation declared data collection will start in June followed by a public consultation.

Another delegation declared that data collection had started. However, it also pointed out that verifiers did not have enough information and time necessary to make verification. Notification would end at the end of December 2011 / beginning of January 2012.

A MS started data collection on 17 May 2011 and was expected to finish on 17 July. No templates were available yet. They had also started to work on the English version.

Another MS prepared data collection by the end of May. Deadline for operators for the submission of data would be end of July.

A MS had started data collection in May and it would continue till the end of July or August. It also pointed out that no translated documents were available to help operators.

A participant declared that some problems were faced with reference to the interpretation of phase 1 and 2. Data collection was expected to start in middle/end of June until the end of August. Several workshops for verifiers had already been scheduled.

Another MS had organised several workshops for operators and verifiers. However, no law would be put in place before winter. The MS set June 30 as deadline for the submission of data by operators. It added that several verifiers had faced different problems during their verifications. Moreover, no political decisions were adopted yet. Considering the difficult period for the country, the MS will try to comply with all deadlines.

A participant declared that data collection would have continued till 3 June 2011, before two months period for the process of calculation. Consultations with stakeholders will start in August and will be provided in autumn.

Another MS held a workshop with the public sector. The Member State declared being generally in line with the timetable. However, the participant stressed two bottlenecks: possible equivalent measures for small emitters and the transfer of installation data from the template to the NIMs list.

A participant expected data collection to be completed by the end of the 2011 or the beginning of the 2012.

Another MS started data collection. Workshops were held the week before. Data collection will have started on June 13.

Another delegation declared that data collection was not yet completed in one of its regions. A decree as legal basis for the data collection in another region was likely to be adopted on May 18. Data collection was expected to begin in June 2011 and to be finished by the end of July. Consultations would have started at the end of August.

## **8. Any other business**

The Commission communicated that the next meeting of the Subgroup of Working Group 3 under the Climate Change Committee had been fixed on 28 June 2011. Moreover, the Commission stated that it would send out the methodology report and the final version of GD7 during the following days.

A participant asked if an additional meeting in July was scheduled. The Commission said it would provide the Member States with more information on this issue.