

27TH MEETING OF THE INFORMAL TECHNICAL WORKING GROUP ON BENCHMARKS FOR THE ETS

Subgroup of Working Group 3 under the Climate Change Committee

Brussels

15 September 2011, 9:30 – 15:00

REPORT

1. Adoption of agenda and minutes

The Commission welcomed the participants, adopted the agenda and informed that the draft minutes from the 23rd (13 April 2011) and the 24th (17 May 2011) TWG meetings were sent on 12 August 2011, and the ones from the 25th (28 June 2011) and 26th (10 August 2011) TWG meetings were sent on 25 August 2011. Some comments were received by Member States ("MS" henceforth) relating to the wording of their specific intervention and will be incorporated. The minutes from the 23rd, 24th, 25th and 26th TWG meetings were adopted and will be sent out on the 16th Sept 2011.

2. NIMs submission: technical issues

The Commission gave a presentation on the technical issues related to the NIMs submission and opened the floor for discussion.

A MS enquired about the "Helpdesk for determining the amount of free allowances in EU ETS in phase 3" end date and the Commission clarified that it will function until the beginning of 2012 when hopefully all NIMs will have been prepared.

Another MS asked for more clarifications about the arrangements with the NIMs assessment consultants concerning business confidential nature of the data processed. The Commission pointed out that there will be a confidentiality agreement, the 'need to know' principle will be applied and the consultants will use the data received strictly for the purposes of the NIMs assessment.

A participant underlined that due to their different approach in data collection, more time might be needed to fulfil the detailed template requirements of the NIMTable and therefore it could be submitted few weeks later than the NIMlist. Also, due to their simplified approach, there might be gaps in the heat supply data which could be discussed. The Commission expressed its view that it is important to submit all required templates in one go.

Another participant asked if the Commission could develop a version of the template compatible with Open office, because its local authorities do not use Excel. The Commission answered to discuss this bilaterally with the MS and consultants, but already hinted that this might not be possible.

3. NIMs assessment process

The consultants and the Commission gave an extensive presentation on the "NIMs assessment process" and opened the floor for comments.

A MS enquired how long it would take from the NIMs submission to its assessment. The consultants explained that the 'quick scan' on completeness would - after the methodology has been set stable based on the first notifications—normally should only take 2-4 working days, the generic and the specific assessments are aimed to last around 1 month each. The Commission explained that its role would be to draw the conclusions on each stage of the process and duly inform the MS. The analysis will be an interactive process between the Commission and the consultants, and once findings are delivered, the Commission will decide how to proceed. Once the whole process is completed, the Commission will take a formal decision that the NIMs of a given MS will not be rejected.

A participant enquired if a NIMs rejection means starting the whole procedure again, and also how long the country visits envisaged in the assessment process would take. The Commission underlined that rejection is the worst case scenario, and the more likely procedure is that the Commission will request additional or modified information. The consultants explained that 1-2 days per country visit are foreseen.

Another participant asked if the completeness check will check whether all data per installation is complete, or whether all installations are included in the NIMs. The Commission explained that both will be done, based on data sources such as CITL, Article 9(2) etc, and special attention will be paid if all previously announced installations are included. After the completeness check has been ended, and missing information has been completed, the Commission and consultants will start the real assessment process, i.e. checking whether the notified data are also collected and calculated in accordance with the legal rules.

A MS raised the point how to deal with installations on the CITL list, which plan to close, and another participant added also the case of installations which will not fall under the scope of EU ETS anymore. The Commission replied that installations not applying for (or not receiving) free allocation and existing ETS installations who will not fall anymore under the scope of EU ETS from 2013 should be identified on the "Additional InstList" sheet of the NIMslist (where manual data entry of installations is possible) with the respective comments "Not applying for/receiving free allowances under Art 10a" and "Not falling any more under the scope of EU ETS as from 2013".

A representative of a MS enquired how much time will be provided to prepare for the country visits, how many questions will be asked and what will be the impact in terms of man-days, emphasising the administrative burden that such an exercise could pose. The Commission underlined that the workload associated with the country visits entirely depends on the Competent Authority and the quality of the submitted NIMs. Furthermore, during the country visits mainly findings from the risk assessment of the NIMs will be checked.

Another MS raised the issue of possible conflict of interest of members of the local consultant teams when performing the NIMs Specific assessment or the specific checks at installation level in Member States where they also performed baseline data verifications. The consultants explained that such risk is recognised and will be tackled.

A participant enquired if the Commission will communicate the interim reports. The Commission replied that interim documents will not be distributed as only the Commission's conclusions together with requests for explanation and/or additional data will be communicated to the Member State concerned. The Commission also added that it is possible that the Commission is present during the country visits of the consultants.

A delegation enquired about the quick scan criteria. The Commission explained that in principle complete NIM submissions are expected and in the opposite case it may ask for the missing data. If such data cannot be provided by the Competent Authority because it had not been requested from operators in the first place, pragmatic solutions can be explored addressing the level of associated risks.

Another delegation underlined that not all data in the baseline data collection templates is mandatory and asked how this will affect the completeness checks. The Commission explained that basically in the templates there are three categories of data: mandatory, voluntary and under Competent Authority's discretion, and that the focus of the completeness check will lay on the mandatory type data.

4. Progress on NIM implementation process

The Commission gave a presentation on a new form used for being able to track progress on the NIMs implementation. The form will be sent out to Member States.

A MS asked what will be the status of information exchanged this way and if it will be publicly available. The Commission suggested that a suitable way of information sharing is through the TWG minutes, and that active information sharing will at this moment only be done when a Member State has notified its NIMs.

Three MS gave extensive presentation on their experiences with respect to their NIMs implementation process. The Commission thanked and opened the floor to questions.

Other three MS raised the point of possible over-allocations within installations producing methanol outside refineries. The Commission took note of the comments and suggested to study this issue.

The consultants asked if the assessment process at national level would be described in the Methodology report, and the Commission confirmed that such information will be indeed useful and drew the attention to the existing specific questions on the process outlined in the Methodology Report template.

5. Tour de table: progress on NIMs implementation process

A delegation stated that all verification reports are expected by end October 2011, hoping to submit the NIMs by end 2011. There is no formal public consultation.

A MS stated that 80% of the data is received and the remaining 20% are expected by end September 2011. 5-10% of data has been assessed, and a lot had to be returned to operators for additional information. A further delay is caused by a change in the interpretation of the MS of Article 6 of the Directive, delaying for some operators the deadline to submit the baseline collection data. This makes it impossible to predict a date of NIMs submission. The Commission strongly urged the MS to speed up the process.

Another MS stated that the deadline for scrutiny of the draft NIMs is end October and that there are some common errors in cross-boundary heat flows data for chemical installations. The MS is aiming for submission by end of 2011. The small emitters' exclusion issue remains open.

A participant stated that all data from operators has been received, and that 6 operators did not submit data because they would for different reasons not fall under ETS any more in 2013. The NIMs will be submitted to the Cabinet around 23 September which will allow probably to meet the deadline.

Another participant stated that 90% of the data have been received and the missing 10% are due to structural changes. The Art 27 possibility to exclude small installations will not be applied.

Another MS stated that 50% of the data has been received and assessment is ongoing on regional level. End of October the data will be submitted to the central administration, and public consultation will start mid November, aiming for a NIMs submission in end December.

Another delegation stated that around 700 of 780 reports have been received and will be assessed by 12 people full time for 6 weeks, allowing a scrutiny period of 2-3 weeks and aiming for submission until end 2011.

A MS stated that the data collection deadline had been extended several times and all data is expected at the latest in mid October, expecting to submit the NIMs in the beginning of 2012.

Another MS underlined that probably the NIMs would be submitted on time, depending on the outcome of the national elections.

A participant stated that data collection ended on 18 July and all data is received by the regions. The first revision of the applications found missing data and now operators are correcting the mistakes which will lead to probable submission in the beginning of 2012.

Another participant stated that 90% of the 400 installations have submitted the data and the missing 10% are shutdowns and exclusions. The review will take several weeks due to limited capacity. Probable submission by end November. The participant also communicated a message from another MS about very limited administrative capacity and probable NIMs submission mid November.

A MS stated wanting to start data collection in October lasting 3 months, allowing 3 more months for assessment, meaning probable NIMs submission end March 2012. The public consultation will run in parallel with the assessment. The Commission strongly urged the MS to do everything possible to shorten this period because it causes very serious delays and infringement proceedings cannot be excluded.

Another MS stated data collection was ongoing until end October, and there was still discussion on Art 27 possibility. NIMs submission could not be expected before the beginning of 2012.

Another participant stated there will not be a legal basis in place before 2012, the data collection was until 15 September and this will allow submission in the end of 2011.

A MS stated that data collection deadline was until 15 August, 80% of the reports were received, but some complex installations have not submitted yet. Assessment is ongoing slowly because of limited capacity. Trying for submission before end 2011.

A delegation stated that almost all data from the 600 installations is received and around 100 installations, mainly peak load district heating installations, will not apply for free allocation. Aiming for submission in end 2011 – beginning 2012.

A MS stated that the data collection deadline was postponed due to lack of verifiers, but now 95% of the reports are received. Many reports have been returned to the operators for correction of data and in some cases re-verification. The assessment is taking longer than expected and no submission date can be estimated, due to problematic quality of some reports.

Another MS stated that the NIMs list is in public consultation and that it is still possible to meet the deadline.

6. Any other business

The Commission enquired if any of the MS would like to volunteer and submit a preliminary data set for database testing purposes.

The Commission informed that Guidance Document No.7 on new entrants and closures was endorsed by the CCC on the 14th September 2011 and that there are some small corrections of cross-references in Guidance Document No.8 which will be published.

The Commission informed the MS that the consultants assisting in the NIMs assessment process will be added to the TWG mailing list.

The Commission informed that the consultants in charge of providing further technical assistance for Member States which have expressed such need, have already established contact with the Competent Authorities.