

# **28<sup>TH</sup> MEETING OF THE INFORMAL TECHNICAL WORKING GROUP ON BENCHMARKS FOR THE ETS**

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

**Brussels**

**17 November 2011, 10:00 – 17:00**

*REPORT*

### **1. Adoption of agenda and minutes**

The Commission welcomed the participants, adopted the agenda and, after having agreed with comments received from a Member State ("MS" henceforth) on their specific intervention, adopted the minutes from the 27<sup>th</sup> (15 September 2011) TWG meeting.

### **2. NIMs submission**

The Commission gave a presentation on the state of play related to the NIMs submissions, explaining that up to 17-Nov-11 seven MS did notify. It also shared the expected dates of notification of other MS, and announced that it would give later further practical recommendations to MS still having to notify their NIMs List.

### **3. NIMs assessment**

#### Progress in the process of the assessment of the NIMs and preliminary findings

The consultants gave an extensive presentation on the NIMs assessment process and the assessment methodology. The Commission followed with presenting a draft note on information to be included in the Add InstList of the NIMs List (sent to participants on 16 November 2011). It also shared an overview of error messages in Installation IDs that should be avoided by MS that still had not notified its NIMs.

A MS enquired how a change in allowances to be allocated would be handled for installations that would have been allocated allowances for the 13-20 trading period (i.e. a decision to be taken in mid 2012), but for which it becomes clear end 2012 that they stopped their activities end 2012, and whether this would have an impact on the calculation of the cross-sectoral correction factor. The representative of the MS also asked the effect on the ETS cap in case installations initially notified as 'new' to ETS as from 2013 due to extension of its scope under Article 9a2, would after further consideration not be included in the ETS after all. To the first question the Commission replied that such allocation changes are foreseen in the registries regulation, and that such changes would not imply a review of the cross sectoral correction

factor. As for the question related to the 9a2 installations, the Commission replied that this would in principle not have an effect on the ETS cap.

A participant enquired if those MS which submitted their NIMs already would need to resubmit them reflecting the categorization of installations presented in the Add InstList Note. The Commission replied that it would very much appreciate if MS use this classification in case resubmission is required for missing data.

The Commission also gave a presentation on a number of checks that it would recommend Competent Authorities to perform before submitting the NIMs, and opened the floor for discussion.

A representative of a MS enquired if PRODCOMs are key mandatory data. The Commission replied that they are absolutely necessary for fall back sub-installations exposed to carbon leakage and in case of installations combining fall-back sub-installations and product benchmark sub-installations.

Another MS enquired if installations would be allowed to provide only the NACE code. The Commission explained that the higher disaggregation is preferred, and that PRODCOM codes are in particular necessary, if in the Carbon Leakage list PRODCOM codes are indicated.

Another participant enquired how to check the correctness of the RCUF in case of sectors with a limited number of installations and therefore a limited basis for comparison. The Commission replied that this could indeed be a challenge, but that it would certainly also perform such checks when assessing the NIMs of the MS.

A delegation enquired upon the inclusion of possible sensitive business confidential data in the NIMs Methodology Report. The Commission replied that, if this is the case, it should be marked as business confidential within the submission.

Another MS enquired whether the nature of the consistency checks performed, and the templates that consultants will use during the assessment of the NIMs, can be distributed. The Commission replied that there is no such intention and that the presented snapshot provides some ideas.

### Management of the confidentiality and conflict of interest issues

The consultants gave a presentation on conflict of interest and confidentiality issues, followed by a separate presentation on the same topic by the Commission which opened the floor for comments.

A MS thanked the Commission for devoting due attention to this issue and expressed its preliminary view that the concerns it had raised before seem to be solved.

Another MS expressed their satisfaction with the provisions on confidentiality and conflict of interest and expressed some concerns on the suitability of ISO 14001 verifiers for NIMs checking. The Commission took note of the comment and explained that the experience with the consultants so far has completely met its high expectations and hoped this would be so in the future as well.

#### **4. Tour de table: progress on NIMs implementation process**

A MS stated that most installations already have submitted their (baseline) data (collection) template, however further enquiry was necessary, and in about 30% reply from operators is still pending. Due to delay in the approval of the legal basis by the Second Chamber the NIMs can be submitted only in March-April 2012.

Another MS stated that 98% of all installations have submitted the data template, and the remaining 2% expected to submit end of January 2012. The assessment is ongoing and there will be a public consultation of 6 weeks upon its completion. Estimated date for submission is end March or May 2012, depending on installations' appeals during the public consultation.

A delegation of a MS explained that the legal basis is not incorporated in the EEA agreement, but all installations have voluntarily submitted non-verified data templates, which are being checked and verified by the Competent Authority. IS expects to submit NIMs before end 2011.

A participant stated data collection is completed and assessment is ongoing since 1 November 2011. Public consultation is foreseen for 1-21 December 2011 and submission for mid January 2012.

Another participant stated 90% of data templates are received and assessment has started. Public consultation is foreseen and possible date for submission is March 2012.

A MS explained that the legal basis is not integrated in the EEA agreement, but that it has received all data templates from installations which are now verified, asking for missing information. The MS expects to submit by the end of 2011.

Another delegation stated it is analyzing the data templates received but the quality is low and in 70-80% of the cases the CA needed to ask additional information from operators. There are elections on 20 November 2011 and this might cause delays when having to submit the NIMs.

The representative of another MS stated it had reviewed 99% of the data templates and will open a public consultation 1-14 December 2011 and submit by the end of 2011 or beginning of 2012.

A participant stated that a public consultation has ended on 4 November 2011, that the submission is waiting for approval by the Board of Directors and that it normally will submit the NIMs by mid December 2011.

Another MS stated that 90% of all data templates are received, and 53% have been assessed. The quality is low and in 90% of the cases data templates need to be sent back for completion and re-verification in some cases. The checks performed by the Competent Authority follow the methodology suggested by the Commission. Expected submission is March 2012.

A MS stated it is working on the legal basis and the Air Pollution Act was adopted on 28 October 2011. The MS is aiming to submit end June 2012.

The delegate of another MS stated that the scrutiny period ended on 28 October 2011 and that it is finalising the NIMs aiming for submission in mid-December 2011.

Another participant stated the assessment is almost over and public consultation will be ongoing in December 2011 aiming to notify the NIMs in January 2012.

Another delegate stated 100% of the templates were received, 60% were checked. The MS aims to submit end November 2011.

The representative of a MS stated the review of templates is finalised, where no big problems have occurred and cooperation with operators was good. Public consultation will start on 23 November 2011 for two weeks. After its end, the MS will start working on exclusion of small emitters under Article 27 where it would need a clear answer on the monitoring, reporting and verification provisions.

A participant stated it has finalised the legal process and data collection has started on 23 October 2011 for 3 months. After that the Competent Authority will check the templates. The MS aim to submit end March 2012. No public consultation is foreseen.

One of the regions of a MS stated 60% of templates have been submitted and are of good quality after several submissions to the verification body. No public consultation is foreseen. There will be a delay because the legislation is not in place yet. The representative of another region of the MS stated there is an ongoing public consultation. The MS aims for notification in the beginning of 2012.

Another MS enquired whether the final allocation numbers and the cross-sectoral correction factor will be published by Member States or by the Commission. The Commission explained that the procedure is clearly included in Article 15, paragraphs 3 and 4 of the "Benchmarking Decision". The delegation also enquired whether the Commission is planning to put on its website links to Member States' websites that already submitted their NIMs. The Commission replied that this is indeed the intention, but that in the beginning only information on how many MS (and who) did already notify the NIMs.

## **5. Notifications under Article 27**

The Commission informed that an application for exclusion of small emitters under Article 27 has been submitted by two MS.

Another MS enquired whether the new Monitoring and Reporting and Accreditation and Verification Regulation would directly apply to small installations excluded under Article 27. Two MS supported the question. The Commission took note of the question and pointed the final texts of both Regulations will be further discussed in WG III and CCC. Already it explained that – regardless the outcome of the issue –small installations should (either directly or indirectly) follow the monitoring and reporting provisions. It also indicated that this thus not necessarily also hold for the verification provisions, where lighter schemes could be considered in view of alleviating administrative burden for small installations.

## **6. Any other business**

A participant enquired upon the New Entrant Reserve and the related procedures. The Commission explained that a new project was launched in that sense and that MS would be updated on this in a next Technical Working Group.

The Commission announced that the next TWG is provisionally foreseen to be held on the 12th December 2011, but explained that this is still subject to confirmation.