

29TH MEETING OF THE INFORMAL TECHNICAL WORKING GROUP ON BENCHMARKS FOR THE ETS

Subgroup of Working Group 3 under the Climate Change Committee

Brussels

24 January 2012, 14:00 – 18:30

REPORT

1. Adoption of agenda and minutes

The Commission welcomed the participants, adopted the agenda and informed that a comment from a Member State ("MS" henceforth) to the draft minutes from the 28th TWG meeting (17 November 2011) was received and would be inserted in the final minutes. The Commission stated that these would be sent around and anonymised minutes would be published on the Commission's website.

2. NIMs submission: state of play

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

A representative of a MS enquired what would be a possible solution if a disagreement on the interpretation of allocation rules to particular installations were to arise between a MS and the Commission. The Commission replied that it would do its best to always reach an agreement on such issues.

Whereas the Commission did confirm it did not have an obligation to do so, a MS gave their support for the intention to publish on the EC website the links to respective websites of the MS which already submitted and published their NIMs. It also raised its concern on the time constraints caused by the delay in the submission of NIMs by a number of MS and their inability to speed up the submission process. It also enquired on the letters asking to provide additional information that have been sent to MS who already notified their NIMs.

The Commission replied that on the one hand the Commission's assessment of the last MS normally will go much faster than the assessment of the first MS, as experience in assessing leads to improvements in the speed and efficiency of handling NIMs received. On the other hand, it has also taken the necessary steps, such as letters to MS through the EU-pilot system, to urge the MS that have not notified, to speed up the process. The Commission expects the submissions to be completed by summer 2012. With regard to the letters sent by the Commission enquiring for additional information, 7 MS have already received such letters following the completeness check of the NIMs submitted and the rest will be sent out once the completeness checks of the respective submissions are completed.

A MS asked for examples of the method according to which compliance checks are carried out by the Commission. The Commission explained that these checks are mainly of

mathematical nature but also qualitative, i.e. the likelihood of combinations of different sub-installations within a particular type of installation, or checks on the consistency in coding (PRODCOMs, etc).

Another MS asked the Commission how equal treatment among sectors in different countries can be ensured. The MS and probably also other MS also said it has come across special cases in which it was difficult to interpret the guidance documents, and where therefore some discretion of the MS was needed. Therefore possible consultation with other MS on these particular issues could be useful in enhancing coordination.

The Commission stressed that basically it is the harmonised allocation rules that will ensure equal treatment among sectors. On the special cases, the Commission replied that MS are encouraged to share their concerns with the Commission and to seek guidance.

Another MS shared the concern and suggested that the cases mentioned should be described in the methodology report submitted together with the NIMs to allow the Commission to check on the application of a common approach and ensure equal implementation. It stressed that due to the large number of questions from the operators it is difficult to consult the Commission about every case which leaves the relevant authority with the need to sometimes develop its own approaches. The Commission reiterated that MS are welcome to consult the Helpdesk with their concerns.

A representative of a MS asked whether it is necessary to apply the linear factor for electricity generators when submitting the NIMs. The Commission clarified that the *preliminary* amounts of allowances are to be notified, and that in the case of electricity generators this assumes that the linear factor is not yet applied. If a MS uses the tool to generate the NIMs, the linear factor will not be applied at this stage of the process. The linear factor will only be applied for the installations identified as electricity generator when the *final* amounts of allowances to be allocated will be allocated according to Article 10(9).

Three MS agreed that the correct interpretation of the CIMs is not always clear from the legal point of view. The Commission emphasized the relevance of Guidance documents that also bear legal value.

The consultants gave a presentation on the completeness checks process.

A MS asked the Commission to deliver the presentation to the participants and the Commission confirmed.

3. Data Collection template for New Entrants

The consultant gave an extensive presentation on the background for developing the template, on the allocation rules that have to be integrated in the template, and on the envisaged content of the template. The consultant and the Commission also confirmed that the template would not only cover "new entrants", but also "closures" (i.e. partial cessation, cessation and significant reductions of capacity).

Two MS enquired about how the communication between Commission and MS would be organised when rules related to new entrants and closures have an impact on allowances of a specific installation during the 3rd trading period. The Commission stated that these issues are still under examination. In the meantime, one can already assume that the communication will be relatively straightforward as the data collection template for new entrants/closures will include a summary sheet which is comparable with the summary sheet of the "incumbents" data collection template. It is expected that part of that summary information will have to be sent to the Commission when it has to assess the application. The Commission also explained that further work on this will also be done by consultants in the course of this year.

A MS enquired whether there will be more information related to the queuing system. It also requested to make sure that it is possible to switch off certain fields in the template if needed which would simplify the process and avoid provision of unnecessary information.

The Commission explained that also on the queuing system, there will be support from consultants. It also reminded the MS that the Commission is only obliged to assess whether a queuing system should be put in place when half of the amount of allowances set aside for new entrants is issued or is to be issued until 2020. On the possibility to switch off certain fields, the consultant replied that this will be foreseen.

4. Progress on the NIMs implementation process by MS - tour de table

A delegation stated that they had finished data collection and finalized the preparation of documents. Some final checks were still needed. Legal basis for notification, however, was still needed and therefore they expected to submit end of February or in early March 2012.

Another delegation expected to be ready for submission by the end of January 2012.

A MS noted the fact that almost all the reports submitted by operators were erroneous. Once the review is done, the NIM would be compiled, the document would go to the Council of Ministers for a 2 week-scrutiny and then submitted to the Commission, most likely by March 2012.

Another MS had finalized the adoption of the legislation and operators had submitted all the templates before the deadline which was 23 January 2012. Approximately 1800 applications were received and assessment is ongoing. The representative also stated that approximately 2000 questions had been received and answered during the 3-month period. Even though the final submission still depends on some factors such as the quality of the templates, the MS expects to submit by the end of March 2012. During the process of the data collection, a working group was formed and a procedure established to discuss questions, guidance and other issues. The authority created a separate database where the data were transported to perform automated checks to make the process more efficient.

A delegate from a MS could not present the state of play as he was not from the relevant authority.

A MS affirmed that the legal basis for notification existed but was subject to a public hearing of one month before final implementation. The NIMs would be ready in two weeks except for the cases of safety flaring which still posed some methodological challenges. If these cases

are resolved, the MS plans to submit the NIM before the legal basis is in place. The MS also requested other MS to share experience about the case of safety flaring and the necessary statistical analysis to be carried out.

A representative of another MS stated that a 6-week consultation would start on 25 January 2012 which would lead to the submission in April 2012. It confirmed that this was an improvement in the previously expected schedule.

After the end of the public consultation, a delegate of another MS expected the submission to take place in February 2012.

A MS confirmed the submission to take place before the end of January 2012.

The assessment of another MS took longer than expected as 80% of operators were asked to resubmit the reports. The process, however, was almost completed and the MS expected to submit the NIM by March 2012.

Another delegation said they would submit by the end of January 2012.

A MS stated that 75% of all installations had been assessed, 80% of which needed sometimes multiple clarifications due to their poor quality. There were three ministries involved in finalising the calculations and coupled with the low quality of the templates received, the submission would not take place before the 2nd quarter of 2012.

Another MS indicated that the legal basis was finalised and that there were only few issues outstanding leading to expected submission by the beginning of March 2012.

A representative from a MS said that they had received all templates and finished checks. The data, however, included a number of errors and 10% of the templates needed to be corrected leaving one problematic installation. After the public consultation is over, the MS would notify the NIM by the end of February 2012.

Another delegate explained that they were still elaborating its legal framework of entering the ETS before its official accession to the EU.

5. Art. 27 submissions

The Commission confirmed there was limited interest to use Art. 27 as only a few submissions were received. No questions were raised by MS.

6. Any other business

A MS enquired on the purpose of the letters sent through the EU-Pilot system and the need for a formal response. The Commission clarified that the submission of NIMs was in itself a sufficient response to the letter coupled with a note in the system that the NIM had been submitted. If no NIMs had been submitted, the delay needs to be duly substantiated.

Another MS enquired on the methodology regarding new entrants. It stated that the Guidance Document 7 was not clear on certain issues, such as the relevant capacity utilisation factors

for fall-back approaches. Further, it enquired about the process of a sector being added to the carbon leakage list, responsibilities of parties and deadlines.

The Commission referred to the ongoing preparation of the data collection template for new entrants/closures. The Commission also referred to the legal text where it is up to the MS to determine, if applicable, the relevant capacity utilisation factor taking into account some duly substantiated and independently verified information of the installation concerned. Given this, if more MS would think there is need for sharing information on these factors, of course the Commission would not oppose to this information sharing.

The Commission also clarified there was no deadline for the submission of a carbon leakage application (to add a new sector or sub sector to the carbon leakage list), but there was a specific deadline to be respected if a particular sector were to be added to the list in time for the 2013 allocation. The MS restated they believed harmonisation on relevant capacity utilisation factor would be desirable instead of leaving the issue to the discretion of MS.

The Commission announced that the next TWGs provisionally are to take place on 1 March, 23 March and 26 April 2012. However, most probably the meeting of 1 March would be cancelled.
