



20 August 2009

## **CPI Response to DECC Consultation on the Transposition of Directive 2009/29/EC**

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1. This document is submitted in response to your invitation to comment on the consultation paper on the first set of draft regulations to transpose Directive 2009/29/EC (concerning aspects of Phase III of the Emissions Trading Directive) published on 24 June 2009.
2. The Confederation of Paper Industries Ltd (CPI) works on behalf of the UK's paper industries. It was launched in January 2000 and brought together four long-established industry trade associations:  
Association of Makers of Soft Tissue Papers (AMSTP)  
British Recovered Paper Association (BRPA)  
The Corrugated Packaging Association (CPA)  
The Paper Federation of Great Britain.
3. CPI represents the whole of the paper chain including the sourcing of pulp, recovery of used paper, papermaking, conversion into finished products, marketing and distribution. Paper mills above a certain size are eligible for EU ETS (the Annex I activity is "manufacture of pulp and paper with a capacity of more than 20 tonnes per day"). There are currently 52 paper mills operating in the UK and 43 of them are in EU ETS including a brand new mill which commenced operations this month.

### **General Comments**

4. Although paper mills with a capacity of greater than 20 tonnes/day are already in EU ETS, the changes to the definition of combustion plant in Phase III will bring in two energy-from-waste plants associated with paper mills. These EfW plants are currently excluded from EU ETS because of rulings made by the Environment Agency. The plants are located at existing ETS installations which are already permitted (see our answer to Q31 below for further details).

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5. Any free allocation to these EfW plants will presumably be calculated based upon their combustion capacity (each is of the order of 30MW) and not the papermaking capacity of the associated mill. Therefore the definition of “activity data” in relation to these plant needs to be examined carefully. If the allocation to the EfW plants referred to above is not to be calculated based upon combustion capacity, but on some other metric, it is essential that liaison with the operators and ourselves is made at the earliest opportunity.
6. We have not answered all the questions in the consultation document but have only provided responses to those that we feel are directly relevant to the particular circumstances of the paper sector and the interests of our members.

### Responses to Specific Consultation Questions

Q1. Is the definition of “emissions data” in Regulation 2 sufficiently clear?

A1. Yes.

Q3. Do you have any comments on which installations are to report historical emissions data under this Regulation?

A3. The DECC explanatory text for this question only talks about “installations not currently in the EU ETS but which will be brought into the EU ETS as a result of the changes to Annex I...”. It does not explicitly refer to installations already in EU ETS which operate an activity not currently in EU ETS but which will be brought into the scheme from 1 January 2013. However, the Regulations seem to be written in such a way that this category of installation is covered.

Q5. If you are an operator with an installation new to the EU ETS in Phase III, are you confident of submitting data prior to the final deadline of 30 April 2010?

A5. We represent one operator in this category (strictly speaking, in the category defined by the comments in A3 above) and are closely associated with the operator of a similar facility. At this stage we do not see a problem with provision of the data, provided of course that the verification requirements finally decided upon are not unduly onerous.

Q8. In your view is the amount of £500 proposed as a fee appropriate?

A8. No. The Environment Agency and SEPA have had several years to refine their EU ETS data management processes and in these circumstances a fee of £500 seems excessive and implies that inordinate time will be taken to deal with such data. There is no specific cost incurred by the Agencies in collecting data (other than in asking for it) as there is an obligation on the industry to supply data at its cost; the Agencies’ cost is incurred almost wholly in processing which we expect should be efficient. As a comparison, in our experience, a first class industry consultant with significant experience and seniority would expect to charge a daily fee of between £400 and £500 – is it reasonable to expect that the Agencies’ data processing requirements for the emissions data from one installation should require the equivalent of a day’s work by a top industry consultant?

Q10. Do you have any suggestions as to how the definition of ‘activity data’ might be refined for the purposes of these draft regulations?

A10. It should be recognised that all sectors have activities that are identified differently. In the paper sector the activity is defined as tonnes per annum of paper production. For a sector where combustion is the principal activity it should be rated thermal capacity or the fuel consumption per annum. Where there is a benchmarking process in place the emissions should relate to the unit activity - or another relevant agreed metric - which can then easily be converted into emissions so that allocations may be made.

Q12. Is the deadline of 31 March 2010 for activity data to be received by the regulator from installations appropriate, and, if you are an operator that must submit this data, are you confident of submitting it?

A12. We represent one operator in this category (strictly speaking, in the category defined by the comments in A3 above) and are closely associated with the operator of a similar facility. We feel that provision of activity data should not be a problem provided that any verification requirements finally decided upon are not unduly onerous.

Q13. Do you have comments on the general requirement that activity data be independently verified?

A13. Independent verification is an appropriate course of action that should be an EU-wide requirement. Where activity data is required for installations that have previously been in EU ETS at Phase II (and particularly in CCA where activity is already verified) then the separate supply of activity data for Phase III should be able to be based upon the earlier verification and not require additional verification.

Q15. Does the proposed fee of £300 for submitting activity data appear appropriate?

A15. No. Further to our comments in A8 the suggestion of a £300 fee per installation is outrageous! The Agencies would be asking for three numbers from each installation (the activity levels in 2005, 2006 and 2007). How can a sum of £300 be justified for processing 3 numbers? As an example, we have 43 paper mills currently permitted under EU ETS regulations. At £300 a time, this would mean a transfer to the Agencies of nearly £13,000 from our industry for the processing of 129 numbers. It should also be noted that the Environment Agencies will have some of this information already as production data is submitted in some mills' annual PPC returns.

A better, more cost-effective solution will be to allow the option for trade associations to supply this data. Many trade associations will already have this information as part of their role as producers of sector statistics (and in the case of sectors in a CCA the data may already be verified). Why not allow the option that operators should be able to instruct their trade association to provide the data on their behalf. In this case, the liability for provision of data (and penalties for non-provision) should still rest with the operator – this would be similar to an operator appointing an agent to supply data on its behalf. If this approach is agreed then an Agency fee of several hundred pounds for the processing of data from a large number of installations (say, up to 50) would then be appropriate.

Q19. Do you have any comments on the introduction of a civil, rather than criminal, penalties regime for data gathering?

A19. As the supplier of data is a body corporate a civil penalty regime is more appropriate and is likely to be more easily enforced than a criminal regime.

## Q20-Q23. Structure and Penalties

20-A23. The regime seems unduly harsh and the penalties high.

Q29. Do you have any comments on the assumptions made in the “Costs” section of the Impact Assessment? Please provide evidence to support your comments.

A29. We infer that the costs recorded in the impact assessment relate strictly to the cost of providing verified data because substantial and onerous costs to industry underlie the implementation of the amended Directive in Phase III. In the case of the paper sector we have historical data for emissions and activity which have been verified in accordance with UKAS/DECC standards.

As an example, DECC already has our verified emissions data for Phase I opted-out installations. In these circumstances individual installation charges – particularly at the high levels proposed - for the handling of data would be unreasonable.

The comment in the assessment about the requirements ‘not disproportionately impacting small firms’ is strange given that the European Commission, in allowing an opt-out for small emitters in Phase III, has recognised that small emitters are particularly impacted by EU ETS. The UK is still considering its position on opting-out installations and in the meantime small companies will be caught by the data collection exercises envisaged in the Transposition Regulations. This is a needless cost.

Q30. Do you have any comments on the scope for synchronising future and existing data requests in order to minimise the burden on those who are asked to submit data?

A30. We agree this would be a sensible and considerate approach. The run up to Phase III has been characterised by data requests that have been stressed as urgent with often only days allowed for responses. This process is disruptive to the normal functioning of business and should be avoided wherever possible. Considerate and explicable requests for data will always be addressed responsibly and as accurately as possible.

Q31. In your view, is the attached list (of installations) accurate? Do you believe there are any installations that we have omitted that should be included, or ones that are included that should have been left out?

A31. We can comment only on installations relating to the paper sector as follows:-

(1) The inclusion of Palm Paper as a new installation is incorrect. This mill commenced operation earlier this month (August 2009) and will therefore enter EU ETS in Phase II as an Annex I “pulp & paper” installation. It will not have data for the periods 2005-2007 and 2008 and will have to be treated exceptionally for any Phase III benchmarking or allocation process.

(2) The inclusion of E.On UK CHP Ltd is presumably because of the Energy-from-Waste plant on site which is associated with the adjacent paper mill complex operated by St Regis Paper Co Ltd. The other EfW plant associated with the paper sector is operated by Aylesford Newsprint Ltd and therefore this installation should also be on the list.

If you require any further information please contact me and I will be happy to discuss any of the issues and provide further detail as appropriate.

A handwritten signature in black ink, appearing to be 'DM', with a horizontal line underneath.

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Confederation of Paper Industries