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Guidance Document n°10
on the harmonized free allocation methodology for the EU-ETS
post 2012

Guidance on Allocation for Mergers and Splits¹

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¹ Neither the authors of this file nor the European Commission can be held liable for the views expressed in this document and for eventual damages resulting from the wrong application of the provisions in the European Directive 2003/87/EC, European Decision 2011/278/EU and European Regulation 389/2013.

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1 Introduction

1.1 Status of the Guidance Documents

This guidance document is part of a group of documents, which are intended to support the Member States, and their Competent Authorities, in the coherent implementation throughout the Union of the new allocation methodology for Phase III of the EU ETS (post 2012) established by the Decision of the Commission 2011/278/EU on “Transitional community-wide and fully harmonised implementing measures pursuant to Article 10a(1) of the EU ETS Directive” (CIMs) and developing the National Implementation Measures (NIMs). The guidance does not represent an official position of the Commission and is not legally binding.

This guidance document takes into account the discussions within several meetings of the informal Technical Working Group on Benchmarking under the WGIII of the Climate Change Committee (CCC), as well as written comments received from experts from Member States. It was agreed that this guidance document reflects the opinion of the Climate Change Committee, at its meeting on 15 October 2014.

The guidance papers do not go into detail regarding the procedures that Member States apply when issuing greenhouse gas emissions permits. It is acknowledged that the approach to setting the installation boundaries laid down in GHG emissions permits differ between Member States.

1.2 Background of the CIM Guidance Documents

Specific topics were identified within the CIMs which deserve further explanation or guidance. The CIM guidance documents intend to address these issues as specifically and clearly as possible. The Commission considers it necessary to achieve the maximum level of harmonisation in the application of the allocation methodology for phase III.

The CIM guidance documents aim at achieving consistency in the interpretation of the CIMs, to promote harmonisation and prevent possible abuse or distortions of competition within the Community. The full list of those documents is outlined below. In particular:

- Guidance document n. 1 – general guidance: this guidance gives a general overview of the allocation process and explains the basics of the allocation methodology.
- Guidance document n. 2 – guidance on allocation methodologies: this guidance explains how the allocation methodology works and its main features.
- Guidance document n. 3 – data collection guidance: this guidance explains which data are needed from operators to be submitted to the Competent

Authorities and how to collect them. It reflects the structure of the data collection template provided by the EC.

- Guidance document n. 4 – guidance on NIMs data verification: this guidance explains the verification process concerning the data collection for the National Implementation Measures².
- Guidance document n. 5 – guidance on carbon leakage: it presents the carbon leakage issue and how it affects the free allocation calculation.
- Guidance document n. 6 – guidance on cross boundary heat flows: it explains how the allocation methodologies work in case of heat transfer across the 'boundaries' of an installation.
- Guidance document n. 7 – guidance on new entrants and closures: this guidance is meant to explain allocation rules concerning new entrants as well as the treatment of closures.
- Guidance document n. 8 – guidance on waste gas and process emission sub-installation: this document provides for explanation of the allocation methodology concerning process emission sub-installation, in particular, concerning the waste gas treatment.
- Guidance document n. 9 – sector specific guidance: this guidance provides for detailed description of the product benchmarks as well as the system boundaries of each of the product benchmarks listed within the CIMs.
- Guidance document n. 10 – allocation guidance for mergers and splits.

This list of documents is intended to complement other guidance papers issued by the European Commission related to Phase III of EU ETS, in particular:

- Guidance on Interpretation of Annex I of the EU ETS Directive (excl. aviation activities), and
- Guidance paper to identify electricity generators

References to Articles within this document generally refer to the revised EU ETS Directive to the CIMs and to the Registry Regulation.

1.3 Additional guidance

Next to the guidance documents, additional support to the Member State authorities is provided in the form of a telephone helpdesk, and the EC-website, with list of guidance documents, FAQs and useful references,

http://ec.europa.eu/clima/policies/ets/cap/allocation/index_en.htm

² Article 11 of Directive 2003/87/EC

2 General rules pursuant to Commission Decision 2011/278/EU

The Harmonised Allocation Rules³ do not contain any explicit provisions regarding mergers and splits of installations. Therefore, as a general rule, any change to free allocation following a merger or split of installations should be implemented in accordance with the New Entrants and Closures (NEC) rules foreseen by the Harmonised Allocation Rules.

Under the framework of Harmonised Allocation Rules and when the conditions for a significant capacity change are met:

- A merger of two installations is realised as one installation ceasing operations and another one increasing its production capacity.
- A split of one installation in two (or more) should be implemented as a significant capacity reduction of the original installation and one (or more) new entrant(s) ("greenfield").

The Member States must notify the Commission of such changes following the normal NEC reporting procedure. On the basis of the information provided, the Commission reviews each such case and communicates the results of this assessment to the Competent Authority. Once the assessment phase is completed a NAT change will be implemented under the provisions of Art. 52(2) of the Registry Regulation described in detail in section V of the guidance document "Changes to the National Allocation Tables for Stationary Installations in Phase 3".

With regard to the above, although mergers and splits are relatively common industrial administrative procedures resulting from changes in ownership, in the context of free allocation under the EU ETS, they need to be dealt with in accordance with the Harmonised Allocation Rules, i.e., through new entrants (greenfields), significant capacity changes and cessations.

Nevertheless, certain other changes to the allocation following a merger or a split may also be in line with the Harmonised Allocation Rules, provided that certain conditions are met:

³ Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 130, 17.5.2011, p. 1).

- Installations have to be under the scope of the ETS and hold a GHG permit before and after the merger or split takes place⁴;
- A merger or split does not result in an allocation of more allowances than compared to the allocations reported in the National Allocation Table (NAT) before the merger or split;
- In case of merging installations, in line with Article 3(e) of Directive 2003/87/EC, the merger relates to installations that are technically connected and which operate on the same site and are covered by the same permit after the merger takes place;
- The installation(s) involved in the merger or split are covered by a greenhouse gas permit reflecting their new status.

The Member State Competent Authority must inform the Commission on all cases of mergers or splits of installations pursuant to Article 24 of Decision 2011/278/EU by sending an official notification explaining the circumstances and the reasons for the change, including a clear identification of the installations concerned and their physical connections and a short description of the permit changes. In the notification, Member States must report installation related data reflecting the situation after the merger or split. The installation related data should include emissions data, allocation data and historical activity level (HAL Total)⁵ to allow further application of rules on partial cessation and capacity changes when needed. The data should be based on the most recently established historical activity level used to determine the allocation in the NAT of the original installation(s) before the merger or split.

The Commission reviews each such case and communicates the results of this assessment to the Competent Authority.

⁴ If before or after the merger or split any of the involved installations is not covered by the ETS, the application should be dealt according with New Entrants and Closures rules (i.e. closures, greenfields, and significant capacity changes).

⁵ The Competent Authorities are encouraged to submit the installation related data in an Excel file using the NIMs Table format to the extent possible. The Commission will consider the need to adapt the NEC's operator template for mergers and splits reporting to ensure a consistent reporting across Member States in the future.

3 Examples

The following examples illustrate the implementation of mergers and splits under Article 24 of the Harmonised Allocation Rules as outlined above.

3.1 Merger

In the following example, operator of installation A purchases installation B. Installations A and B are technically connected and operate on the same site. Consequently, after the merger, operator of installation A controls both installations A and B and the installations are operating as one.

The GHG permit of installation B is revoked and the GHG permit of installation A is updated so that its monitoring plan includes all emissions sources from both installations A and B.

In this case the change in the free allocation will be as follows:

- 1) The allocation for installation A should be increased so as to correspond to the sum of allocation from both installations A and B, for the year after the change takes place and for the subsequent years of Phase 3;
- 2) The allocation for installation B is reduced to zero, for the year after the change takes place and for the subsequent years of Phase 3;

In practice, the change in the allocation will have to be reflected in a change in the NAT with effect as of the year following the one during which the merger took place. The procedure to be followed is as follows:

The Competent Authority informs the Commission on the merger pursuant to Article 24 of Decision 2011/278/EU by sending an official notification explaining the circumstances and the reasons for the change, including a clear identification of the installations concerned and a description of the permit change, with the following documents attached:

- An Excel file(s) including installation related data reflecting the situation after the merger as described in section 1 above;
- NAT Change .xls file as per Art. 52(1) of the Registry Regulation including the concerned installations;

Upon assessment of the information submitted, the Commission informs the Competent Authority whether the allocation as revised has been accepted.

The National Administrator prepares and submits to the Commission an XML file in line with the proposed revised allocations (points 1) and 2) above)⁶. The file is uploaded in the EUTL and in the Union Registry following the normal NAT change procedure.

Pursuant to Article 11 of the ETS Directive, by 28th February of the year after the change takes place, Operator A receives in its registry account the free allocation corresponding to the sum of free allocation from installation A and B as indicated in the changed NAT.

3.2 Split

In the following example, operator of installation A sells part of its installation and operations to Operator B. As a result from this split, installations A and B operate independently in a way that the boundaries of the sub-installations of each installation are clearly separated. The GHG permit and monitoring plan of installation A are revised accordingly and operator B receives a valid GHG permit and a monitoring plan covering the boundaries of its new installation B. Operator B also opens a new account in the Union Registry for installation B.

The final allocation decisions relating to installations A and B are changed as follows: the number of allowances related to the part of the installation that has changed ownership are deducted from the allocation of Operator A and are allocated to Operator B in particular provided that:

- 1) The free allocation for installation A is decreased in accordance with the revised activity levels (HAL Total) of the sub-installations that remain under the control of Operator A, for the year after the change takes place and for the subsequent years of phase 3;
- 2) The free allocation for installation B is set in accordance with the revised activity levels (HAL Total) of the sub-installations which are under the control of Operator B, for the year after the change takes place and for the subsequent years of phase 3;
- 3) The sum of the final allocation of installations A and B is equal to the previous allocation of installation A (i.e., before the split takes place).

In practice, the change in the allocation will have to be reflected in a change in the NAT with effect as of the year following the one during which the split took place. The procedure to be followed is as follows:

The Competent Authority informs the Commission on the split pursuant to Article 24 of Decision 2011/278/EU by sending an official notification explaining the

⁶ For detailed guidance on the procedure to change the NAT please refer to the document "Phase 3 Changes to the National Allocation Tables for stationary installations"

circumstances and the reasons for the change, including a clear identification of the installations concerned and a description of the permit change, with the following documents attached:

- An Excel file(s) including installation related data reflecting the situation after the split as described in section 1 above;
- NAT Change .xls file as per Art. 52(1) of the Registry Regulation;

Upon assessment of the information submitted, the Commission informs the Competent Authority whether the allocation as revised has been accepted.

The National Administrator prepares and submits to the Commission an XML file in line with the proposed revised allocations (points 1) and 2) above). The file will be uploaded in the EUTL and in the Union Registry following the normal NAT change procedure.

Pursuant to Article 11 of the ETS Directive, by 28th February of the year after the change takes place, Operator A receives in its registry account the reduced amount of free allocation corresponding to the activities which are still under its control and Operator B receives in its account the allocation related to the activities that have changed ownership so that the sum of free allocation from installation A and B equals the allocation of installation A before the split.

4 Rules for international credit entitlements

In the absence of guidance in the EU ETS Directive, in the Registry Regulation and in the Regulation on International Credit Entitlements, merged and split installations are to be dealt with on a case by case basis and under the responsibility of the Member States when drawing up their international credit entitlement tables for their stationary installations and aircraft operators. As a general rule, the split or merged installations in a Member State's list of international credit entitlement table should be consistent with the Member State' National Allocation Table also with regards to mergers and splits. That is, if in the National Allocation Table of a Member State an installation is split into several installations this should also be reflected in the Member State's International Credit Entitlement Table in that the two tables should contain the same number of installations with the same installation IDs. If, on the other hand, separate installations were merged into an existing or a new installation in the National Allocation Table, this should also be mirrored in the International Credit Entitlement Table. When determining the credit entitlement of a merged or a split installation, Member States should also take into account what credit entitlements have already been used in Phase 2 in order to avoid unfair entitlements.