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Frequently Asked Questions

Accreditation and Verification Regulation - FAQ on classification and reporting of outstanding issues in the verification report

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This document is part of a series of documents and templates provided by the Commission services to support the implementation of Commission Implementing Regulation (EU) No. 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council¹.

The guidance represents the views of the Commission services at the time of publication. It is not legally binding.

This document takes into account the discussions within meetings of the informal Technical Working Group on MRVA (Monitoring, Reporting, Verification and Accreditation) under WG III of the Climate Change Committee (CCC), as well as written comments received from stakeholders and experts from Member States.

All guidance documents and templates can be downloaded from the Commission's website at the following address: https://ec.europa.eu/clima/eu-action/eu-emissions-trading-system-eu-ets/monitoring-reporting-and-verification-eu-ets-emissions_en#tab-0-1

¹<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02018R2067-20210101&from=EN>

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1 CLASSIFICATION AND REPORTING OF OUTSTANDING ISSUES IN THE VERIFICATION REPORT

1.1 What is a misstatement?

A misstatement is an error, omission or misrepresentation in the operator's or aircraft operator's reported data. A misstatement does not include the uncertainty permissible under the MRR (i.e. the uncertainty related to the applicable tier).

Art 3(5)
AVR

However, it would account, for an installation, for example, consuming 105 234 tonnes of coal in the reporting period, calculated in accordance with the approved calculation procedures in the monitoring plan, but reporting 105 000 tonnes of coal due to inappropriate rounding. This constitutes a misstatement, and is subject to further assessment whether this misstatement is a material one (see question 1.5).

If the overall uncertainty is outside the tier range required in the approved MP and the MRR, the additional uncertainty could constitute a misstatement and does need to be taken into consideration. For more information please see section 3.2.8 of the Explanatory Guidance (EGD I).

Examples of misstatements

- Errors in the amount of fuel reported in the emissions report
- Errors in the reported net calorific value, emission factor, oxidation factor
- Errors in the reported total energy content
- Errors related to inappropriate sampling and analysis thereby leading to errors in the reported data on calculation factors and emission data
- Incorrect use of units of measurement
- Errors in the reported total emissions data
- Error in the reported data that can be associated with measurement equipment that is not meeting the required uncertainty level as described in the approved MP or the MRR (additional error)²
- Errors in the reported data due to incorrect installation or functioning of measurement instruments causing the instruments to exceed the required and approved uncertainty levels
- A data gap identified by the verifier, is not corrected by the operator by applying a conservative estimation method and is not reported in the emissions report
- Emissions from sustainable biomass are incorrect because the bioliquid used does not meet the required sustainability criteria or greenhouse gas savings criteria.

1.2 What is a non-conformity?

A non-conformity in verification is:

- For installations: any act or omission of an act that is not in line with the GHG permit or the requirements in the MP approved by the CA
- For aircraft operators: any act or omission of an act that is not in line with the requirements in the MP approved by the CA.

Art 3(13)
(a) (b)
AVR

A non-conformity may cause a misstatement if this non-conformity leads to errors, omissions or misrepresentations in the reported data (see question 1.1). To correct non-conformities it may be necessary to update the MP and notify these changes to the CA or have these approved by the CA in the case of significant changes to the MP.

² Temporary deviations from the tier approved in the MP that are monitored, notified and reported in accordance with Article 23 of the MRR are not necessarily misstatements

Examples of a non-conformity

- A source stream or emission source detected by the verifier that was monitored and reported but was not included in the approved MP. Such an additional source stream would also be a misstatement if the emissions of that missing source stream are not taken into account in the emissions report thereby leading to omissions in the reported data.
- A source stream that is classified as a de-minimis source stream in the approved MP, now found to have higher emissions equivalent of a minor source stream.
- Analysis determining the emission factor is not carried out in accordance with the frequency required by the approved MP
- The tier listed in the approved MP is not met by the operator
- The operator uses the fuel supplier's invoice data to define the activity data whereas the approved MP states that the amount of fuel is to be measured by internal meters.
- The procedure described in the approved MP for estimating the stock at the beginning and end of the year has not been implemented, applied or documented by the operator.
- The gas chromatograph analyser used for the determination of the composition of gas has not been calibrated in accordance the requirements described in the approved MP, e.g. the calibration is not carried out with the required frequency, the calibration gas used for calibration is not suitable or the calibration gas certificate has been expired
- The operator uses a non-accredited laboratory to carry out analyses for the emission factor whereas the approved MP requires that the laboratory is accredited in accordance with EN ISO/IEC 17025.
- The procedure described in the approved MP mentions that a responsible person performs cross-checks with production data, invoices and data from previous years and that these cross-checks are reviewed during audits. During the verification the verifier identifies that these cross-checks have not been carried out in accordance with the procedure.
- Corrective action in response to calibration of a measurement instrument is not carried out in line with the procedure described in the approved MP.
- The approved MP indicates that the aircraft operator determines the fuel consumption by using method B, while in practice the aircraft operator uses method A.

1.3 What is a non-compliance with the MRR?

A non-compliance with the MRR is any act or omission of an act that is not in line with the requirements of the MRR.³ Verifiers are required to report any identified non-compliance with the MRR in the verification report. This also applies if the non-compliance concerns an issue that is approved by the CA in the MP, e.g. the CA approved the use of a certain default value with reference to Annex VI of the MRR which is not the exact same value listed in Annex VI.

Art 7(5)
AVR

A non-compliance with the MRR may cause a misstatement if the non-compliance leads to errors, omissions or misrepresentations in the reported data (see question 1.1).

In some cases a non-conformity can also be a non-compliance with the MRR.

The operator or aircraft operator should look at non-conformities and non-compliance with the MRR at the earliest opportunity. Non-compliance with the MRR represents a breach of the MRR and should be followed-up immediately by the operator or aircraft operator and the CA. With respect to non-conformities operators or aircraft operators are required to propose in the improvement report how they have corrected or will correct the non-conformities (Article 69(4) of the MRR).

³ Where the MRR leaves room to do so, MS may include national requirements in national legislation. If this is the case, non-compliance can also entail non-compliance with that specific national legislation.

Examples of non-compliance with the MRR

- A temporary change to the MP is not notified to the CA⁴ (not notifying a temporary change would not be in line with Article 23(2) of the MRR)
- The operator uses the fall-back approach but has not assessed the uncertainties of the parameters used for the determination of the annual emissions in line with the ISO Guide to the Expression of Uncertainty in Measurement (GUM) (this would not be in line with Article 22 of the MRR).
- The operator has not adapted the sampling plan when the heterogeneity of the fuel significantly differed from the information on heterogeneity on which the original sampling plan for that specific fuel was based (this would not be in line with Article 33(2) of the MRR).
- Some of the samples taken by the operator were not representative for the relevant batch or free from bias (this would not be in line with Article 33(1) of the MRR).
- The operator has insufficient evidence that the non-accredited lab is technically competent to carry out the analysis required of calculation factors (this would not be in line with Article 34(3) of the MRR).
- The MP was not updated to reflect the actual situation of the installation and this was not notified or approved by the CA (e.g. source stream was added but not included in the approved MP) (this is not in line with Article 14 and 15 of the MRR). Please note this is also as a non-conformity (see the examples of a non-conformity).
- An installation of low emissions uses its own meters to determine the activity data through continual metering but has not carried out an uncertainty assessment to ensure that the uncertainty requirements are not exceeded. The installation of low emissions cannot provide the verifier with such an assessment (this is not in line with Article 28 of the MRR and 10⁵ and 19 of the AVR).
- The approved MP of the aircraft operator refers to a procedure which allows a correction factor to be applied for the auxiliary power unit (APU) which would lead to the exclusion of the APU. This is a non-compliance since Article 53(2) of the MRR requires the APU to be taken into account.
- An emission factor of zero was applied for bioliquid that did not meet the sustainability criteria or greenhouse gas savings criteria (this would not be in line with Article 38 (5) of the MRR). The bioliquid should have been treated as a fossil source stream. This is also a non-conformity since the MP, allowing the emission factor of zero, was approved based on the source stream being sustainable biomass.
- The estimation method to correct for data gaps is described in the approved MP but the verifier identifies that this method does not lead to conservative estimation of the emissions (this would not be in line with Article 66(1) of the MRR). If this has led to errors in the reported data (e.g. an underestimation of emissions) the issue is also a misstatement.

1.4 What is a recommendation for improvement?

A recommendation of improvement is a suggestion from the verifier to improve the operator's performance in monitoring and reporting emissions. In general the verifier should raise any weaknesses identified in the operator's performance and inform the operator why it considers an improvement is relevant. However, the verifier should refrain from prescribing how the operator should resolve the identified weakness as that would place the verifier in a consultancy role and compromise its independence as a verifier.

Recommendations for improvement can cover a whole range of issues not only involving the operator's risk assessment, data flow activities, control activities and procedures but also the accuracy of monitoring and reporting. In general, misstatements, non-conformities and non-compliance with the MRR should be reported as such and not as recommendations for improvement. This can be derived from Article 29 and 30 of the AVR which require verifiers to assess in the next year whether and how

Art 7(4)
and 30
AVR

⁴ Please note that in some MS the requirement to notify temporary changes is also listed in the permit conditions. In those cases the omission to notify temporary changes is a non-conformity because it would be an act contrary to the GHG permit.

⁵ Article 10 of the AVR requires verifiers to provide any relevant information necessary for carrying out the verification. This includes the uncertainty assessment necessary to perform the verification activities described in Article 19 of the AVR.

outstanding non-conformities were corrected and whether and how recommendations of improvements were implemented. Separate reporting facilitates this assessment process. However, if a verifier chooses to report non-conformities and non-compliance with the MRR also under recommendations for improvement, the AVR does not preclude verifiers from doing so. In those cases the issue is reported under multiple items.

A non-conformity that does not actually affect the reported data, for example, the contact details on the MP/Permit have not been updated after a change of personnel or a change in the document system that does not affect the data, can technically be reported under recommendation for improvement provided it also listed as a non-conformity.

Examples of a recommendation for improvement

- The operator has indicated a low inherent risk regarding the appropriateness of the location of the measurement equipment whereas the verifier deems the risk to be higher requiring more robust control activities. *Note: the verifier should however refrain from explicitly stating which type of more robust control activities he recommends as that would place the verifier in a consultancy role and compromise its independence.*
- The operator does not regularly cross-check or review the ETS data, the verifier recommends the need for more frequent review of the ETS primary and calculated data to ensure that anomalies are picked up in a timely manner. *Note: the verifier refrains from prescribing the level of improvement in frequency which should be based on the operator re-assessing the risks involved.*
- The operator of a category B installation is applying tier 2 for the emission factor because it claims it is technically not feasible to meet the highest tier. This was approved by the CA in the MP. However the verifier can recommend the operator to apply a higher tier and more accurate monitoring if it considers with good reason that it is technically feasible to meet that higher tier and a higher tier is possible at comparable installations. The verifier should abstain from providing precise technical advice.
- The operator determines the activity data and calculation factor for de-minimis source streams by using conservative estimation. The verifier recommends using tiers because it considers that using tiers would be achievable without additional effort.
- The operator uses a document management system that is not suitable for the magnitude of documents to be stored for such a large installation. The verifier can recommend use of a more up-to-date and robust document management system meeting the required document management standards.
- During the verification the verifier identifies that the access to the spreadsheet for calculation of the CO₂ emissions is not restricted. The verifier can recommend need to restrict access/change rights.
- The spreadsheet for calculation of the CO₂ emissions algorithms has not been protected. The verifier can recommend protecting the spreadsheets.
- The MP refers to internal procedures covered within the operator's ISO14001 certification. However the procedures have not been adapted to include reference to ETS. The verifier recommends including such reference.
- For the calculation of CO₂ emissions emitted, the verifier identifies that the data is manually transported although the data can be easily transferred without manual interference, hence avoiding errors in manual transposition of data. The verifier recommends using IT systems to transfer data. *Note: the verifier refrains from prescribing the exact IT systems to apply and how.*

1.5 When is a misstatement material?

Assessing the materiality of misstatements has a quantitative and qualitative aspect: such assessment is done regarding outstanding misstatements (misstatements that have not or cannot be corrected by the operator).

With respect to the quantitative aspect the verifier aggregates misstatements in the reported data and compares the individual and aggregated misstatements to the total declared value in the operator's report. The difference between what the verifier considers the correct total value and what is declared

by the operator in the emissions report is compared to the materiality level.⁶ If the materiality level is exceeded the impact on the reported data is material. It should be noted that misstatements can individually be minor misstatements but could exceed the materiality level once they are aggregated. Please see section 3.2.9 of the Explanatory Guidance (EGD I) for more information on how to apply the materiality level.

The quantitative aspect and thus the materiality level alone is not the only factor when assessing whether or not a misstatement, non-conformity or non-compliance with the MRR has material effect. The qualitative aspect has to be considered as well. The key question for assessing the qualitative aspect is whether a misstatement or non-conformity (individually or combined) can influence the decision of the CA. This will depend on the size and nature of the misstatements and non-conformities as well as on their particular circumstances of occurrence. As non-compliance with the MRR can also constitute (material) misstatements, the same observations can be made for non-compliance with the MRR. It is important to note that even if the materiality level is not exceeded, misstatements, non-conformities and non-compliance with the MRR can still have material effect on the reported data.

Art 22
AVR

Section 3.2.9 of the Explanatory Guidance (EGD I) outlines factors that can be relevant in the assessment of materiality. It depends on the individual circumstances which and how factors will be assessed.

Examples of the influence certain factors may have on the verifier's decision on materiality

- Whether the misstatements, non-conformity or non-compliance can be corrected: correction is for example not possible if there is a large data gap that cannot be filled by a conservative method of estimation (no primary data), if the measurement equipment of a major source stream has not been calibrated or the calibration records are missing and the verifier is uncertain about the accuracy of the data, if the operator cannot provide evidence that the measurements comply with the required tier level etc.)
- Whether the operator refuses to correct the misstatement, non-conformity or non-compliance: if an operator refuses to correct an issue, the verifier will first request the operator's reasons for doing so. Article 22(1) of the AVR requires operators to correct any identified misstatement, non-conformity or non-compliance which makes the refusal to correct an outstanding issue without sound justification an important factor that the verifier needs to take into account when assessing the materiality of misstatements.
- The likelihood of a misstatement, non-conformity or non-compliance reoccurring: the likelihood is for example high if the control activities are not sufficient to mitigate inherent risks, calibration is structurally not carried out, important monitoring data are not documented properly, a measurement instrument is not installed properly, personnel are incompetent, procedures are not implemented etc.
- The duration of a misstatement, non-conformity or non-compliance: if the issue has lasted for a long period of time (from one year to another), this is usually a sign that the control system is not working properly or operators are reluctant to correct the issue which will play a role in assessing whether this has a material impact on the reported data.
- Whether the misstatement, non-conformity or non-compliance is the result of an act with or without intent: cases of fraud will always impact the verifier's decision on materiality.
- Non-compliance with the MRR or other relevant national legislation.

1.6 How to report outstanding issues?

All issues that cannot be corrected by the operator before issuing the verification report, must be reported by the verifier in the verification report. These issues must be described in sufficient detail to allow the competent authority to understand the size and nature of the issue, whether there is a material impact on the reported data and to which element of the emission report, the MP or the MRR the issue

Art 27(3)
(4) AVR

⁶ Article 23 of the AVR.

relates. This information needs to be provided and completed in Annex I of the European Commission's template. The following can be noted with respect to the different types of outstanding issues.

Misstatements

The verifier must report:

- the size of the misstatement: in % or in absolute value specifying the impact on the total emissions declared by the operator where this is possible⁷;
- the nature of the misstatement: what the error, omission or misrepresentation entails. If the misstatement is material an explanation should be provided on why it is material (e.g. the materiality threshold is exceeded or specific individual circumstances and factors have led the verifier to consider the individual misstatement or combined misstatements is material);
- whether it is material or not;⁸
- which element of the emission report it concerns.

Examples of how to report a misstatement

- The operator uses a minor source stream, natural gas, that is not mentioned in the approved MP and is not included in the emissions report. Based on the provided evidence during the verification, the initially omitted source stream accounts for 4,000 tonnes CO₂ which is not included in the total emission data of the emissions report. The MP needs to be updated and this significant change to the MP needs to be submitted to the CA for approval (see also under non-conformity and non-compliance with the MRR)⁹.
- Since the installation of the measurement instrument no calibration has been carried out. The operator could not demonstrate calibration certificates, and cross-checks with other data indicated that the measured results were not correct and caused errors in the amount of natural gas. This has led to errors in the reported emission data. The verifier considers this misstatement as material since the operator is reluctant to correct the non-conformity, it is likely that the non-conformity will reoccur, the source stream concerned is major and the operator cannot demonstrate that the required uncertainty is met (please see also under non-conformity).

Non-conformities

If non-conformities are also misstatements, they must be reported in the verification report as non-conformities **and** as misstatements if these are not corrected by the operator. In these cases the verifier must clarify that the issue is reported under multiple classifications. The verifier can provide a detailed explanation under one classification box and refer in the other boxes to the detailed description.

The verifier must report:

- the size of the non-conformity: in assessing the uncorrected non-conformity (individually or combined with other non-conformities) the verifier needs to assess the magnitude and origin of the non-conformity. The verifier should assess whether this is also a misstatement and if that is true indicate in the verification report the impact on the reported data and specify whether it is a material or non-material misstatement (if this is the case, it should also be reported under misstatements). The verifier should describe the magnitude of the non-conformity in such a way that it is clear whether the non-conformity concerns a major issue or minor issue;
- the nature of the non-conformity: what the non-conformity concerns, the origin of the non-conformity, what its duration has been and whether the non-conformity is likely to reoccur;

⁷ In some cases the verifier may be uncertain of the impact on the emission data (e.g. calibration is not carried out, the operator has not provided sufficient evidence for the verifier to be certain on the data).

⁸ In the European Commission Template this is selected through a drop down box.

⁹ The preferred approach is to include the suggestion of the verifier to update the MP under the misstatement. However the AVR does not preclude the verifier from reporting the actual misstatement under the item of misstatements and the suggestion to update the MP under recommendation of improvement provided it is clear that this suggestion relates to that specific misstatement.

- which element of the MP it concerns: specifying the section of the MP to which the non-conformity refers.

Examples of how to report a non-conformity

- The approved MP specifies that the tier applicable to the amount of coal is tier 4. However the installed weighbridge does not meet the required tier because the weighbridge was not installed properly. The uncertainty achieved is $\pm 3\%$ instead of $\pm 1.5\%$ as required for tier 4. The likelihood of the non-conformity reoccurring is high since the weighbridge is still not installed properly and it can't be easily corrected. The non-conformity has already lasted for six months and had a material impact on the emission data in the emission report (see under misstatements¹⁰).
- The internal and external audits to ensure regular internal reviews regarding the implementation of the MP procedures and validation of data are not carried out as described in the approved MP. Furthermore the scope of the audits does not totally cover the ETS scope. This non-conformity has no known impact on the stated emission data in the emissions report.
- The installation uses external laboratories for analysing the calculation factors. However the procedure for outsourced activities as described in the approved MP has not been completed/documentated. This non-conformity does not have a known impact on the reported emission data.

Non-compliance with the MRR

If a non-compliance is also a misstatement or a non-conformity, it must be reported in the verification report as a non-compliance and as a misstatement or non-conformity. In these cases the verifier must clarify that the issue is reported under multiple classifications. The verifier can provide a detailed explanation under one classification box and refer in the other boxes to the detailed description.

The verifier must report:

- the size of the non-compliance: in assessing the uncorrected non-compliance the verifier needs to assess the magnitude and origin of the non-compliance. The verifier should therefore assess whether the non-conformity is also a misstatement and if that is true indicate in the verification report the impact on the reported data and specify whether it is a material or non-material misstatement (if this is the case, it should also be reported under misstatements). The verifier should describe the magnitude of the non-compliance in such a way that it is clear whether the non-compliance concerns a major issue or minor issue;
- the nature of the non-compliance: what the non-compliance is, its duration and whether the non-compliance is likely to reoccur;
- which article of the MRR it concerns: indicating the specific article(s) of the MRR.

Examples of how to report a non-compliance with the MRR

- The operator has taken 10 samples that were not representative for the relevant batch. This is not in line with the requirement in Article 33(1) of the MRR. The non-compliance with the MRR has had no known effect on the emission data in the emissions report. However, the sampling plan needs updating and subsequent approval by the CA to avoid reoccurrence of this non-compliance.¹¹
- An emission factor of zero was applied to the bioliquid used by the operator in the installation. During the verification it was identified that the certificate issued by the scheme recognised by the Commission is no longer valid. For the bioliquid used, the operator cannot demonstrate that the sustainability or greenhouse gas savings criteria have been met. The operator is therefore not entitled to use a zero rated emission factor for this bioliquid and has to treat the source stream as a fossil source stream. This

¹⁰ Where possible, the verifier should indicate the size of the impact (in % or absolute value) under misstatement. Assessment of individual factors can be noted both under non-conformities and misstatements.

¹¹The preferred approach is to include the suggestion of the verifier to update the sampling plan under this non-compliance. However the AVR does not preclude the verifier from reporting the actual non-compliance under the item of non-compliance and the suggestion to update the sampling plan under recommendation of improvement provided it is clear that this suggestion relates to that specific non-compliance.

has an impact on the reported data in the emissions report since the emissions of biomass has incorrectly been counted as sustainable biomass which is not in line with Article 38 of the MRR (see also misstatements).

- The operator has determined the activity data of a major source stream, using a no tier approach and applied an emission factor of zero because the approved MP indicates that the source stream consists of exclusive biomass. However the operator cannot demonstrate that the biomass is 100% biomass and is not contaminated with fuel. This has an impact on the reported data in the emission report (see also under misstatements). The emissions from that source stream, are not monitored in line with Article 38 of the MRR. The MP needs to be updated and this significant change to the MP needs to be submitted to the CA for approval.¹²

Recommendations for improvement

The verifier must provide sufficient detail for the CA to understand what the recommendation for improvement involves and to which element of the operator's performance in monitoring and reporting it refers (e.g. risk assessment, data flow activities, control activities, procedures or accuracy of monitoring and reporting). In some cases a recommendation for improvement could also be a minor non-conformity in which case the issue should be reported under both items. In these cases the verifier must clarify the issue is reported under multiple classifications. In principle however, misstatements, non-conformities and non-compliance with the MRR must be reported as such and do not have to be reported as recommendations for improvement. This can be derived from Article 29 and 30 of the AVR which require verifiers to assess in the next year whether and how outstanding non-conformities were corrected and whether and how recommendations of improvements were implemented. Separate reporting facilitates this assessment process. However if a verifier chooses to report misstatements, non-conformities and non-compliance with the MRR also under recommendations for improvement, the AVR does not preclude verifiers from doing so. In those cases the issue is reported under multiple items.

Examples of how to report a recommendation for improvement

- During the verification evidence points to the possibility for the installation to meet a higher tier. Therefore the operator is recommended to explore the use of the highest tier (tier 3) for the analysis of the emission factor of natural gas, or obtain agreement from the CA that this is not required. At the moment tier 2 is applied, however new technical developments should enable the operator to meet the higher tier.
- During the verification, the verifier observes that the control risk in the operator's risk assessment regarding the calibration and maintenance of the measurement equipment is higher than specified in the operator's risk assessment (a high risk compared to the low risk indicated by the operator). The verifier considers the risk to be high since the personnel performing the calibration and maintenance are not competent and have not received the proper training. The operator is recommended to update the risk assessment and where appropriate include additional control activities.

¹²The preferred approach is to include the suggestion of the verifier to update the MP under the non-compliance. However the AVR does not preclude the verifier from reporting the actual non-compliance under the item of non-compliance and the suggestion to update the MP under recommendation of improvement provided it is clear that this suggestion relates to that specific non-compliance.

Summary of steps to take when classifying and reporting outstanding issues

