EU ETS penalties: FAQs

May 2016

Has there been a breach of the ETS regulations?

Yes. Nobody is denying that there has been a breach. However the breach was not deliberate and when operators were made aware that there was a compliance issue they took steps to obtain the necessary permits, informed the regulator voluntarily, were transparent and fully cooperative. This was acknowledged by the regulator and is reflected in the penalties.

Data Centres are large energy users so surely ETS is aimed at data centres?

No, data centres are not the intended target of the policy. The EU ETS scheme is aimed squarely at large scope 1 emitters – eg generating plants or steelworks that burn fuel such as coal, coke, oil or gas and produce hundreds of thousands, even millions of tonnes of CO_2 a year. While data centres are indeed energy intensive they use electricity. They do not burn fuel to power their facilities and are therefore negligible scope 1 emitters. Annual tonnes of CO_2 emitted by most data centres are in single figures and even the largest sites are unlikely to emit more than around 100 tonnes a year.

How on earth did you miss it? Everyone's heard of ETS.

It was missed for a number of reasons. Firstly a scheme targeted at power stations and large scale combustion operations was not on our radar because we are not large scope 1 emitters. It isn't that surprising: if you heard that there was a regulation aimed at people with three legs and you only had two legs, then you probably wouldn't pay that much attention to it. Secondly, although it should be identical, ETS has been interpreted differently by other member states such as Germany, where emergency standby generators are explicitly excluded on the grounds that they are rarely used. This has caused confusion since many of our operators have sites across the EU. Thirdly, it only became relevant to data centres due to a change in wording between Phase II and Phase III and this change was not publicised. Moreover the wording was unclear and it took some time, and escalation to the European Commission, to clarify the situation. Fourthly, there is a low emitters opt-out scheme but this was closed to entrants at the end of Phase II, before the start of Phase III when data centres were brought in: an exquisite irony of timing. The opt-out was available to sites emitting less than 25,000 tonnes a year. Data centres rarely exceed 100 tonnes so would all have been eligible for the opt-out option.

So if data centres are not the intended target of the policy, why are they captured?

You would think that the ETS obligation would be based on CO_2 emitted but it is actually based on the generating capacity, irrespective of whether that capacity is ever used (like you have to buy a TV licence even if your TV is in a box in the attic). Large data centres may be captured by ETS because they maintain emergency standby generators to ensure that they can continue to operate in cases of mains power outage. When we sought clarity from the European Commission, they explained that standby capacity was captured because some power plants are classed as standby for grid provision and these are very large emitters. It is widely accepted that the Commission could have been more intelligent in its definitions and have differentiated emergency standby that provides power to businesses to enable them to function when there are problems with grid supply, from standby

power that feeds into the supply grid. This could have been achieved by applying criteria such as additionality of the direction of power (towards or away from the grid).

But ETS must be doing something good, right?

Not really in this case, because the policy actually creates perverse incentives for data centre operators. Since they do not run the generators electively except for regular testing and maintenance (it is expensive and the generators are not designed for continuous running) operators cannot reduce run hours. So there is no scope to reduce run time and the high embedded energy means that it would be counterproductive to upgrade plant before life expectancy. Operators could duck under the threshold for ETS by opting for multiple smaller generators but this would be far less efficient and again would increase embedded energy.

What else is wrong with it?

Plenty. While the actual emissions are utterly trivial, the policy is dysfunctional because it is extremely burdensome for participants: compliance costs for data centres (fees and charges) vary from £10,000 to £30,000 per site per year against allowance costs of a few tens to a few hundreds of pounds. This is like paying car tax of £30 but having to pay £20,000 a year to register your car just so you can pay the tax. A policy tool usually comes under scrutiny if the compliance costs start approaching parity with allowance costs: in this case the ratio can reach 300:1. Serious scrutiny is overdue.

If EU ETS is pointless, wouldn't it have been better to stay under the radar?

Although the emissions don't amount to a hill of beans, operators take their compliance obligations very seriously indeed and it is not an option for them to ignore a regulatory requirement, irrespective of how expensive or pointless it is. CSR, governance and reputation are all very important considerations.

Is this an air quality issue?

No the EU ETS is about carbon emissions, it is not about air quality. Other regulations cover air quality.

Further information

Our ETS policy position: https://www.techuk.org/images/techUK_DCC_Com_1602_EU_ETS.pdf

Contact:

Emma Fryer, Associate Director: emma.fryer@techuk.org