

EU ETS Phase IV / The Future of Carbon Pricing in the UK

Article 27a, proposals

May 2019

Article 27A makes provision for the exemption of ultra-low emitters from the next phase of EU ETS. UK government proposals for the implementation of this provision are below, extracted from the consultation document.

Article 27a Provisions – reproduced from The Future of Carbon Pricing, page 99-103

See: <https://www.gov.uk/government/consultations/the-future-of-uk-carbon-pricing>

304. We propose to implement a new provision for Phase IV under Article 27a of the ETS Directive. This new provision offers Member States the option of fully excluding from the EU ETS stationary installations emitting less than 2,500t CO₂eq per year. Other than monitoring their emissions and confirming that they remain beneath this threshold, this provision makes no further demands on these installations, not requiring any equivalent measures to reduce emissions, any verification of or reporting of their emissions, nor payment to emit over a limit.

305. The reasoning behind this derogation is the same as the reasoning behind the Article 27 derogation. These emitters face a disproportionately large cost of compliance compared to much larger emitters, and in the case of these emitters the scale of the disparity is even more pronounced. Given the very low emissions of these installations it was decided through Phase IV negotiations that more simplification was possible and proportionate given their low environmental risk.

306. Some stakeholders or members of the public may be concerned that the removal of these operators from the EU ETS, with no requirement for equivalent emissions reductions, may constitute an undermining of the environmental principles of the ETS. However, our analysis indicates 168 UK operators may be eligible for an Article 27a exclusion, collectively representing less than 0.1% of UK EU ETS emissions. Therefore, we believe this measure would be proportionate and have no significant impact on the UK's greenhouse gas reduction goals.

Consultation Questions

64 a) Do you support the proposed implementation of an Article 27a exemption scheme, as a proportionate measure to simplify the scheme and reduce administrative burdens for installations with very low emissions? (Y / N) b) Please expand on your answer and give evidence where possible.

Eligibility for the Article 27a Scheme

307. The scope of the Article 27a Scheme is set out in the ETS Directive. An Article 27a installation is defined as an installation where reported annual emissions are less than 2,500t CO₂eq in each of the three years preceding a NIMs collection exercise (the two NIMs collection exercises for Phase IV being held in 2019 and 2024). Therefore, the relevant baseline years for the allocation period 2021-2025 are 2016, 2017 and 2018, and the relevant baseline years for the allocation period 2026-2030 are 2021, 2022 and 2023.

Consultation Question

65: Are you responding on behalf of an installation that emitted less than 2,500t CO₂eq annually in the years 2016, 2017 and 2018? (Y / N)

UK implementation of Article 27a Provision

308. Eligible operators who wish to take advantage of Article 27a will be required to fill in their baseline data on the NIMs template, including verified emissions for the relevant three years, and indicate their intention to opt out under Article 27a in the relevant field. For the first allocation period in Phase IV, this will need to be done and returned to the regulator before 30 June 2019. Regulators will contact eligible installations to inform them of this process in advance of this deadline.

309. Should an eligible installation fail to enter their baseline data, indicating a preference for entering the Article 27a Scheme, it will be entered into the EU ETS main system, unless it has otherwise declared its intention to enter the Article 27 Scheme and followed the relevant parallel process. If the installation intends to enter the main scheme and receive free allocation or wishes to be eligible for free allocation should they have to enter the main scheme for whatever reason, then they will also need to submit data in accordance with the Free Allocation Regulation by 30 June 2019.

310. Once eligibility has been confirmed, an Article 27a installation will be required to have in place a monitoring plan (monitoring annually in line with a January-December annual monitoring period), and understand that they are required to continue to monitor their emissions to ensure they do not exceed the overall 2,500t CO₂eq threshold in any one calendar year (including any additional emissions that arise from additional sources or fuel types). As a baseline, regulators will assume an installation will maintain the monitoring plan it applied from the end of Phase III. Should an installation wish to adopt a different monitoring methodology, this will need to be discussed with the regulator, who may charge the operator for the time taken to assess and approve any alternative monitoring plan. Regulators will be empowered to assess and approve these plans, and to charge if necessary for cost recovery.

311. The obligation to monitor is required by the Directive and will be established in our amendments to the 2012 GHG Regulations. It is the responsibility of the installation to report any breach of this emissions threshold to the regulator and apply for the relevant permit; an installation failing to do so will be liable to incur a penalty in line with the existing penalties established in the 2012 GHG Regulations that can be applied to operators conducting an activity covered by the EU ETS Directive without a permit. We consider this proportionate as the aim of these penalties is to charge the operator for all costs avoided by not being subject to the compliance costs of the EU ETS, ensuring that an operator cannot profit through non-compliance.

312. Furthermore, it will be the responsibility of the operator to ensure that the regulator has a valid point of contact for the installation and to inform the regulator of these changes. However, other than these points, there are no further annual reporting requirements made for an Article 27a installation, and they will be exempted from the EU ETS for the duration of that five-year allocation period (as long as their emissions remain beneath the threshold).

313. The exempted installation will be required to re-verify its eligibility for the UK's Article 27a Scheme in advance of each allocation period. For the 2024 data collection exercise, Article 27a operators will be required to submit verified annual emissions data for 2021, 2022 and 2023 in accordance with the Free Allocation Regulation. If as part of this process it is determined that an installation failed to promptly report a breach of the annual limit of 2,500t CO₂eq (within three months of the end of a calendar year) they will be liable to be fined for all emissions for that year and all subsequent years in line with the penalties outlined above.

Consultation Questions

66 a) Do you agree with the process outlined for an installation's entry onto the Article 27a scheme? (Y/N) b) Please expand on your answer and give evidence where possible.

67 a) Do you agree with the UK Government's and the Devolved Administrations proposed approach to penalising operators who exceed the emissions threshold and do not report, including the timelines for notification and other administrative issues? (Y / N) b) Please expand on your answer and give evidence where possible.

Exceeding the 2,500t CO₂eq threshold

314. Once eligibility for the UK's Article 27a Scheme is confirmed by the regulator, an installation will be asked to declare a preference for what happens should they exceed the emissions limit in any given year. They will have a choice between either entering the EU ETS main scheme or entering the UK's Article 27 Scheme in the year following the threshold exceedance. When the UK submits its list of Article 27 and 27a installations to the Commission (by 30 September 2019) it will indicate which Article 27a installations would enter the Article 27 Scheme and which would enter the main system if they exceed the 2,500t CO₂eq threshold. *

315. If an installation chooses to enter the main scheme on exceeding the 2,500t CO₂eq threshold, then the same procedure will be followed as when an Article 27 installation exceeds the 25,000t CO₂eq threshold mid-allocation period.** It is important to note that if an installation had opted not to provide a fully verified baseline data report (including details on sub-installations) as part of the relevant NIMs exercise then they would not be eligible for free allocation for the remainder of that allocation period.

316. If they choose to enter the Article 27 Scheme then their target will be calculated based on the three prior years of verified emissions, which will have to be retroactively verified by an accredited third-party verifier. The operator will bear the cost of this process.

317. In either case the operator will be required to pay for any emissions over the Article 27a threshold emitted during the period between exceeding the threshold and entering either the main scheme or the Article 27 scheme. The penalty will be the EU ETS carbon price (as determined annually by the Secretary of State) for each tCO₂eq over 2,500. This payment will be collected through a civil penalty.

Consultation Questions

68: a) Do you agree that operators entering the Article 27a Scheme should declare a preference for what should happen should they exceed the emissions threshold, to enable them to enter the Article 27 Scheme if necessary? (Y / N) b) Please expand on your answer and give evidence where possible.

Note on reserve or backup units

318. Article 27a also allows Member States to exclude reserve or backup units from the EU ETS which do not operate more than 300 hours in each of the three years preceding a NIMs exercise. However, we have several concerns with this provision.

319. Firstly, there are practical implementation challenges concerning how this would be monitored and verified. Measures for the robust and reliable monitoring and verification (MRV) of annual emissions are a tried and tested feature of the EU ETS. Operating time is not part of the current EU MRV framework and we would have concerns over how to reliably incorporate this aspect into existing domestic MRV provisions without imposing significant new administrative burdens.

320. Secondly, we can see how in some circumstances the implementation of this measure could lead to a large volume of emissions being removed from the EU ETS. For example:

a. Individual large and energy intensive backup units can run for less than 300 hours and still generate a high volume of CO₂eq. b. An installation could operate several backup units, each operating for less than 300 hours per year, but collectively emitting a large volume of CO₂eq. c. The removal of one or more of these units could lower the overall installed capacity of an installation to below 20MW, thereby taking the entire installation (and its emissions) out of the EU ETS.

321. Thirdly, there is no clear definition on exactly what constitutes a 'reserve or backup unit' and attempting to agree one would likely prove controversial.

322. Lastly, we feel that setting a quantifiable de minimis emissions threshold for inclusion in the EU ETS is more in keeping with the overall objectives of the Directive (i.e. a system to monitor and drive reductions in GHG emissions) than setting an operational duration threshold.

323. For these reasons, we do not intend to implement this aspect of the Article 27a provisions for Phase IV.

Consultation Questions

69: a) Are there further simplifications that could be made for Phase IV Article 27a Scheme participants, respecting the provisions established by the EU ETS Directive? (Y / N) b) Please expand on your answer and give evidence where possible.

70 : a) Do you agree with the proposed approach to not implement the Article 27a provision on reserve or backup generators? (Y / N) b) Please expand on your answer and give evidence where possible.

71: a) Assuming you are in scope, would you choose to take advantage of the proposed Article 27a scheme for Phase IV? (Y / N / not in scope) b) Please expand on your answer and give evidence where possible.

72: a) Do you agree to the proposed use of penalties for implementing Article 27a? (Y / N) b) Please expand on your answer and give evidence where possible.

73: Do you have any general comments on the proposed UK Phase IV Article 27a Scheme, not captured by the previous questions?

*To note an installation with emissions < 25,000 tCO₂eq per year but a combined thermal input in excess of 35MW would be ineligible to enter the UK's Article 27 Scheme and would have to enter the main scheme.

** Including applying for a permit, agreeing an approved monitoring plan and opening an account in the UK registry.

Further information

- Consultation: <https://www.gov.uk/government/consultations/the-future-of-uk-carbon-pricing>
- ETS helpline: ETSPHaseIVHelp@environment-agency.gov.uk
- SEPA: <https://www.sepa.org.uk/regulations/climate-change/eu-emissions-trading-system/>
- techUK: [Our notes from the BEIS briefing call on 3rd May](#)
- techUK: [Our briefing note on NIMS](#)

Contacts



Emma Fryer
Associate Director, techUK
Tel: 01609 772 137
Mob: 07595 410 653
emma.fryer@techuk.org



Lucas Banach
Programme Assistant
Tel: 020 7331 2006
Lucas.banach@techuk.org

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