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Technical and operational amendments to the UK ETS

techUK's response

About techUK

techUK is the trade association that brings together people, companies and organisations to realise the positive outcomes of what digital technology can achieve. With around 1,000 members (the majority of which are SMEs) across the UK, techUK creates a network for innovation and collaboration across business, government and stakeholders to provide a better future for people, society, the economy and the planet. By providing expertise and insight, we support our members, partners and stakeholders as they prepare the UK for what comes next in a constantly changing world.

techUK's award-winning Data Centres Programme provides a collective voice for UK operators. We work with government to improve the business environment for our members. To date we've saved UK operators over £150M, alerted them to business risks, mitigated regulatory impacts and raised awareness, most recently negotiating key worker status for the sector. techUK is a supporter of the Climate Neutral Data Centre Pact.

Response

5. Do you agree with the proposal to permit applications for ultra-small emitter (USE) status for the 2026-30 allocation period with the requirements for submission of data as set out above? Please provide reasons where possible.

techUK welcomes the government's proposal to allow installations that started operation on or before 1 January 2024 to apply for USE status in the next UK ETS phase (2026-2030).

However, we would like to draw attention to some broader issues within the UK ETS framework that disproportionately affect the data centre industry. While we welcome any efforts to streamline the administrative burden on ultra-small emitters, we believe the current rules governing USE status application and exemptions highlight some of the impractical aspects of the scheme, especially for the fast-growing data centre sector.

Data centres fall under the UK ETS due to the capacity of their on-site generating plant, which is purely for emergency back up in the unlikely event of grid failure. The vast majority of generators deployed in this way within the sector have never been run in anger – they are test fired regularly, but hardly ever deployed. The energy source for data centres is electricity, not combustion of fuel.

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As a result, most data centres in the UK emit negligible CO_2 compared to the industries with continuous emissions that this regulation was originally targeting, for instance power stations. Consequently, including data centres in the scheme yields no meaningful policy outcome and imposes a disproportionately high burden, as compliance costs often exceed allowance costs by a significant margin. This disparity should signal to the government that the scope of this policy is misaligned and requires urgent reform.

As the proposals note, installations emitting less than 2,500 tCO_2e annually can opt out as ultra-small emitters under Article 27a. This exemption was targeted at data centres, which may have significant embedded generating capacity but low activity, so typically emit well below this threshold, with most not exceeding 100 tCO_2e. Indeed, the UK ETS Registry for NACE codes 6311 and 6010 shows that in 2023, the total emissions from all 27 registered data centre sites barely exceeded 3,000 tonnes.

However, the mechanism for obtaining an exemption under Article 27a is inherently flawed. Operators must comply with the UK ETS for at least three consecutive calendar years, during which they must accumulate verified emissions data, before they are eligible to apply for USE status. In addition, the current approach requires operators to wait for the application window to open. Finally, operators must wait for the start of next phase which will happen the year after the one in which the application window closes. Since there are phases and the application windows only happen every five years, under the existing approach an operator could wait **10 years** before they can be accepted as USE, all the while being subject to the full ETS scheme.

Considering the above, the government's proposal to allow installations with at least one full scheme year of operations to apply for a USE exemption in the next UK ETS phase is welcome. This being said, we believe further clarifications and a deeper commitment to reducing red tape associated with UK ETS regulations are needed.

According to the proposals, the current data collection and validation period ends a full year and a quarter before the application window opens (p.8 of the consultation states installations that begun regulated activity on or before 1 January 2021 should submit data for the calendar years 2021, 2022 and 2023 in preparation for a 90-day application window from 1 April 2025 to 30 June 2025). We are confused as to what has happened to 2024 in this calculation and why 2022 cannot be the first calendar year in which operators that come under this category can accrue and validate data.

Furthermore, while we strongly welcome Proposal 3 and efforts to address reporting burden and delay by reducing the time required to accrue verified emissions data to one year from three, the proposals do not go far enough given the nature of the sector. Even under the proposed amendments, in a worst-case scenario, a newly established data centre with compliant low emissions would still need to participate in the full UK ETS for over six years before qualifying for an exemption. This extended compliance period places an unnecessary administrative and financial strain on data centres, provides no policy outcome, and distracts operators from their primary function of providing resilient digital infrastructure.

It is also unclear whether the shortened verification period will be permanent or only apply to the 2026-2030 phase, or if there is potential for a broader reconsideration of the UK ETS regulations and their scope in the next few years.

We appreciate that ETS was designed for large, traditional energy-intensive industries with installations that have been in place for many years. In contrast, the data centre sector is undergoing buoyant growth with operators and developers bringing new sites into operation every year. Unlike the majority of ETS participants who have many years of verified data to fall back on, new entrants have none and are forced to comply with the full ETS requirements for an extended period. Additionally, when an operator takes over a legacy site undergoing refurbishment, they often lack years' worth of emissions data. As a result, they must sift through old records from previous owners to find the necessary information.

We urge the government to, more generally, reconsider the inclusion of data centres in the UK ETS. The current rules fail to reflect the actual emission profiles of these facilities and, even if amendments are made, they will continue to impose a disproportionate burden on the industry.

We recommend that the UK follow Germany's example by fully exempting data centres from the UK ETS. Germany has previously recognised the impractical nature of the EU ETS rules and has fully exempted data centres from its ETS scheme on the explicit basis that "their generators hardly ever run". Now, with the opportunity to diverge from EU ETS rules post-Brexit, the UK should consider a similar exemption for its data centre industry, especially given the critical role data centres play in the economy.

In view of the troubled history of ETS, we appreciate that policymakers will be concerned that a full exemption for data centres could create a compliance loophole for other entities that are not data centres but might wish to declare that they are. Firstly, there is no evidence that such a loophole has been exploited in Germany. Secondly, data centres are easy to identify through a number of existing avenues including, but not limited to, NACE codes, the Ratings Valuation Agency, Ofcom's registry, the Climate Change Agreement and, of course, how they advertise their services publicly. Moreover, the sector has recently been designated as Critical National Infrastructure, so an additional activity-oriented register is inevitable. Finally, the number of data centres obliged under ETS is limited – this is a small industry, and sites are transparent for verification.

In terms of detailed emissions data, all data centres can provide robust evidence of their emissions status that is easily verifiable, for example through fuel purchase records, generator maintenance records, generator run logs, capacity and load, or generator permit details (MCPD or IED/EPR).

By granting data centres a full exemption, the government would support the continued growth of this essential sector. Addressing the broader inefficiencies and impracticalities of the current UK ETS framework is also aligned with the new government's ambition to reduce red tape and would allow data centres to redirect resources to more impactful initiatives. This would be a win-win for all parties, fostering innovation and economic growth while maintaining the integrity of the UK's environmental goals.