

Article 10a4 of the revised EU ETS Directive 2009/29/EC

European Industry Associations call on the Commission and Member States to stay true to the Spirit of the revised EU ETS Directive.

Brussels, Thursday 8th April, 2010

Industrial operators have made considerable investments in developing CHP over the years, an environment-friendly technique that was, is and will continue to be supported by the EU institutions, the Member States, and regional authorities. The organisations subscribing to this letter do not want to be penalised for running CHP installations against less efficient techniques under the revised EU ETS.

With this joint letter our organisations wish to suggest solutions to the anomalies in the interpretation of the revised EU ETS directive of 26th March 2010 on the level of free allocation of EUAs to combined heat and power (CHP) plants within industrial and District Heating (DH) installations. It was indicated in the recent ECCP panel that there could be different treatments of CHP installations based on an apparent interpretation of the ETS directive. This would violate the spirit of the EU ETS Directive.

The preamble on the revised EU ETS Directive:

- Acknowledges the benefits of CHP explicitly in Article 10a1.
- States in Recital 19 that in order to avoid distortions of competition, installations qualifying as electricity generators may also receive free allowances for district heating and for heating and cooling produced from high-efficiency cogeneration. This intention is put in place in article 10a4.
- States in Recital 23 clearly that undue distortions of competition should be avoided on the markets for electricity and heating and cooling supplied to industrial installations and distortions of competition between industrial activities carried out in installations operated by a single operator and production in out sourced installations.

There are two crucial issues for CHP and DH raised by current interpretations of the directive:

- The interpretation that the linear reduction factor should be applied to individual, high efficiency CHP and district heating installations when determining free allocations.
- The interpretation that there should be different allocation rules for heat from high efficiency CHP installations compared with heat produced at installations depending on whether they are part of carbon leakage sectors or not and with either product benchmarks or fall back heat production benchmarks.

With such interpretations of the text in the Directive different levels of free allocations will occur for the same quantity of heat. This is even though the intention should be to provide consistent levels of free allocation for heat produced across all technologies and from all benchmark methodologies (e.g. production installations, CHP, non CHP, in-house, outsourced, within product benchmarks and within sectors outside Annex 1). The only exception to this principal should be that in all cases of installations in a sector at risk of Carbon Leakage they should receive 100% of the benchmark allocation for free.

On the linear factor:

The wording of Article 10a4 is ambivalent as a result of the considerable pressure at the end of the Trialogue process in 2008. The second sentence has been read by some as implying an application of the linear reduction factor to the amount of free allowances awarded to each individual installation, *which will not be the case for other existing installations*. The exact wording in the Directive, however, is that “*the total allocation to such installations (...) shall be adjusted (...)*”. The aim of this provision is simply to repeat the fact that the total level of allowances awarded to the sum of all installations is reduced over time by the linear reduction factor described in Article 9, not that certain individual installations will see their allocation reduced by a further reduction of -1.74% per year. To bring the treatment of these installations in line with the total CAP, the treatment of industry and heat producing installations inside industry must not depart from an application of the linear reduction factor to the total cap only.

On the treatment of high efficient CHP installations not part of a product benchmark or heat based benchmark for carbon leakage sectors

Article 10a4 is a remnant of a previous debate where the allocation to high efficient CHP operated by electricity companies and district heating installations would be awarded through auctioning as part of the electricity generating sector. Recital 19, which is linked to Article 10a4 states that in order to avoid distortions of competition installations qualifying as electricity generators may receive free allowances for district heating and for heating and cooling produced from high-efficiency cogeneration.











The Commission is required to estimate the size of the total industry cap. To facilitate this process they, have produced a non-paper to assist Member States define electricity generators in order to define the industry cap. However, these interpretations applied to individual installations, in combination with the definition of electricity generator in the non-paper has left an unclear situation for those sectors that are not mentioned in Annex 1 specifically, but are still at risk of Carbon Leakage (such as e.g. food, potatoes, sugar, man-made fibers).

Applying article 10a4 in its apparent interpretation would imply that high efficiency CHP installations in these non Annex 1 but Carbon Leakage sectors will get a declining allocation starting at 80% of the heat benchmark and declining to 30% in 2020 instead of 100% free allocation as applying to heat boilers but not high efficient CHP. This goes against the aim of the Directive which is to ensure that installations in a sector or supplying to a sector or sub-sector at risk of Carbon Leakage get 100% of their benchmarked allocation for free.

Collectively, we therefore suggest as a way forward to discuss the following options:

1. Use the word “total” from Art 10a4 and apply the interpretation that the linear factor applies to the total cap and total cap for free allocation (industry, district heating and electricity generators’ high efficient CHP) and not to individual installations.
2. Allocate the heat produced in all sectors at risk of carbon leakage in the same way, e.g. 100% of the benchmark, be it product benchmarks or heat based benchmarks, being in Annex 1 or not. Give preference to the status and articles of carbon leakage above the definition and interpretation of electricity generators, which makes a difference in installations in sectors mentioned in Annex 1 and non Annex 1 sectors.

Organizations supporting this Joint Letter to the Commission and Member States

 <p>Confederation of the food and drink industries of the EU</p>	 <p>Confederation of European paper industries</p>
 <p>European Trade Association for the Promotion of Cogeneration</p>	 <p>European Chemical Industry Council</p>
 <p>European Vegetable Protein Federation</p>	 <p>European Man-made Fibres Association</p>
 <p>Association des Amidonniers et Féculiers (European starch industry)</p>	 <p>European Bioethanol Fuel Associations</p>
 <p>Malting industry in the European Union</p>	 <p>EU Oil and Proteinmeal Industry</p>
 <p>European Federation of Intelligent Energy Efficiency Services</p>	