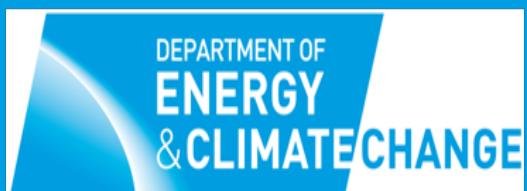


# Consultation on the UK unilateral opt-in of Nitrous Oxide emissions from nitric acid production into Phase II of the EU Emissions Trading System



This consultation has been issued by the Department of Energy and Climate Change, together with the Devolved Administrations for Northern Ireland, Scotland and Wales.

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# 1. Introduction

## 1.1 The European Union Emissions Trading System (EU ETS)

1. Directive 2003/87/EC of the European Parliament and of the Council ('the EU ETS Directive') established a system for greenhouse gas emission allowance trading within the European Community.
2. The establishment of the EU ETS in 2005 was a major milestone in the global effort to tackle climate change. It was one of the key policies introduced by the European Union to help meet the EU's greenhouse gas emissions reduction target of 8% below 1990 levels under the Kyoto Protocol. The EU ETS is divided into distinct phases. Phase I ran from 2005 to 2007 and was a pilot phase. Phase II, the current Phase, runs from 2008 to 2012 and corresponds with the first Kyoto compliance period. Phase III will run from 2013 to 2020.
3. The EU ETS works on a 'cap and trade' basis. So there is a limit on all the emissions covered by the EU ETS. The rationale behind emissions trading is that it enables emission reductions to take place where the cost of the reduction is lowest. More abatement will be undertaken by operators with lower abatement costs, therefore reducing the overall costs of meeting the emissions target (or cap) set by the trading system.
4. The EU ETS currently (i.e. in Phase II) covers carbon dioxide emissions from heavy emitting industries, such as electricity generation, iron and steel, mineral processing industries (e.g. cement manufacture), and pulp and paper processing industries.
5. All operators under the existing EU ETS must monitor and report their emissions. At the end of each year they are required to surrender allowances to account for their actual emissions. One tonne of carbon dioxide equivalent is equal to one EU allowance. In Phase II all operators receive a free allocation of allowances. They may surrender all or part of their free allocation to cover their emissions and have the flexibility to buy additional allowances or to sell any surplus allowances generated from reducing their emissions below their allocation.
6. This consultation seeks views on the Government's proposal to include nitrous oxide ( $N_2O$ ) emissions from nitric acid production into Phase II of the EU ETS. This option has been accorded to Member States by the EU ETS Directive, and is conditional on approval by the European Commission. Guidance for interested parties on how to respond to this consultation is set out in **Section 2**.

## 2. Guidance for Responding and Other Information

7. Please, where possible, substantiate your comments. Your responses will be used to inform our decisions on the proposed UK unilateral inclusion of N<sub>2</sub>O emissions from nitric acid production into Phase II of the EU Emission Trading System.
8. The consultation will run for **4 weeks** from **[11<sup>th</sup> October 2010]** until **[8<sup>th</sup> November 2010]**. Please ensure that responses to this document reach us by the closing date. We cannot guarantee to consider your response if it arrives after that date.
9. Responses should be sent to:

N<sub>2</sub>O opt-in Consultation,  
EU Emission Trading System Team  
Department of Energy and Climate Change  
Area 1A, 3 Whitehall Place  
London SW1A 2AW  
Email: [eu.ets@decc.gsi.gov.uk](mailto:eu.ets@decc.gsi.gov.uk)  
Telephone: 0300 060 4000

10. Consultees located in Scotland, Wales or Northern Ireland are requested to copy their responses to the relevant Devolved Administration:

Scotland: Climate Change Division, Scottish Government, 1G Dockside, Victoria Quay, Edinburgh EH6 6QQ, or email: [EUETS@scotland.gsi.gov.uk](mailto:EUETS@scotland.gsi.gov.uk)

Wales: Gareth John, Climate Change and Water Division, Welsh Assembly Government, Cathay Park, Cardiff CF10 3NQ, or email: [climate-change@wales.gsi.gov.uk](mailto:climate-change@wales.gsi.gov.uk).

Northern Ireland: Chris McWilliams, Environmental Policy Division, Department of the Environment, Calvert House, 23 Castle Place, Belfast BT1 1FY, or email: [chris.mcwilliams@doeni.gov.uk](mailto:chris.mcwilliams@doeni.gov.uk).

11. This consultation document is available on the DECC website, at: [www.decc.gov.uk/en/content/cms/consultations/consultations.aspx](http://www.decc.gov.uk/en/content/cms/consultations/consultations.aspx)
12. If you would like alternative formats of this consultation document please contact us at the address or telephone number above.
13. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

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14. If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
  15. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
  16. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.
  17. We will summarise all responses and place this summary on our website at [www.decc.gov.uk/en/content/cms/consultations/](http://www.decc.gov.uk/en/content/cms/consultations/). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.
  18. If you have any comments or complaints about the consultation process, please email: consultation.coordinator@decc.gsi.gov.uk.

# **3. Phase II EU ETS UK unilateral opt-in of Nitrous Oxide emissions from Nitric Acid production**

## **3.1 Introduction**

19. Article 24 (see Annex A) of the EU ETS Directive enables Member States, subject to approval by the European Commission, to include unilaterally in the EU ETS additional gases and activities from 2008 which are not already covered. To date, two Member States have unilaterally opted in nitrous oxide ( $N_2O$ ) emissions from nitric acid production into Phase II of the EU ETS – Austria and the Netherlands<sup>1</sup>. From the beginning of Phase III both carbon dioxide ( $CO_2$ ), and  $N_2O$  emissions from nitric acid production will be covered by the EU ETS across all Member States.
20. The Coalition Government in the June budget announced its intention to make an application to the European Commission to include unilaterally  $N_2O$  emissions from nitric acid production into Phase II of the EU ETS<sup>2</sup>.  $CO_2$  emissions from nitric acid production are not covered by the proposed opt-in. In the UK there is currently only one nitric acid producing company, GrowHow UK Ltd, with two sites, that will be covered by this proposal. The Government has been engaged with GrowHow UK Ltd in developing this opt-in policy.
21. The rationale for including additional activities and gases into to the EU ETS is that the system is designed to put a price on carbon emissions and incentivise abatement at the lowest cost.  $N_2O$  is a highly potent greenhouse gas with a global warming potential of 310 times that of  $CO_2$ . Coupled with the significant  $N_2O$  emissions reduction potential in the nitric acid sector, means that companies can bring their emissions down dramatically once they see a carbon price incentive. A Phase II UK opt-in will encourage early abatement and will contribute to building a low carbon manufacturing sector in the UK by incentivising green investment. It is anticipated that the  $N_2O$  opt-in will save around 1.6Mt $CO_2e$ , compared to average annual emissions, over 2011 and 2012. This will assist the UK in reducing emissions under the Kyoto Protocol 1<sup>st</sup> commitment period (concurrent with Phase II of the EU ETS), and meeting our national carbon budgets.
22. The Government has made an Article 24 application to the European Commission to opt-in  $N_2O$  emissions from nitric acid production from 1<sup>st</sup> April 2011. Along with the application, the Government has also submitted an additional appendix to the UK Phase II National Allocation Plan (NAP) for European Commission approval. (see Annex B).
23. The UK  $N_2O$  opt-in application and proposed Phase II NAP appendix will be considered by the European Commission by the comitology procedure in the Climate Change Committee.

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<sup>1</sup> The European Free Trade Association Surveillance Authority has also approved Norway's unilateral inclusion of  $N_2O$  emissions from nitric acid production into Phase II of the EU ETS.

<sup>2</sup> See: [www.hm-treasury.gov.uk/junebudget\\_documents.html](http://www.hm-treasury.gov.uk/junebudget_documents.html)

Responses from this public consultation exercise will feed into this application process. The UK Article 24 application will need to be approved by the Commission before the opt-in can be implemented into UK law. If the UK opt-in application is successful, amendments will be required to be made to the Greenhouse Gas Emissions Trading Scheme Regulations 2005 (the ‘2005 Regulations’) which established the regulatory framework for the EU ETS in the UK. The proposed amendments to the 2005 Regulations are part of this consultation package (Annex C).

## 3.2 Objective

24. The objective of this consultation is to seek views on the unilateral UK Phase II opt-in of N<sub>2</sub>O emissions from nitric acid production only. Issues relating to inclusion of other additional activities and gases into the EU ETS fall outside this consultation, along with Phase III EU ETS issues relating to the nitric acid producing sector.
25. Responses from this consultation exercise will feed into the Government’s opt-in application which is currently in the early stages of consideration by the European Commission.
26. Policy responsibility for emissions trading lies with the Department of Energy and Climate Change (DECC), together with the Scottish Government, Welsh Assembly Government, and the Northern Irish Executive. References to the Government in this consultation document also cover the Devolved Administrations.

## 3.3 Key Stages

27. This consultation will start [11<sup>th</sup> October 2010] and will run for 4 weeks. It will close on [8<sup>th</sup> November 2010]. The shortened consultation period is due to the timescales in achieving an opt-in by the planned start date of 1<sup>st</sup> April 2011. In addition, as the proposed N<sub>2</sub>O opt-in only directly impacts on one company in the UK this was considered sufficient time to consult in this case.

## 3.4 Proposed N<sub>2</sub>O opt-in and Consultation Questions

28. The additional Appendix F to the Phase II UK NAP to unilaterally include N<sub>2</sub>O emissions for nitric acid production (Annex B to this consultation) sets out the full details of the Government’s opt-in proposal. This includes the total quantity of allowances distributed to installations as a result of the N<sub>2</sub>O opt-in; the sources of these allowances; rules for any new entrants in the nitric acid producing sector; and general conditions on nitric acid producing installations.

**Question 1: Do you have any comments on the Government’s N<sub>2</sub>O opt-in proposal set out in the additional Appendix F to the UK Phase II NAP (Annex B)?**

29. The proposed Regulations to opt-in N<sub>2</sub>O emissions from nitric acid production into Phase II of the EU ETS amend the Greenhouse Gas Emissions Trading Scheme Regulations 2005, which provide a framework in the UK for a greenhouse emissions trading system and implement the EU ETS Directive in respect of stationary installations. The Regulations would be laid before Parliament in draft, but would not be made until the Commission has given its approval to the opt-in under Article 24 of the Directive. The proposed Regulations

make the following changes to the 2005 Regulations and the implementation of the EU ETS Directive in the UK:

**Citation and commencement.** The Regulations will come into force on 1<sup>st</sup> April 2011. The required scrutiny under the comitology procedure applied by Article 24 of the Directive will by then have been completed, so that we will know whether the Commission has been able to adopt its approval decision.

**Specification of approved national allocation plan (and Regulation 2)** This amendment ensures that the definition of “approved national allocation plan” includes the additional Appendix F to the Phase II NAP to unilaterally include N<sub>2</sub>O emissions from nitric acid production, once it is approved by the European Commission, and allow the issuance of allowances based on this approved NAP Appendix F.

**Regulation 16A and Regulation 40A.** These new regulations provide a mechanism to adjust allocations for an installation which has partially or completely ceased nitric acid production, and establish a civil penalty for an operator of an installation that, after notification from the regulator, fails to surrender an over-allocation of allowances where there has been a partial or complete cessation of nitric acid production activities.

**Regulation 21.** The amendment ensures that, when deciding on the allocation and issue of allowances, the Secretary of State will have regard to the national allocation plan as amended to include the additional Appendix F.

**Regulation 22.** The amendments provide a mechanism for installations which commence the operation of nitric acid production after 30<sup>th</sup> June 2010 to apply to the New Entrant Reserve for an allocation of allowances.

**Regulation 27A.** The amendment prevents operators from using international project credits (i.e. those from Joint Implementation or the Clean Development Mechanism) for N<sub>2</sub>O emissions compliance.

**Schedule 1, Part 1.** The amendment includes N<sub>2</sub>O emissions from nitric acid production in the list of activities and specified emissions covered by the EU ETS.

**Question 2: Do you have any comments on the proposed amendments to the 2005 Regulations (Annex C)?**

30. The proposed amendments to the 2005 Regulations will extend the scope of the existing civil penalties and criminal offences. This means that operators of installations producing nitric acid will be subject to the same civil penalties and criminal offences that currently exist in the 2005 Regulations for emissions of carbon dioxide (e.g. failure to surrender allowances to account for annual verified emissions).
31. In addition, it is proposed to introduce a new civil penalty in respect of the failure to surrender an over-allocation of allowances where there has been a partial or complete cessation of nitric acid producing activities.

**Question 3: Do you have any comments on the above proposals in relation to civil penalties and criminal offences?**

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32. The Impact Assessment associated with this consultation sets out the cost, benefit analysis for the proposed N<sub>2</sub>O opt-in. This analysis has been informed by the available evidence.

**Question 4: Do you have any comments on the cost/benefit analysis in the accompanying Impact Assessment? Please provide evidence to support your comments.**

# **4. ANNEX A – Article 24 of the EU ETS Directive (2003/87/EC)**

## *Article 24*

### **Procedures for unilateral inclusion of additional activities and gases**

1. From 2008, Member States may apply emission allowance trading in accordance with this Directive to activities, installations and greenhouse gases which are not listed in Annex I, provided that inclusion of such activities, installations and greenhouse gases is approved by the Commission in accordance with the procedure referred to in Article 23(2), taking into account all relevant criteria, in particular effects on the internal market, potential distortions of competition, the environmental integrity of the scheme and reliability of the planned monitoring and reporting system.

From 2005 Member States may under the same conditions apply emissions allowance trading to installations carrying out activities listed in Annex I below the capacity limits referred to in that Annex.

2. Allocations made to installations carrying out such activities shall be specified in the national allocation plan referred to in Article 9.

3. The Commission may, on its own initiative, or shall, on request by a Member State, adopt monitoring and reporting guidelines for emissions from activities, installations and greenhouse gases which are not listed in Annex I in accordance with the procedure referred to in Article 23(2), if monitoring and reporting of these emissions can be carried out with sufficient accuracy.

4. In the event that such measures are introduced, reviews carried out pursuant to Article 30 shall also consider whether Annex I should be amended to include emissions from these activities in a harmonised way throughout the Community.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:275:0032:0046:EN:PD>

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**ANNEX B – Proposed Appendix F to UK Phase II National Allocation Plan to include unilaterally N<sub>2</sub>O emissions from nitric acid production**

(separate document)

**ANNEX C – Amendment to the Greenhouse Gas Emission Trading 2005 Regulations (SI 2005/925) as a consequence of opting in N<sub>2</sub>O emissions from nitric acid production into Phase II of the EU ETS.**

(separate document)

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