

Government Response to the 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 Government response 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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Information about this publication is available from:

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**This document is available on the DECC website at:
<http://www.decc.gov.uk/en/content/cms/consultations/consultations.aspx>**

Published by the Department of Energy and Climate Change on behalf of the UK Government and the devolved administrations for Northern Ireland, Scotland and Wales.

Government Response

1. Background

The consultation which opened on 11th October 2010 and closed on 8th November 2010 considered the UK's intention to include unilaterally nitrous oxide (N₂O) emissions from nitric acid production into Phase II of the EU Emissions Trading System (EU ETS).

The responses to the consultation have been very helpful in informing the UK Government and devolved administrations' views on the issues involved, and Government thanks all those who have taken the time to respond.

This document sets out Government's response to the issues raised in the consultation. There is also a summary of the responses received to the consultation questions.

2. Government Response to the Consultation

There was a limited response to the consultation, as expected due to its specific subject matter. The responses received broadly supported the N₂O opt-in.

One respondent raised concerns about the proposed obligation on nitric acid producing installations to have their level of free allocation reduced should they reduce their annual production level by over 50% below the allocation baseline ("the partial closure rule").

In parallel to the consultation process the European Commission informed us that they did not consider such a partial closure rule as permissible under the rules for Phase II of the ETS under the current ETS Directive. In Phase II of the EU ETS, installations that partially reduce production can maintain a full allocation.

Our intention for including the partial closure rule in our N₂O opt-in application was to bring in this sector to the ETS in line with what is now established best practice - the phase III Community Implementation Measures agreed in December 2010 include such a rule. However, we judged both that the partial closure rule was not central to our opt-in application and that it would be highly unlikely to be used ahead of phase III, and so, in order not to jeopardise our opt-in application, which would have severe financial consequences to the UK's one nitric acid producing company - GrowHow UK Ltd - the partial closure rule was removed from our opt-in application.

This means that the N₂O opt-in closure rules will be the same as those currently in place across the rest of the EU ETS. This change does not affect any of the costs and benefits detailed in the consultation stage Impact Assessment (IA) therefore the final IA will remain unchanged, with the opt-in anticipated to deliver a net benefit to business of £3.5m (discounted) over 10 years, or no net cost.

On the 15th December 2010, at the EU Climate Change Committee (CCC), the Commission's draft decision to approve the UK opt-in application was unanimously confirmed. On 9th January that draft decision began a three month scrutiny process by the EU Parliament and Council.

This keeps the N₂O opt-in on course to deliver significant environmental and economic benefits. We will be opting-in N₂O from 2011 into the EU ETS, two years ahead of the mandatory EU wide start date of 2013. This will incentivise early investment of abatement technology by GrowHow and help contribute to the building of a low carbon manufacturing economy in the UK. It is estimated that the opt-in could save the equivalent of 80 full time jobs within the sector. The opt-in will also result in emission reductions of up

to 1.6MtCO₂e. This will assist the UK in meeting its Kyoto Protocol commitments and our national carbon budgets.

3. Summary of Responses

There were 3 responses to the consultation from the following organisations:

- Scottish and Southern Energy Plc
- Chemical Industries Association
- Scottish Power

One respondent provided a general response in support of the policy to opt in N₂O into Phase II of the EU ETS. The specific questions in the consultation and a summary of the responses to them were:

Question 1: Do you have any comments on the Government's N₂O opt-in proposal set out in the additional Appendix F to the UK Phase II NAP?

The responses to this question supported the proposed benchmarks for nitric acid producers as these were in line with those approved for other Member States N₂O opt-ins. It was also noted that the opt-in would support other businesses integrated within GrowHow's operations. The responses supported bringing the opt-in ahead of the mandatory inclusion of N₂O into the EU ETS in 2013, as this would encourage early abatement measures.

It was noted also in the responses that the proposed partial closure rule was more stringent than the closure rules currently agreed across the EU ETS in Phase II.

Question 2: Do you have any comments on the proposed amendments to the 2005 Regulations?

The responses received to this question agreed with the proposed amendments as they would ensure that N₂O emitters would be subject to the same obligations as other EU ETS operators.

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

The responses to this question noted that the proposed partial closure rule would have introduced a new civil penalty for failure to return an over-allocation of allowances when nitric acid production levels had reduced. As the partial closure has now been removed, this civil penalty is no longer applicable.

Question 4: Do you have any comments on the cost/benefit analysis in the accompanying Impact Assessment?

The responses for this question noted that the cost of the abatement project being undertaken by GrowHow meant that there was no prospect of the company gaining any windfall as a result of the free Phase II allocation.

4. Next Steps

As mentioned in section 2, the EU Climate Change Committee (CCC) has confirmed the Commission's draft decision to approve the UK's application to opt-in N₂O into Phase II of the EU ETS. This draft decision is now subject to a three month scrutiny period with the European Parliament and EU Council.

In parallel to the EU processes, we will take the amending regulations through the necessary domestic parliamentary procedures. The Commission's draft approval decision takes effect from 1st April 2011 and from this date it will be possible for N₂O emissions in the UK to be included within the ETS. However the domestic legislation will come into force several weeks after this date, so we have made provision within the domestic legislation for the period from 1st April to the commencement date by allowing an operator to take advantage of a period of voluntary monitoring of its N₂O emissions. Thus if a producer of nitric acid has already begun monitoring emissions before the commencement date, it will be able to notify the regulator that it wishes a period of pre-commencement monitoring to be taken into account in the allocation of N₂O emissions allowances. The operator's allocation will, however, be reduced pro rata for each day of non-monitoring between 1st April 2011 and the commencement date. Alternatively, the operator can choose not to monitor its N₂O emissions all until the commencement date. In that case, the allocation of allowances will be reduced to take into account the entire period from 1st April 2011 to commencement.

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URN 11D/688