

Position Paper

BDEW comments on the Draft Free Allocation Rules (FAR) and the Monitoring and Re- porting Regulation (MRR)

Berlin, 23. November 2018

Introduction

On 26th October 2018, the European Commission published the draft 'Delegated regulation on determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council' (**Free Allocation Rules - FAR**) as well as the draft 'Implementing regulation on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012' (**Monitoring and Reporting Regulation - MRR**).

The two regulations provide a set of implementing rules and guidance for the fourth trading period of the European Emission Trading System (EU-ETS). The proposals are open for feedback from stakeholders until 23rd November 2018.

The **German Energy and Water Association – BDEW e.V.** represents a large number of member companies in the scope of the EU-ETS. BDEW's members operate large and medium-sized combustion plants for electricity and district heat generation as well as compressor stations for gas supply in Germany.

In the following, please find BDEW-comments on the draft Free Allocation Rules (FAR) and the Monitoring and Reporting Regulation (MRR).

Summary of Key Issues

BDEW proposes the following amendments to the FAR:

- The reporting deadlines for the first monitoring methodology plan should be postponed.
- The division in district heat sub-installations and other measurable heat sub-installations not subject to carbon-leakage should not be required for the first allocation period.
- The announcement for decreases or increases of the activity level should be made in conjunction with the annual emission reporting.
- The updating of the heat benchmark values should not be based on the baseline data collection from plant operators, as this would lead to methodological inconsistencies and set disincentives for the application of high efficient co-generation technologies and district heat.
- To avoid inconsistencies and unfair treatment of heat producers the updating of the heat benchmark should be based on the reference efficiency development for heat production in a modern gas-fired stand-alone boiler.

In the MRR appropriate provisions for monitoring and reporting of renewable gases of non-biological origin (power-to-gas) shall be established in line with the provisions for biogas injected into and subsequently removed from a gas network.

1. BDEW comments on the Draft Free Allocation Rules (FAR)

Proposal n° 1 for amending Article 8: Content and submission of the monitoring methodology plan

Commission proposal for Article 8 (4)	Proposal for amendment of BDEW
<p><i>4. The operator shall submit the monitoring methodology plan to the competent authority for approval by the date set in Article 4(1). Member States may set an earlier time-limit for the submission of the monitoring methodology plan and may require the monitoring methodology plan to be approved by the competent authority before submission of an application for free allocation.</i></p>	<p><i>4. The operator shall submit the monitoring methodology plan to the competent authority for approval by 31 December 2019 and every five years thereafter. Member States may set an earlier time-limit for the submission of the monitoring methodology plan and may require the monitoring methodology plan to be approved by the competent authority before submission of an application for free allocation.</i></p>
<p style="text-align: center;"><u>Justification</u></p> <p>The Commission proposals requires the submission of the first monitoring methodology plan by 31 May 2019 together with the baseline report and the application for free allocation. However, the monitoring methodology plan is not necessary for drafting the National Implementation Measures that have to be submitted by 30 September 2019 to the EU Commission. In contrast, the monitoring methodology plan needs to be approved by the competent authority by 31 December 2020. Therefore, the deadline for submitting the monitoring methodology plan by the plant operator should be postponed to the end of 2019 to reduce the administrative burden for both plant operators and competent authorities.</p>	

Proposal n° 2 for amending Article 10: Division into sub-installations

Commission proposal for Article 10 (3)	Proposal for amendment of BDEW
<p>3. For heat benchmark sub-installations, fuel benchmark sub-installations and process emissions sub-installations, the operator shall clearly distinguish on the basis of NACE and PRODCOM codes whether or not the relevant process serves a sector or subsector deemed to be exposed to a significant risk of carbon leakage as determined by Decision (EU) 2018/xxx [CLL]. In addition the operator shall distinguish the amount of measurable heat which is exported for the purposes of district heating from the measurable heat which does not serve a sector or subsector deemed to be exposed to a significant risk of carbon leakage as determined by Decision (EU) 2018/xxx[CLL].</p>	<p>3. For heat benchmark sub-installations, fuel benchmark sub-installations and process emissions sub-installations, the operator shall clearly distinguish on the basis of NACE and PRODCOM codes whether or not the relevant process serves a sector or subsector deemed to be exposed to a significant risk of carbon leakage as determined by Decision (EU) 2018/xxx [CLL]. In addition, from 1 January 2026 onwards, the operator shall distinguish the amount of measurable heat which is exported for the purposes of district heating from the measurable heat which does not serve a sector or subsector deemed to be exposed to a significant risk of carbon leakage as determined by Decision (EU) 2018/xxx[CLL].</p>
<p style="text-align: center;"><u>Justification</u></p> <p>The new distinction between district heat and other measurable heat is associated with a significant administrative burden for plant operators. In many cases, exact and verified information will not be available to the heat generator and will require additional data requests from the heat consumers including gathering information that is not readily available.</p> <p>The rules and procedures for determining the free allocation for district heat and other measurable heat not delivered to sectors exposed to carbon leakage are identical in the first allocation period. Therefore, the reporting of a separate district heat benchmark sub-installation should only be required from the second allocation period onwards. By this way, the plant operators would have more time to collect and verify the necessary data.</p>	

Proposal n° 3 for amending Article 23: Changes to the allocation of an installation

Commission proposal for Article 23 (1)	Proposal for amendment of BDEW
<p>1. Operators shall inform the relevant competent authority of any change related to the operation of an installation which has an impact on the installation's allocation. Member States may set a time-limit for that notification and may require the use of electronic templates or specific file formats.</p> <p>--</p>	<p>1. Operators shall inform the relevant competent authority of any change related to the operation of an installation which has an impact on the installation's allocation. Member States may set a time-limit for that notification and may require the use of electronic templates or specific file formats.</p> <p>1a (NEW) Plant operators, whose operations have increased or decreased, as assessed on the basis of a rolling average of two years, by more than 15 % compared to the level initially used to determine the free allocation, should inform the relevant competent authority by 31 March of the year following the increase or decrease of the corresponding activity rates.</p>
<p style="text-align: center;"><u>Justification</u></p> <p>Directive (EU) 2018/410 amending Directive 2003/87/EC establishes in Article 10a (20) new rules for adjusting free allocation in cases of a significant decrease or increase of the historical activity rate. In article 23 of the FAR, a Union-wide corresponding deadline should be established for submitting the corresponding information to the competent authority. In general, verified information on the activity level of a given year is available by the end of March of the following year. The announcement should be made in conjunction with the annual emission reporting.</p>	

Proposal n° 4 for amending Annex IV: Parameters for baseline data collection

Commission proposal for Annex IV N° 3	Proposal for amendment of BDEW
<p>3.2. Annual data for heat benchmark sub-installations and district heating sub-installations</p>	<p>3.2. Annual data for heat benchmark sub-installations and district heating sub-installations</p>

<p><i>This item contains at least the following information for each year of the baseline period:</i></p> <p><i>(a) Quantity of net measurable heat produced within each heat benchmark sub-installation or district heating sub-installation;</i></p> <p><i>(b) Emissions attributed to production of measurable heat;</i></p> <p><i>(c) Activity level of the sub-installation;</i></p> <p><i>(d) Quantity of measurable heat produced, imported from and exported to other sub-installations, installations or other entities;</i></p> <p><i>(e) Quantity of electricity produced.</i></p>	<p><i>This item contains at least the following information for each year of the baseline period:</i></p> <p><i>(a) Quantity of net measurable heat produced within each heat benchmark sub-installation or district heating sub-installation;</i></p> <p>(b) Emissions attributed to production of measurable heat;</p> <p><i>(c) Activity level of the sub-installation;</i></p> <p><i>(d) Quantity of measurable heat produced, imported from and exported to other sub-installations, installations or other entities;</i></p> <p>(e) Quantity of electricity produced.</p>
<p>Justification</p> <p>The updating of the heat benchmark values should not be based on the baseline data collection, as this would lead to methodological inconsistencies and set disincentives for the application of high efficient co-generation technologies and district heat. It is unclear how emissions are to be attributed to measurable heat deliveries from industrial processes. The data collection for heat should only focus on deliveries of measurable heat to Non-ETS installations, but not to product benchmark installations. Only heat production using commercially available fuels should be taken into account for the benchmark update.</p> <p>Note that according to Article 10a (4) of the ETS-Directive the linear reduction factor is applied for CHP heat and district heat supplied from electricity generators over the entire baseline period. This unique reduction is comparable to the effects of a benchmark update.</p> <p>Further note that a direct comparison of the gathered emission factors with the current heat benchmark would not appropriately reflect the progression of the current heat benchmark that was not derived from company data, but was based on the reference efficiency of a stand-alone gas-fired boiler. Consequently, to avoid inconsistencies and unfair treatment of heat producers the updating of the heat benchmark should be based on the reference efficiency development for heat production in a modern gas-fired stand-alone boiler established in the Commission Delegated Regulation (EU) 2015/2402¹. Therefore, the baseline data collection for (b) emissions attributable to production of measurable heat and (e) quantity of electricity produced is not required and should be abolished.</p>	

¹ Commission Delegated Regulation (EU) 2015/2402 of 12 October 2015 reviewing harmonised efficiency reference values for separate production of electricity and heat in application of Directive 2012/27/EU of the European Parliament and of the Council and repealing Commission Implementing Decision 2011/877/EU (OJ L 333, 19.12.2015, p. 54).

Proposal n° 5 for amending Annex VII: Data monitoring methods

Commission proposal for Annex VII N° 7	Proposal for amendment of BDEW
<p><i>7.3. Distinguishing district heating, EU ETS and non-ETS heat</i></p> <p><i>Where an installation imports measurable heat, the operator shall determine separately the quantity of heat coming from installations covered by the EU ETS, and heat imported from non-EU ETS entities. Where an installation consumes measurable heat exported from a nitric acid product benchmark sub-installation, the operator shall determine that amount of heat consumed separately from other measurable heat.</i></p> <p><i>Where an installation exports measurable heat, the operator shall determine separately the quantity of heat exported to installations covered by the EU ETS, and heat exported to non-EU ETS entities. Furthermore, the operator shall determine separately quantities of heat qualifying as district heating.</i></p>	<p><i>7.3. Distinguishing district heating, EU ETS and non-ETS heat</i></p> <p><i>Where an installation imports measurable heat, the operator shall determine separately the quantity of heat coming from installations covered by the EU ETS, and heat imported from non-EU ETS entities. Where an installation consumes measurable heat exported from a nitric acid product benchmark sub-installation, the operator shall determine that amount of heat consumed separately from other measurable heat.</i></p> <p><i>Where an installation exports measurable heat, the operator shall determine separately the quantity of heat exported to installations covered by the EU ETS, and heat exported to non-EU ETS entities. Furthermore, from 1 January 2026 onwards, the operator shall determine separately quantities of heat qualifying as district heating.</i></p>
<p style="text-align: center;"><u>Justification</u></p> <p>See proposal for amending Article 10. The rules and procedures for determining the free allocation for district heat and other measurable heat not delivered to sectors exposed to carbon leakage are identical in the first allocation period. Therefore, the reporting of a separate district heat benchmark sub-installation should only be required from the second allocation period onwards.</p>	

Proposal n° 6 for amending Annex VII: Rules for assigning fuels and emissions of CHP

Commission proposal for Annex VII N° 8	Proposal for amendment of BDEW
<p>8. RULES FOR ASSIGNING FUELS AND EMISSIONS OF COMBINED HEAT AND POWER PRODUCTION (CHP) FOR THE PURPOSE OF UPDATING BENCHMARK VALUES</p> <p><i>This section applies to situations where an operator, for the purpose of updating benchmark values, has to attribute inputs, outputs and emissions of cogeneration units to sub-installations.</i></p> <p>...</p>	<p>Section N° 8 should be deleted</p>
<p style="text-align: center;"><u>Justification</u></p> <p>See proposal for amending Annex IV N° 3.2. Updating of the heat benchmark should not be based on the baseline data collection, but refer to the reference efficiency of a stand-alone gas-fired boiler. Consequently, the updating of the heat benchmark should be based on the reference efficiency development for heat production in a modern gas-fired stand-alone boiler. Under this setting, the rules for assigning fuels and emissions of CHP are not required anymore.</p>	

2. BDEW comments on the draft Monitoring and Reporting Regulation (MRR)

BDEW proposes two amendments to the MRR aiming at setting the necessary framework for using renewable gases of non-biological origin (PtG) in ETS plants.

Proposal n° 7 for amending Article 39: Determination of biomass and fossil fraction

Commission proposal for Article 39 (3)	Proposal for amendment of BDEW
3. <i>By way of derogation from paragraphs 1 and 2 and Article 30, where the guarantee of origin has been established in accordance with Articles 2 (j) and 15 of Directive 2009/28/EC for biogas injected into and subsequently removed from a gas network, the operator shall not use analyses to determine the biomass fraction.</i>	3. <i>By way of derogation from paragraphs 1 and 2 and Article 30, where the guarantee of origin has been established in accordance with Articles 2 (15) and 19 of Directive 2009/28/EC for biogas or renewable gas of non-biological origin injected into and subsequently removed from a gas network, the operator shall not use analyses to determine the biomass fraction.</i>
<p style="text-align: center;"><u>Justification</u></p> <p>The derogation for biogas injected into and subsequently removed from a gas network should be extended to include other renewable gases of non-biological origin. Such gases are produced from renewable hydrogen in combination with CO₂ stemming from a broad range of CO₂ sources such as direct air capture, biogas fermentation, biogas upgrading, or biomass combustion („Power-to-gas“ – PtG). The current measurement procedures for determining the biomass and fossil fractions are not applicable in a meaningful way for such renewable gases.</p> <p>In addition, the references to the Renewable Energy Directive (RED) should be adjusted to reflect the recently agreed RED II.</p>	

Proposal n° 8 for amending Article 48: Inherent CO₂

Commission proposal for Article 48	Proposal for amendment of BDEW
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<p style="text-align: center;"><u>Justification</u></p> <p>In Article 48, a new paragraph should be introduced aiming at clarifying that inherent CO₂ originating from renewable gases of non-biological origin taken from the gas network are not counted as emissions when the guarantee of origin has been established in accordance with Directive 2009/28/EC for that renewable gas.</p> <p>In addition, the necessary references to Article 2 (j) and Article 15 of the Renewable Energy Directive (RED) should be updated to reflect the recently agreed RED II.</p>	

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