

UPEI position paper

Draft amendments proposals to European Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 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.

Brussels, 12 June 2023

UPEI, the European Independent fuel suppliers association, welcomes the recent adoption of the revised EU Emission Trading Scheme (ETS2) and would like to answer to the European Commission's invitation to comment on the draft amendments proposals to Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions.

Our comments are as follows:

A. Article 75i.

Determination of the scope factor.

1. Where the released fuel amounts of a fuel stream are used only for combustion in sectors covered by Annex III of Directive 2003/87/EC, the scope factor shall be set at 1.

Where the released fuel amounts of a fuel stream are used only for combustion in sectors subject to Chapters II and III of Directive 2003/87/EC, with the exception of installations excluded under Article 27a of that Directive, the scope factor shall be set at zero, provided that the regulated entity demonstrates that double counting referred to in Article 30f(5) of Directive 2003/87/EC was avoided.

The regulated entity shall determine a scope factor for each fuel stream either by applying the methods listed in paragraph 2, or a default value in accordance with paragraph 3, depending on the applicable tier.

2. The regulated entity shall determine the scope factor using one or more of the following methods, in accordance with the requirements of the applicable tier as set out in Annex IIa:

...

1. Missing availability of information at the excise duty collection point.

UPEI's Members greatly fear an implementation of a scope factor for each fuel stream to determine the share of a fuel stream that is used for combustion in sectors covered by Annex III of Directive 2003/87/EC and thus are not covered by the scope of ETS2. They will be the regulated entity, which has to determine the scope factor, since they release the fuels for consumption at the excise duty point. As presented by UPEI in the CCEG ETS2 meeting on 5th June 2023 (see attachment), the requested information about the **end use of the fuels is mostly not available at the excise duty collection point**. The business activities in the downstream sector are characterised by long trading chains, which generally results in a high number of intermediary distributors along the supply chain. Therefore, the distributor at the excise duty collection point do usually not receive any information about the final customer of the fuel from his direct buyer (another distributor). That is caused by the fact that the buyer is not interested in giving him any details about his customer for competitive reasons and/or he does not know the final end user of the fuel either, because his customer is another distributor. Furthermore, the identified end users under the non-ETS2 sectors are e.g. farmers and military, which are customers of public filling stations as well.

2. How can the non-ETS2 sectors be identified in which fuels are used?

UPEI understands and respects that the tiers method is a well-accepted procedure under the existing ETS1. However, UPEI strongly believes that the application of a scope factor in combination with the tiers method is not suited for the identification of fuel end users in the road transport and building sector. On the contrary, it would only unnecessarily complicate and bureaucratised the future monitoring report for the regulated entity in order to gain alleged more accurate data. In the light of a very small share of non-ETS2 fuels compared to ETS2 fuel quantities in total, this is disproportionate. Consequently, UPEI suggests reducing the tiers methods to a common denominator.

There are only two basic options to identify the end use of the fuels in the road transport and building sector, which **can be applied by all Member States**:

a) Direct deliveries or voluntary chains of custody (ex-ante method).

In case of a direct delivery from a distributor at the excise duty collection point to an end user of non-ETS2 sectors, the requested information is available and can be reported separately in the monitoring report by the regulated entity. Alternatively, the involved distributors of a supply chain decide to disclose the chain on a voluntary basis, so that the

distributor at the excise duty point will be enabled to present the necessary proof to the responsible authority that the end user is exempted from CO2 costs.

b) CO2-Cost compensation (ex post method).

The end user applies for a CO2 cost compensation. This enables the Member State to identify the remaining end user of non-ETS2 sectors, in particular non-ETS users as customers of public filling stations.

Both methods should be as basic principles **equally important approved** under the MRR without a tiers assessment of the data source in the light of very small fuel quantities used in the non-ETS2 sector compared to the ETS2 quantities in total.

All the other methods mentioned under the different tiers in the drafted MRR only apply for some Member States, e.g., Portugal uses a fiscal marker for specific end uses, but the majority of the Member States do not. Other ones grant excise tax reductions or exemptions for some of the non-ETS2 sectors. However, the ETD (Article 6) allows for these different schemes. As a result, it depends on the national tax scheme if the distributor can identify a non-ETS2 end user by directly granting tax reductions or exemptions, or if end user applies for a tax refund. Additionally, other Member States do not grant any tax reduction or exemption nor uses fiscal marker (e.g., Netherlands, Belgium: agriculture; Germany: military).

All these cases mentioned can be covered by a simple application of the methods a) and b).

Taking into account the general ETS preference for the ex-ante method, UPEI would like to point out that the impact of the financial liquidity should be usually a one-time effect and results in a periodic change of refunds. Furthermore, the disclosure of supply chains is against the general rules of competition. Therefore, distributors must not be forced to disclose supply chains to avoid the ex-post method by application for a CO2-cost refund. Consequently, both methods, ex ante and ex post, should be equally importantly approved.

Hence, UPEI requests a replacement of the scope factor by an application of a voluntary traceable chain of custody or a CO2-costs compensation, equally ranked, to ensure a smooth implementation of ETS2. The correctness of the data sources is secured by the strict excise duty-monitoring scheme.

B. Article 3ag Directive (EU) 2023/959.

Article 3ag defines that “release for consumption” for the purposes of Chapter IVa means release for consumption as defined in Art. 6 (3) of Directive (EU) 2020/262. This means

that also excise duties imposed because of so-called transport losses under EMCS ('irregularities' in accordance with Article 6 (7) of Directive (EU) 2020/262) have to be reported. It belongs to the physical nature of liquid temperature-dependent bulk goods that there are always differences (losses and excesses) between the loading volumes determined by the consignor and the discharged volumes measured by the consignee. It is caused by inter alia measurement inaccuracies, different measuring methods of the loading and discharging point, different tolerances for calibration in the Member States, weather conditions at the time of measuring, etc. Therefore, the Member States implemented national thresholds for common partial losses occurred during the movement of excise goods. These thresholds are different in every Member State and thus are often exceeded, although usually no physical loss of product took place. It is only a fiction. Consequently, the excise duties have to be paid for that part of the loss, which exceeds the common partial loss threshold of the competent Member State. These so called "transport losses" are in the scope of ETS2 in accordance with Article 3ag of EU Directive 2023/959. This makes the entire system much more complex as the taxpayer for transport losses is the consignor and not the consignee and hence, for negligible small volumes, the consignor has to fulfil all EU ETS 2 requirements in a Member States where he is not resident. Due to this reason, transport losses have also been excluded from the national German emissions trading scheme for transport and heating (BEHG) as well as the greenhouse gas reduction act/ bio quota obligation.¹

UPEI urges that excise duty paid for transport losses should be excluded from the scope of ETS 2 by an interpretation of the definition of Article 3ag Directive (EU) 2023/959 for the purposes of ETS2 under the Monitoring and Reporting Regulation (MRR).

Contact: Pierre Lucas Secretary General | info@upeei.org | +32 2 740 2030 | www.upei.org

¹ Results of a survey (sample) among member companies of the German fuel industry and trade associations en2x and MEW: Out of 3,220 transports from the EU to Germany, 126 resulted in shortages and taxation. The taxed shortfalls amount to 1,729,490 litres 15°, in relation to the total fuel quantities transported (5,910,765,462 litres 15°) that is only 0.02%. In the case of domestic/EU deliveries, 182 out of 28,419 transports are affected. The taxable shortfalls amount to 696,292 litres 15°, in relation to the total fuel quantities transported (11,055,979,383 litres 15°) that is only 0.006 %.

UPEI represents 2,000 European importers and wholesale/retail distributors of energy for the transport and heating sectors, supplying Europe's customers independently of the major energy producers. They are the interface between producers and consumers, using their own infrastructure and flexibility to supply existing demand for conventional and renewable liquid fuels, as well as non-liquid alternatives as part of the energy transition. They cover more than a third of Europe's current demand. The organisation brings together national associations and suppliers across Europe.

Independent fuel suppliers bring competition to Europe's energy market and are able to respond rapidly to changes affecting supply, contributing to security on a local, national, and regional level. They have developed and maintain a comprehensive infrastructure for the sourcing, storage and distribution of transport and heating fuels, with a commitment to delivering a high-quality service to all consumers. Since 1962 UPEI has been advocating for a level playing field and fair competition to ensure an affordable, sustainable, and secure energy supply for Europe's consumers. Today, in the context of the transition to a low carbon economy, UPEI and its members are also addressing the challenges of adapting the product range and meeting consumer demand through market-oriented solutions.

With its strong track record in pioneering the supply of renewable fuels in the EU, UPEI's members remain committed to delivering and embracing new, cost-effective solutions which further promote energy efficiency and reduce pollutants and emissions.