

ERCST's response to the Department for Business, Energy & Industrial Strategy's UK ETS - Registry Data Publication Consultation

The European Roundtable on Climate Change and Sustainable Transition (ERCST) welcomes the opportunity to provide feedback on **UK ETS - Registry Data Publication Consultation**.

About ERCST

ERCST is an independent non-profit association based in Brussels (Belgium). It aims to provide a neutral space where policymakers and regulators can meet stakeholders to discuss climate change policy and how to manage the transition to a low GHG-economy in a sustainable way. ERCST represents its own views and strives to strictly ensure its independence and integrity.

ERCST has also worked extensively on the design features of the EU ETS, including on the recent review and ongoing implementation process. ERCST has successfully completed projects and written reports on a variety of ETS-related topics, including on carbon leakage, ongoing legislative processes, the market stability reserve, use of auctioning revenues, the State of the EU ETS Report, etc.

About the UK ETS - Registry Data Publication Consultation

Currently, Article 75B (2) of the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020¹ includes a general prohibition on the disclosure of information pertaining to the UK ETS. As a matter of principle, the legal premise of Article 75B is about face: it should be that data information is public except in cases where specifically prohibited.

As a signatory to the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (The 'Aarhus' Convention) the UK Government should be seen to be in favour of environmental data transparency and thus justify any decision as to data publication prohibition.

Regarding the proposed changes

In its feedback on the UK ETS open consultation, ERCST highlights several issues that are important with respect to data publication, considering that the Authority is proposing:

1. *To proceed with legislation which will **amend the 2020 Order** so that all information already published via the Registry is published under the 2020 Order, rather than relying upon the Environmental Information Regulations (EIR). In the 2020 Order, the obligation to publish this information will be bestowed upon the Authority.*

¹ Article 75B (2) "A person to whom this article applies must not disclose information held or obtained under UK ETS legislation to another person".

BEIS wants the power to impose new data requirements potentially without future reference or consultation with market participants. Since more and/or less data publication potentially has a market impact, what are the safeguards on informing market participants that will be used?

2. *To proceed with legislation enabling the Authority to publish a **new report which will detail the total number of allowances held in the Registry** in all user accounts on the previous day, where more information about this potential report is missing.*

Is this a daily report listing all free allocation and purchased auction allowances? Or it is rather an annual snapshot? There is also a potential issue in the granularity of data – Does this refer to all user accounts individually? What about investment accounts? How does the Government propose to make use of the data, considering that some elements of market policing are devolved to the auction platform contractor?

3. *To proceed with legislation to introduce **new exemptions to data and information disclosure** under Article 75B (3) of the Order which **will enable the Authority to publish additional scheme data**.*

To ensure that there are no errors in free allocation transparency of the primary source and total quantity issued is needed, the following shall be published:

- For each installation, the individual quantity of free allocation for each sector benchmark (including dynamic allocation), fall back approach, and free allocation to be listed.
- The NACE code (at level 4 or greater) of each installation is to be published alongside the European Environmental Agency (EEA) sector allocation system nomenclature of 0-99. Hopefully the Commission will scrap its current 0-99 sector categories in favour of NACE coding.

4. *In addition, the Authority is minded to introduce **new obligations** on itself **to publish data on Hospitals and Small Emitter (HSEs) reportable emissions**.*

This is too vague - detailed clarification with respect to which data is to be published is required. At a minimum, installations should be clearly identifiable by address and NACE Code and annual emissions should be made public.

Regarding the consultation questions:

1. **Is there any other information, which is not currently published, that you think should be published on the Registry or elsewhere?**

ETS annual reporting must be in a single report containing **per installation**:

- Annual Verified Emissions.
- Installation NACE Code Data.
- Installation total free allocation by source + adjustments made by dynamic allocation.
- Installation Open / Closed with date of closure.
- Installation identifier data: competent authority number, installation name, location address, post code, owner .

In addition, and in order to achieve the “**proposed mirroring the EU ETS MRV regime**”, authorities shall ensure the publication of data on key parameters grouped for the different benchmark products². This includes, in addition to the average GHG emissions intensity of the 10% most efficient installations and the benchmark values, the following data published by the European Commission:

- Median GHG emissions intensity of all installations (tCO₂e/CWT).
- Average GHG emissions intensity of all installations (tCO₂e/CWT).
- Weighted average of GHG emissions intensity of all installations (tCO₂e/CWT).
- Number of (sub-)installations using the benchmark for free allocation.
- (Attributed) GHG emissions covered by benchmark (tCO₂e/CWT).
- Number of (sub-)installations taken into account for the benchmark value update.
- Preliminary free allocation covered by benchmark.

2. Is there any information you think should not be published?

Yes. In those cases where there is commercial and competitive sensitive information.

3. Do you agree with the proposal to publish Hospital and Small Emitters data?

Yes, but it is by definition small quantities and authorities shall consider if this publication is cost effective.

4. Do you agree with the proposal to publish data pertaining to the number of allowances held in the Registry in all user accounts?

Is this to be a daily report listing all free allocation / purchased auction allowances? Or an annual snapshot?

The issue is the granularity of the data. This raises a number of questions: Are all Installation account holdings to be individually listed? What about investment accounts? How does the Government propose to make use of the data? Given that some elements of market policing are devolved to the auction platform contractor.

5. Do you agree with the proposal to introduce a new exemption to enable the Authority to publish additional scheme data? Additional scheme data could include for example information on the reportable emissions of Ultra Small Emitters (USEs).

It's good legal drafting practice to ensure the Government sets out what it wants in advance, in law. ERCST is reluctant to see blanket powers – particularly as Statutory Instruments (SI) scrutiny is minimal and almost always unchallenged by Parliament.

In principle, no objection to USE, small emitter or hospital installation data being published, but if that is the most convenient approach, it is better to ask for it in the consultation. So far, the Government have given no reason or justification for wanting such a change, while a justification of this measure is welcome.

² EC (2021) Update of benchmark values for the years 2021 – 2025 of phase 4 of the EU ETS. Updated final version issued on 12 October 2021.