

EFET response to the EU Commission proposal on rules for the zero-rating of biomethane emissions under the EU ETS

The European Federation of Energy Traders (EFET¹) appreciates the opportunity to submit our comments to the proposal of the EU Commission revising Implementing Regulation (EU) 2018/2066 on the monitoring and reporting of greenhouse gas emissions (MRR Regulation²) pursuant to Directive (EU) 2023/959 revising the EU Emissions Trading System (ETS) Directive³.

Our feedback focuses on requirements for zero-rating emissions from biomethane, in the context of ETS monitoring and reporting, with the aim of effectively reducing the emission allowances (EUAs) a company is obliged to hold. We read the proposed provisions comparatively with the MRR Guidance Document No. 3⁴ which further specifies the accounting of biomethane against the EU ETS quota. This is because compliance of economic operators with the sustainability and greenhouse gas (GHG) savings criteria under article 29 Directive (EU) 2018/2001 (recast Renewable Energy Directive – RED II), also found under article 38 (5) MRR, has taken full effect from the start of 2023. The precise implementation by biomethane traders of the amended MRR and Guidance has been raising questions particularly regarding transfers of biomethane across EU borders.

1. General comments

We endorse the objective of DG CLIMA to facilitate entities falling within the scope of the EU ETS Directive to demonstrate sustainability and GHG savings criteria for the emission factor of biogas produced from biomass to be counted as zero under the EU ETS MRR. Certificates for renewable and low-carbon gases meeting these criteria should offer relief from the obligation to acquire EUAs. Validation of an emitter's acquisition of such certificates should allow for the carbon abatement value of gases to be recognised under the EU ETS

¹ The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and enable the transition to a carbon neutral economy. EFET currently represents 146 energy trading companies, active in over 27 European countries. For more information: www.efet.org

² Our response relies on the consolidated version of the MRR, as updated by the Commission Implementing Regulation (EU) 2020/2085 of 14 December 2020 http://data.europa.eu/eli/reg_impl/2018/2066/2022-08-28

³ Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023L0959&qid=1692090726920>

⁴ "Biomass issues in the EU ETS." Updated version, 17 October 2022 https://climate.ec.europa.eu/system/files/2022-10/gd3_biomass_issues_en.pdf

MRR. The carbon abatement value will help determine the net obligation of an emitter to purchase EUAs.

We have identified the reduction of reportable emissions under the EU ETS as one of the incentives for market participants to trade in biomethane and/ or biomethane certificates/ guarantees of origin (GoOs) in the context of our recently launched Biogas Certificates Trade Agreement for trade of biogas certificates on the CEGH GreenGas Platform⁵. Our detailed points are hence made primarily from a contractual perspective with a view to enhancing our understanding of the MRR requirements and documentation a seller must abide by/ furnish to the benefit of the buyer, following transpositions of applicable EU Law in national jurisdictions.

2. Detailed remarks

2.1 *Recitals 5 and 27* – National practices and EU frameworks should be monitored and ultimately converge to ensure consistent reporting.

We appreciate the intention of DG CLIMA to improve the MRR with details on how to handle biomass in mass balances, including through guidelines on the implementation of RED II to avoid undue administrative burden on biogas producers. However, we wish to point to the present fragmentation of national approaches on the carbon abatement aspects of certification in absence of an EU-wide mass balance registry.

The obligation on Member States to implement, as of 2023, the sustainability criteria under RED II has come with rather unclear implications for cross-border trading (platforms versus OTC) because of the regulatory uncertainty around the economic operators' options⁶. Of note are certain constraints linked with national and international mass balancing schemes such as proof of capacity bookings and trading of molecules bundled with the proof of sustainability (PoS) certificates (independent labelling of each MWh), which risk de-commoditising the gas market. We expect a full-fledged Union database (UDB) for all end uses of biomethane and renewable and low-carbon hydrogen under article 31a of the provisionally agreed revision of the Renewable Energy Directive (RED III⁷) and article 8 of the draft recast Gas Directive⁸ to alleviate such constraints.

⁵ EFET Biogas Certificates Standard Single Trade Agreement – Version 1.1./ June 2023 and Guidance Note <https://efet.org/home/documents?id=42>

⁶ Union database go-live for transport sector end uses of biomethane / ERGaR RED mass balance scheme (still not recognised by the EU Commission) / AIB hub / international voluntary schemes / national GoO – certificate schemes.

⁷ Provisional political agreement by the Council and European Parliament on the Renewable Energy Directive <https://www.consilium.europa.eu/media/65109/st10794-en23.pdf>

⁸ Proposal for a Directive on common rules for the internal markets in renewable and natural gases and in hydrogen <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0803>

An additional layer of complexity around certification relates to the operational design of the UDB which is based on both RED II and III⁹ and foresees the synchronisation of the UDB with GoO registries to ensure that any further trade of GoOs along the value chain would also include the PoS numbers associated with them, until cancellation of both at withdrawal point of biomethane from the single logistical facility.

To add to the nexus of draft and adopted EU legislation, requirements and limitations at Member State level may, on a case-by-case basis, diverge from the MRR. This is owing to the use of national GoOs, or certificates of production, to provide information on compliance with the RED II criteria by ETS installations consuming biomethane. Trade of GoOs may serve the voluntary market by providing an additional revenue stream to supplement other means of financial support to the production of renewable energy. If traded in the same market of production of biomethane, production data from GoOs may be considered in national statistics for reporting against article 3 RED II. However, trading for compliance purposes of (at least) EU-produced biomethane across borders requires the proof of mass balance at every border and should not be hindered by national approaches.

We hence support DG CLIMA's perception of the EU gas grid as a single logistical facility (see also sub-section 2.3) based on the principle that biomethane certified by an EU Commission-recognised certifier can be used against ETS allowances across EU borders. However, until the UDB acts as a common mass balance registry also ensuring certification of the MRR criteria, Member States still need to ensure that the mass balancing is conducted correctly via national registries, with cross-border trade handled via agreements between registries, subject to acceptance by the authority of destination. In the absence of biogas registries acting as a mass balance with the meaning of RED II in every Member State, we struggle to determine the precise role of GoO registries in cross-border transfers of certificates, as well as the freedom of choice of Member States in terms of the mutually exclusive approaches for issuance and cancellation of GoOs to avoid double counting, as outlined in the Guidance¹⁰.

We thus ask for the details and guidelines mentioned in the recitals of the consulted proposal to clarify the following, including for extension of the MRR to ETS II sectors, either as part of the revised Implementing Regulation or future Guidance documents:

- For implementation of article 39 (4) MRR in Member States where the biomethane registry doesn't serve as a mass balance system, the operator of the ETS installation must cancel "without undue" delay GoOs of the same quantity and consignment that the actual purchase record relates to¹¹. Are Member States free to determine the period within which this cancellation may occur, provided the 18-month expiry period for GoOs is respected?

⁹ Conditional on formal adoption of the latter by the co-legislators.

¹⁰ Guidance 03, sub-section 5.3.4

¹¹ Guidance 03, sub-section 5.3.2

- We understand that the required evidence consists of a) the sustainability criteria as outlined in articles 29 (2) to (7) RED II, b) the GHG savings (e.g., in case of consumption by an ETS facility for heating purposes, considering the start year of the production facility and the full supply chain of biogas production including grid transportation or additional accounting from liquefaction.) Is it possible for a national registry to link PoS and GoO as a single certification instrument – on top of the supply contract and invoices?

2.2 Recital 06, articles 39, 43 and Section 4 – The overarching purchase-record approach should be practically explained and consistent throughout the Regulation.

We welcome the introduction in Guidance 03 of a definition of the biomethane “purchase record” which, as roughly replicated under the proposed Implementing Regulation, is based on the prevention of double counting of the same biomethane quantity ensured by the “registry”, potentially also the UDB, connection of ETS operator and biomethane producer to the same gas grid and inseparable trading of the PoS with the mass balance certificate issued by the “registry”¹². Such a definition should ideally not leave room for interpretation at the national level and economic operators should be aware of the precise documents they need to demonstrate as of the start of this year when use of PoS became mandatory.

We understand that evidence of mass balancing is necessary – i.e., physical quantities of biomethane. We also understand that a gas supply contract may serve as a purchase record. In this case, it is not clear to us whether, in practice, the EU Commission expects Member States to check the actual supply contracts – and what will the role of the voluntary schemes be in this process.

Prospectively, as indicated in section 2.1, under the provisionally agreed RED III, and according to the operational design of the UDB, the mass balance system will have to be complemented by GoOs, where appropriate. This element will have to be considered while revising the MRR in the context of the expansion of the scope of the ETS to ensure that no undue administrative burden is placed on market players and Member States. These points need to be addressed by both DG ENER and DG CLIMA.

Ultimately, we are concerned about the EU Commission proposal on an exemption from the use of purchase records in terms of measurements of the flue gas under article 43. This

¹² Guidance 03, sub-section 5.3.2. As EFET, we would nonetheless have a clear preference for the certificate and the commodity to be tradable independently of each other. This would better enable deep, liquid, transparent markets for certificates, which will boost consumer confidence and demand, and help to create a firmer demand pull on the green transition.

causes certain inconsistency with the recitals citing that a “purchase record-based” quantity of biogas is to be used for reporting of the installation’s emissions. We recommend that consistency in terms of the applicability of article 39 (4) MRR is maintained throughout the legislative text to determine the biomass fraction of gas from the grid.

2.3 Recital 06, article 39 – Requirements around the “gas grid” should be thoroughly specified.

We welcome the more detailed definition of the “gas grid” in Guidance 03¹³ which aligns it with the mass balance system definition in recital 5 of the Implementing Act for voluntary schemes under RED II¹⁴. However, as is the case with the requirements around the avoidance of double counting through purchase records, we are equally interested in the exact documents that Member States may require for demonstration of compliance with article 39(4)(b) MRR – i.e., link between ETS Operator and biomethane producer via the “same gas grid.”

We consider it necessary for the ETS operators to be required to simply demonstrate connection to the high or medium/ low-pressure¹⁵ network via transmission/ distribution agreements without the need to demonstrate proof of capacity bookings at cross-border points along the supply route.

Biomethane in the interconnected infrastructure with the meaning of recital 18 under the RED II Implementing Act for voluntary schemes (including LNG terminals) must be treated as in a single mass balancing system where there is no tracking of the exact molecules to which a given certificate is attached.

Moreover, we think that the EU Commission should act in case Member States unilaterally decide to limit the notion of the “same gas grid” to national networks. Accordingly, in absence of registries acting as a mass balance in every Member State, we seek confirmation as to whether an ETS installation currently has the right to provide supply contracts¹⁶ to demonstrate that producer and consumer are connected to the same grid, i.e., the interconnected European grid.

¹³ Sub-section 5.3.3

¹⁴ Commission Implementing Regulation on rules to verify sustainability and greenhouse gas emissions saving criteria and low indirect land-use change-risk criteria developed and adopted under article 29 of RED II <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R0996&qid=1692793339506>

¹⁵ The explicit inclusion of “small/ isolated” grids in the definition is necessary and of relevance since many biomethane facilities are located close and connected to local distribution networks.

¹⁶ Provided the operator of the installation also receives from the supplier the evidence on sustainability and GHG savings taking into account the full supply chain of production.