

Energy Traders Europe response to the amended Monitoring and Reporting Regulation for biomethane and RFNBO under ETS II

Brussels, 29 July 2024 - Energy Traders Europe appreciates the opportunity to submit our comments to the second batch of amendments to the Commission Implementing Regulation (EU) 2018/2066 (Monitoring and Reporting Regulation – MRR) setting out conditions for the zero-rating of biomethane, renewable fuels of non-biological origin (RFNBO), recycled carbon fuels (RCF) and low-carbon synthetic fuels under the recast Emissions Trading Directive and Renewable Energy Directive (Directive (EU) 2023/959 and Directive (EU) 2023/2413).

Key messages

1. The current use of national instruments (such as country-specific Guarantees of Origin) is creating barriers to cross-border trading in renewable and low-carbon gases. We strongly support the promotion of an EU-wide instrument - Proof of Sustainability Certificates under the Union database - as a means of fostering the internal market for such gases. It is most welcome that the MRR supports this.
2. As long as national schemes continue to exist, they must become equivalent in terms of recognition and operation. This will allow national databases and registries to connect with the UDB on the same terms and help harmonise and standardise verification of RED compliance for EU ETS purposes, across Member States.

General remarks

Trade in certified biomethane is expected to become an important means to achieve emissions reductions for ETS. The establishment of an EU wide approach is an essential building block to build an internal market in biomethane. The alignment of the MRR with the recast RED is a welcome step in this journey. **We particularly welcome the primacy of proofs of sustainability (PoS), corresponding to transactions registered in the Union Database (UDB), as valid evidence of biomethane/ RFNBO consumption in installations covered by the EU ETS.**

We observe that some national authorities have set preconditions of their own for compliance with the purchase record approach under the MRR. For instance, Italy and

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Spain¹ have either established as mandatory or have recommended the use of guarantees of origin (GoOs) for that purpose, which hinders the acceptance of imported PoS-certificated biomethane. At the same time, Germany and Austria have ruled out the eligibility of imported biomethane towards their national ETS quotas, if subsidised, while the Netherlands have entirely ruled out eligibility of imports. **We call on the EU Commission to ensure that national guidance on the implementation of MRR Regulation encompass the full caseload of options for certified biomethane and RFNBO transfers across EU borders to preserve market liquidity for the achievement of targets in those gases.**

The existence of multiple legislative instruments that overlap or jointly affect commercial activities means that extra care must be taken to ensure that conflicts or contradictions are not created. We caution that the legislative and scrutiny process for this proposed Implementing Regulation, as well as the drafting of the upcoming complementary DG CLIMA Guidance, should also align with the prospective re-launch for consultation of Implementing Regulation 2022/996 under RED III.² **The risk of conflict could be reduced if both non-legislative Acts and Guidance reflect the main accounting preconditions for biomethane and RFNBO purchases as outlined in the CLIMA Guidance for obligated entities under ETS II from 26 March 2024³.**

¹ [Energy Traders Europe reaction to the new recommendations for biogas consumption in EU ETS installations in Spain](#)

² [Renewable fuels – accreditation of certification bodies \(update of implementing act\)](#)

³ [The Monitoring and Reporting Regulation – General guidance for ETS2 regulated entities, section 5.6.5 “Special rules for biogas”, pgs. 50-51](#)

Detailed remarks

1. Certificate cancellations in national databases must not create undue administrative burden

The zero-rating of biomethane, synthetic low-carbon fuels, RFNBOs and RCF is subject to the ETS operator's ability to evidence to the competent authority the purchase of gas cancelled in the UDB, or "a national database in accordance with article 31a (5)." **We welcome the inclusion of the UDB as a tool to prospectively harmonise and standardise verification of RED compliance for EU ETS purposes. At the same time, we urge the Commission to ensure the UDB's consistent use across all Member States and proper connection of the national databases and registries to it⁴. We believe this will require a few technical changes to Articles 38 and 39 (see the Annex).**

In addition, we note that a transitional period for concurrent accounting of volumes on both the UDB and national databases, in whichever Member State they exist, is envisaged at least until May 2025. To ensure regulatory certainty in the transitional period, before the UDB is fully operational and connected with the national registries/ databases, it is important to recognise the validity of existing proofs of sustainability and purchase records and this should be made clear under articles 38 and 39. **These articles should also include safeguards that ensure recognition by all competent authorities of PoS issued by Economic Operators in compliance with EU rules on sustainable certification (see the Annex).**

To avoid undue administrative burden for traders engaged in cross-border compliance transactions, we additionally ask for the DG CLIMA Guidance pursuant to the consulted Regulation to introduce safeguards against technical blockers for the zero-rating of imported/exported biomethane, at least during the transitional period before the UDB, connected with other national databases and registries goes live.

2. Subsidised biomethane must be freely traded across EU borders

The list of product requirements specified under articles 38 and 39 should be exhaustive and applicable across all Member States. **Any deviations at the national level, should be thoroughly justified by national authorities, scrutinised by the Commission, and communicated to market participants. This particularly relates to the treatment of**

⁴ We point to the fragmentation created by national specificities, whereby GO registries wish to undertake the role of national databases (e.g., Netherlands, Estonia), or Member States wishing to establish ad hoc national registries for documentation of renewable gases under the ETS (e.g., Austria).

biomass sourced with the support of investment/ operational state aid and used in the production of biomethane. For the sake of regulatory certainty, the Commission may consider adding an explanation in recital 7 on the zero-rating of subsidised biomethane.

The fact that a unit of energy has benefitted from public financial support that qualifies as operational/ investment state aid within the meaning of Article 107 of the TFEU and Guidelines on State aid for climate, environmental protection and energy must not preclude its zero-rating for the purposes of the MRR. The EU ETS cannot be considered as state aid, and this automatically eliminates concerns on cumulation/ overcompensation via the state aid.

3. The scope of the MRR must be extended to zero-rating of bio-LNG emissions

Modification (18) to article 39 (3) and (4) refers to the cancellation in the UDB of a purchased biogas quantity from the gas grid as a way of demonstrating compliance in line with RED III. **However, the proposed wording seems to be limited to biomethane withdrawn from the gas network. This would inadvertently invalidate recognition of bio-LNG consignments in the UDB, although interconnected LNG terminals are also part of the interconnected infrastructure, within the realms of which the mass balancing principle applies.** Our proposed amendment extending the scope of the MRR to LNG terminals (e.g. bunkering operations) is included in the Annex.

We ask for our amendment to also consider off-grid bio-LNG facilities, given that preamble 5 Implementing Regulation 2022/996 considers them separate mass balancing systems. Regarding consideration of LNG trucks particularly, we assume that supply from the terminal and subsequent transportation up to the end-customer⁵ is also covered under the MRR, since it will have to be reported in the UDB. This is, for instance, pertinent to cover truck-to-ship operations, or small-scale bunkering facilities used for the supply of bio-LNG to the maritime sector, which is already subject to the ETS sector.

4. Blended RFNBO must be demonstrated in the interconnected infrastructure

Article 39a (5) refers to gaseous RFNBOs or RCF "injected into a natural gas grid", instead of the interconnected gas infrastructure. **We once again propose to align the text with the legal definition under RED III.**

⁵ Point where the excise tax is paid, i.e. point where the distributor delivers the gas from the fuelling station to the vehicle/ the bunker vessel supplies the ship.

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We moreover note that the proposed wording on RFNBOs/ RCF is slightly different compared to the one biomethane. It states that, for their zero-rating, the cancellation of the respective consignment in the UDB is valid, if the RFNBO/ RCF has been “injected into the grid”. For biomethane injected into the grid, the UDB consignment seems to be valid only if gas is withdrawn from the grid, thus limiting the scope of the Regulation on biomethane. **Equal conditions must be set for renewable gases flowing through gas and/ or hydrogen pipeline systems.**

5. Storage of CO2 outside the EU must be recognised

The EU Carbon Capture and Storage (CCS) Directive (Directive 2009/31/EC) and ETS Directives already outline requirements for cross-border transportation of CO2 within the EU and EEA. Under EU Law, CO2 emissions verified as captured and transported for permanent storage to a CO2 storage facility within the EU will, for the purposes of emissions accounting and reporting under the ETS, be treated as not having been emitted, and the emitter will not incur a legal obligation to surrender emission allowances in respect of those emissions.

However, transport of carbon dioxide for the purpose of storage outside the borders of the EU should also be facilitated. Considering the amendment to Article 6 of the London Protocol⁶, the transportation and storage of carbon dioxide should be eligible for ETS exemptions, provided that the emissions at the borders of the Union and at the extra-EU storage site are monitored and reported. Therefore, an agreement between the EU and the UK, and potentially also with other countries, will likely be required to ensure mutual recognition of storage of CO2 for the purposes of respective ETS systems.

6. Liability to disclose emissions from CO2 capture and transportation should lie with the original emitters

In the current draft of the MRR, the CO2 emitter (installation operator under Annex I ETS Directive) shall subtract from the emissions of the installation any amount of CO2 captured by a service provider. However, we emphasise that every original CO2 emitter (CO2-emitting installation operator under Annex I) should be liable to disclose such emissions occurring during the capture and/ or transportation of CO2.

7. Low-carbon fuels must be recognised as zero rated towards the ETS

The ETS MRR covers exclusively processes to consider fractions of RFNBO and Biomass as zero-rated. We note that the GHG emissions savings methodology for low-carbon fuels is currently being

⁶ [EU - London Protocol Analysis paper final 0930](#)

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developed under article 9 recast Gas Directive. Therefore, it would be important to also recognise low carbon fuel fractions as zero-rated.

In the case of the transfer of CO₂ to a capture installation, as long as this CO₂ results from materials or fuels containing a fraction of zero-rated carbon, allocation should be possible to enable the capture of CO₂ of predominantly fossil origin and the allocation of zero-rated carbon to residual emissions to the atmosphere. Furthermore, it should be possible to produce zero-rated carbon CO₂ streams for CCU, and applications where after-use release of CO₂ is unavoidable and migration to biogenic CO₂ should be incentivised (e.g. food and beverage).

Obligations for CO₂ transport infrastructure or storage sites to report any CO₂ losses as fossil can lead to barriers (including cost increase) for BECCS and capture of mixed streams e.g. from waste incineration. This should be avoided.

8. The MRR amendments should not apply retroactively

The current draft indicates that amendments will start applying from the 1st of January 2024. We assume this is an error that will be corrected in the final text. In any case new amendments should not be applied retroactively to ensure regulatory certainty in the market.

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Annex

1. Proposed amendments to articles 38(5) and 39(4)

Article 38(5)

*The compliance with the criteria laid down in paragraphs 2 to 7 and 10 of Article 29 of Directive (EU) 2018/2001 shall be assessed in accordance with Articles 30 and 31(1) of that Directive. **The criteria may also shall** be considered complied with if the operator provides evidence for a purchase of a quantity of biofuel, bioliquid or biogas connected to the cancellation of the respective quantity in the UDB set up pursuant to Article 31a or a national database set up by the Member State, **aligned to and linked with the UDB** in accordance with Article 31a(5) of that Directive. In case of subsequent non-compliance regarding the proof of sustainability of the quantities cancelled in the databases, the competent authority shall correct the verified emissions accordingly.*

Before the alignment with the UDB is ensured, competent authorities may continue using national databases but, in any case, shall not refuse to take into account proofs of sustainability as evidence of compliance with paragraphs 2 to 7 and 10 of Article 29 of Directive (EU) 2018/2001 and obtained by economic operators according to Articles 30 and 31(1) of that Directive.

Article 39(4)

The operator may determine the biomass fraction and identical zero-rated biomass fraction of biogas using purchase records of biogas of equivalent energy content, provided that the operator provides evidence to the satisfaction of the competent authority that:

- a. *there is no double counting of the same biogas quantity, that the biogas purchased is not claimed to be used **by any other economic operator anyone else**, including through a disclosure of a guarantee of origin as defined in Article 2(12) of Directive (EU) 2018/2001,*
- b. *the operator and the producer of the biogas are connected to the **interconnected gas infrastructure the same gas grid.***

For the purpose of demonstrating compliance with this paragraph, the operator may use the data recorded in a database set up by one or more Member States which enables tracing of transfers of biogas. Compliance with this paragraph **may shall** be considered demonstrated if the operator provides evidence for a purchase of a quantity of biogas connected to the cancellation of the respective quantity in the UDB set up pursuant to Article 31a of Directive (EU) 2018/2001 or a national database set up by the Member States, **aligned to and linked with the UDB** in accordance with Article 31a(5) of that Directive. In case of subsequent non-compliance regarding the proof of sustainability of the quantities cancelled in the databases, the competent authority shall correct the verified emissions accordingly.

Before the alignment with the UDB is ensured, competent authorities may continue using such national databases but, in any case, shall not refuse to take into account other purchase records and evidence of no double counting provided by economic operators.

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2. Proposed amendment to modification (18) paragraph (d) subparagraph (ii), amending article 39 (3) (2) MRR

"The operator may determine that a certain quantity of natural gas from the interconnected infrastructure⁷, is zero-rated biogas by using the methodology set out in paragraph 4."

⁷ As defined under article 2(18) Implementing Regulation 2022/996, including LNG terminals and storage facilities.