

## Key EU ETS issues to resolve in the case of the UK leaving the EU WITHOUT an agreement

In DEXEU's 'Legislating for the Withdrawal Agreement between the United Kingdom and the European Union' (Cm 9674), Section 75 states *'the Government's aim is to ensure a functioning statute book for exit day in the unlikely event that no agreement is reached.'*

### Can BEIS confirm:

- A. Is the EU ETS Directive (and its associated regulations and decisions) sufficient to continue an ETS in the UK?
  - B. If A. is true, will the required UK competent authorities and agencies be able to mirror the workings of EU Institutions and Agencies, and will these be ready in time for 29 March 2019 BREXIT Day?
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### Specific UK installation and aviation operator EU ETS issues without a UK withdrawing agreement with the EU

1. Will there be any free allocation made to installations in 2019?
  - Note: Under EU ETS Directive free allocation should be made before end February 2019.<sup>1</sup>
2. What penalties will apply if EU ETS GHG reporting and/or surrender is made late? e.g. independent verification capacity issues, inability to access the registry
  - UK ETG notes that the surrender date for EU ETS allowances to cover 2018 emissions is now **Friday 15 March 2019** (i.e. before 29 March 2019).
3. What happens to both EU ETS allowances and CERs in GB operator registry accounts in the EU Registry after 29<sup>th</sup> March 2019?
4. What obligation do UK installations have for GHG reporting of their emissions throughout 2019?
5. For aviation operators registered in GB, with ongoing compliance obligations for intra EU/EEA flights, will they have to move accounts to another EU Member State? If so, which one? Will GB aviation operators become international (3<sup>rd</sup> Country) operators and thus subject to the 'stop the clock' rules that suspend surrender but encourage emissions reporting?
6. Will BEIS consider recommending a 'stop-the-clock' suspension of ETS as applied in the UK? This would give time for a transition between EU ETS and a new ETS or another instrument.

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<sup>1</sup> [COMMISSION REGULATION \(EU\) 2018/208 of 12 February 2018 amending Regulation \(EU\) No 389/2013 establishing a Union Registry \(Text with EEA relevance\).](#)

### Specific post UK BREXIT EU ETS allowance trading issues:

1. Status of trading accounts (not operator compliance accounts) post Brexit.
  - Are trading entities able to continue to transact / deliver EUAs through their existing trading account from the UK?
  - Can UK operators (as UK registered Companies) open a EU ETS trading account in another European country or can this only be done by a European entity<sup>2</sup> (see below reference - important word *may need residence/tax presence*).
2. General passporting issues:
  - EU ETS allowances are now classified as derivatives – can these products be transacted with European Counterparties from a UK entity?
3. Legal continuity:
  - What is the enforceability of contracts under ISDA / IETA / EFET post Brexit? These issues are tied up with passporting issues. There could be a potentially huge requirement to renegotiate / novate many legal agreements.

### Specific Accreditation and Verification issues

1. Current EUETS A&V rules permit passporting of verifiers outside their Member State of Accreditation. Can BEIS confirm that verification by non-UK verifiers for Emissions Year 2018 will be valid in the event of no UK EU withdrawing agreement?

**ETG**

**9 August 2018**

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<sup>2</sup> [EU Regulation No 389/2013 of 2 May 2013](#): Registry Regulation Article 18 -Opening person holding and trading accounts in the Union Registry. Sections 2 & 3 indicate Member States MAY need registry applicants to have residence/tax presence.