

MPA Response to the DECC/Defra Call for Evidence on Environment and Climate Change: Review of the Balance of Competences

The Mineral Products Association (MPA) is the trade association for the aggregates, asphalt, cement, concrete, dimension stone, lime, mortar and silica sand industries. With the recent addition of The British Precast Concrete Federation (BPCF) and the British Association of Reinforcement (BAR), it has a growing membership of 465 companies and is the sectoral voice for mineral products. MPA membership is made up of the vast majority of independent SME companies throughout the UK, as well as the 9 major international and global companies. It covers 100% of GB cement production, 90% of aggregates production, 95% of asphalt and ready-mixed concrete production and 70% of precast concrete production. Each year the industry supplies £9 billion of materials and services to the £120 billion construction and other sectors. Industry production represents the largest materials flow in the UK economy and is also one of the largest manufacturing sectors¹.

This response is written from the perspective of the cement and lime product groups within the MPA membership. Cement and lime manufacturing businesses are regulated and affected by the following environment and climate change legislation/regulations:

- Environmental Permitting Regulations/ Industrial Emissions Directive
- EU Emissions Trading System
- Climate Change Levy (both sectors have a climate change agreement)
- Water Abstraction
- Discharge Consents
- Waste legislation including waste carriers licensing, hazardous waste, duty of care etc
- Mining Waste Directive
- Landfill Directive
- Mobile Plant

Advantages and disadvantages

1. What evidence is there that EU competence in the area of environment and/or climate change has: i. benefited the UK / your sector?

EU competence has delivered a partial level of harmonisation throughout similar industrial activities in Europe. The use of Directives leaves considerable latitude on Member States to implement policies within the existing national framework, although Directives leave more room for interpretation and inherently less harmonisation. One example is in the area of Emissions Trading. Many energy intensive industries across Europe are regulated under the EU Emissions Trading System (EU ETS). This system has harmonised rules to minimise competitive disadvantages within the EU and to ensure, via EU Regulations, that monitoring, reporting and verification is also harmonised. However, as with other policy areas, there are problems with interpretation and implementation which have been expanded upon in the answer to question 1.ii.

¹ For more information visit: www.mineralproducts.org

ii. disadvantaged the UK / your sector?

There are overriding problems for UK operators with the decision making competence resting within Brussels. Firstly, that Directives allow Member States the freedom to interpret and implement the policy which leaves significant discretion for the UK Government and devolved administrations to interpret in the most stringent way and to make matters more onerous by adding conditions to the UK law which EU competitors may not face. Secondly, the implementation of the EU and UK law is critical and we see numerous examples of the regulatory agencies in the UK, particularly the Environment Agency, taking the most onerous interpretation of the law when we see other Member States taking a less onerous interpretation. Thirdly, there is an issue of timing and phasing. The UK is often quick to implement the EU policy when other Member States wait or phase their implementation for their strategic industries to allow time for adaptation and to recognise the need for long lead times when large capital investments are necessary to modify fixed assets that may have 30-40 year renewal cycles.

The text below provides examples of each of the three disadvantages identified above.

1. EU Directives allow Member States the freedom to interpret and implement the policy which leaves significant discretion for the UK Government and devolved administrations to interpret in the most stringent way and to make matters more onerous by adding conditions to the UK law which EU competitors may not face

The shared competence in the area of climate change has disadvantaged the cement and lime sectors because of the opportunities for the UK Government to 'Gold Plate' existing EU legislation with additional conditions within UK climate change legislative transposition. This places additional regulatory and cost burden on MPA product groups such as cement and lime manufacture. **Annex I** shows some additional costs that energy and climate change legislation (both UK and EU) place on the cement sector.

Although Energy Intensive Industries are regulated under the EU Emissions Trading System, the UK cement and lime manufacturing businesses are at a competitive disadvantage within and outside the EU because they are subject to additional UK legislation, for example the direct costs associated with the Climate Change Levy (and Climate Change Agreements) and CRC Energy Efficiency Scheme and indirect costs of electricity market changes and renewable subsidies.

In 2013, the cost of the Carbon Price Support, passed on by power generators to consumers, has placed further significant cost burden on energy intensive industries. Although the Chancellor announced in the 2011 Autumn Statement that energy intensive industries would be compensated for this additional cost, the state aid application has been blocked from gaining Commission approval. The additional costs have started mounting with no indication of when compensation may be available, or exactly which sectors will be eligible. This uncertainty does not make the UK an attractive place to invest. As a result, not only is operating in the UK becoming increasingly costly, but many cement manufacturers have overseas parents, that are choosing to invest elsewhere rather than in the UK. This could have serious consequences for the UK economy and local/regional economies where manufacturing is threatened.

Until the welcome announcement by the Chancellor in Budget 2013, the UK did not apply the mineralogical processes exemption set out in Article 2.4 of the Taxation of Energy Products Directive as

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has been taken up in other European countries. Although both the cement and lime sectors have received a partial reduced rate from the climate change levy in return for meeting CCA targets, the exemption would have ensured that these industries were operating on a level playing field with manufacturers in other EU countries such as Germany. MPA were pleased with the Budget 2013 announcement that the UK would apply the exemption and MPA are now working with HMRC to determine the process for businesses such as those in the cement and lime sectors to receive the exemption. This is an example of where the UK has been quick to burden the cement and lime sectors with the cost of climate change legislation but been slow in administering available benefits.

Another example of a missed opportunity by the UK Government as far as cement manufacture is concerned is the Renewable Heat Incentive (RHI). The cement sector has the ability to significantly increase its use of biomass fuels. However, it is struggling to compete on the market because power generators are incentivised to use biomass through the renewables obligation and smaller businesses are incentivised to install biomass boilers through the RHI. The cement sector falls within a 'policy incentive void' and is given no incentive to maximise the use of biomass. Incentives have the potential to increase the market demand for biomass fuels and as a result their cost increases and the cement sector will become priced out of the market. This trend is already becoming apparent as *Annex II* shows the use of 100% biomass fuels is levelling off while the use of part-biomass fuels (e.g. tyres), which are not incentivised elsewhere, is increasing. This is a missed opportunity for the UK as the cement sector, which requires around 28,000 TJ of fuel energy annually, could contribute significantly to UK renewable heat targets.

2. The implementation of the EU and UK law is critical and the regulatory agencies in the UK, particularly the Environment Agency, often take the most onerous interpretation of the law when we see other Member States taking a less onerous interpretation.

Although the EU Emissions Trading System (EU ETS) has aims of putting European energy intensive industries on a level playing field in terms of GHG regulation, it falls short of harmonisation in a number of areas. Both the cement and lime sectors are deemed vulnerable to carbon leakage and are therefore entitled to a free allowance allocation. Final allowance allocations, following scrutiny of member state National Implementation Measures (NIM's), should have been notified to operators in early 2012. However, 8 months into Phase III of the scheme operators have still not been told of their allocations. The delays caused by other members states in Europe in getting data collected and submitted in their NIM has meant that the cement and lime manufacturers are operating under uncertain conditions and financial planning and budgeting has been impossible.

The second area where EU ETS has been a particular burden to operators in the UK is in relation to small emission sources. The Phase III rules mean that all small combustion sources have to be accounted for and the emissions reported from them annually. On a cement plant producing around 1mt of carbon dioxide emissions a year, spending time trying to find and report emissions from small gas canisters used in welding, that produce only a few kilograms of emissions annually, is inefficient and distracting. Operators in other member states have told MPA that they are not subject to such strict regulation, but instead their regulator takes a much more pragmatic approach. The UK approach for accounting for every small emission is particularly burdensome as it was not the method used in the benchmarking process to determine free allowance allocation and therefore, for consistency, it should not be used in reporting. The inconsistent approach taken by UK regulators in interpreting the same regulations as their EU counterparts is putting additional burden on UK operators.

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3. There is an issue of timing and phasing. The UK is often quick to implement the EU policy when other Member States wait or phase their implementation for their strategic industries to allow time for adaptation and to recognise the need for long lead times when large capital investments are necessary to modify fixed assets that may have 30-40 year renewal cycles.

A clear example of the UK enacting policy before other Member States is in relation to the Industrial Emissions Directive (IED). The Environment Agency (EA) anticipated IED and introduced permit improvement conditions required to meet expected limits before the full details of the legislation had been developed and the BAT conclusions published. This has resulted in a situation whereby manufacturers have submitted improvement conditions to the EA at the end of 2011 and are still awaiting feedback on these in order to finalise the budget required to implement systems to meet these conditions. Had the UK waited for full sight of the requirements before requesting improvement conditions to meet IED then this delay would not have been experienced and the UK would not be implementing stricter permit conditions on UK manufacturers compared to their EU counterparts.

Where should decisions be made?

2. Considering specific examples, how might the national interest be better served if decisions:

i. currently made at EU level were instead made at a national, regional or international level? (What measures, if any, would be needed in the absence of EU legislation?)

EU decision making on climate change policy is fundamentally flawed. Global warming is a global issue and only with global effort will the anthropogenic influence on global warming be mitigated. The EU and the UK have isolated themselves with national and regional policies on climate change, energy efficiency and renewables. All of these require global action and increased effort is required under the UNFCCC programme to find a robust and globally harmonised solution to GHG emissions.

ii. currently made at another level were instead made at EU level?

Reducing the UK ability to further burden UK business by giving the EU greater power in this area could be of great benefit to UK energy intensive industries. However, it is likely that this could come with its own disadvantages as has been seen with the uncertainty in allowance allocations in Phase III EU ETS.

Internal market and economic growth

3. To what extent do you consider EU environmental standards necessary for the proper functioning of the internal market?

CEMBUREAU (the European Cement Association) has measured the increase of EU Environmental legislation between 1990 and 2011. The rise in EU environmental law has rocketed from 19 to 643 instruments. Some of this legislation is necessary for the correct functioning of the internal market because they partially level the playing field for some industrial production activities and therefore allow for minimum standards of environmental protection to be maintained during the production of internally produced goods. However, product standardisation and design standards are probably more important to the functioning of the internal market than environmental protection legislation.

4. To what extent does EU legislation on the environment and climate change provide the right balance between protecting the environment and the wider UK economic interest?

Too often environmental and climate change legislation is set and enacted in isolation of industrial and economic strategy. Environmental legislative impact assessments are narrowly focused and often do not take into account the cumulative burden of the measures on industrial sectors. EU legislation does not often take account of the environmental damage which may result from production shifting away from the EU to non-EU exporters. Furthermore, the measurement of the UK and EU's environmental and climate change impact is narrowly focused on emissions produced on territorial soils. To properly take account of the wider environment and UK economic interest, emissions accounting should take place on a consumption basis so it is not possible to meet climate change or emissions targets by exporting industry outside of the measurement area.

Current legislation

5. Considering specific examples, how far do you consider EU legislation relating to environment and climate change to be:

i. focused on outcomes (results)?

The recent proposal to backload allowances in Phase III EU ETS to the end of the phase indicates that the focus seems to be on burdening industry with cost rather than emissions reduction at least cost.

ii. based on an assessment of risk and scientific evidence?

Too often even proposals that are based on risk assessment and science are influenced by political interference in the policy making system.

Doing things differently

6. How could the EU's current competence for the environment be used more effectively? (e.g. better ways of developing proposals and/or impact assessments, greater recognition of national circumstances, alternatives to legislation for protecting/improving the environment?)

Schemes that reward rather than burden may produce better results in terms of reducing emissions. Recycling payments for emission allowances in the EU ETS back to business for the sole purpose of investing in emissions reductions would help industries achieve the targets set.

Annex I shows the cumulative burden that the cement sector faces from the large number of environment and climate change policies.

7. How far do you think the UK might benefit from the EU taking:

i. More action on the environment/climate change?

More action doesn't need to mean more legislation it could mean less. The EU could seek to rationalise some legislation and in addition seek to ensure that existing legislation is implemented consistently. A more consistent approach taken across Europe that prevents UK business being at a competitive

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disadvantage could benefit the UK economy. However, it could disadvantage the UK if the UK takes a stricter approach to implementation compared to that taken elsewhere.

ii. Less action on the environment/climate change?

Less action at EU level could advantage UK operators if UK measures are more efficiently targeted than broad EU measures. The advantage of the EU taking less action and in turn the UK taking more efficient and targeted action is that MPA has good working relationship with many Government departments. This could result in closer cooperation between MPA and Government to achieve high environmental performance, reductions in emissions and with less cost burden on industry, all of which could be of great benefit to the UK economy.

8. Are there any alternative approaches the UK could take to the way it implements EU Directives on the environment and climate change?

The UK needs to take a pragmatic approach to the implementation of EU Directives. Some flexibility is required to ensure operators are not unduly penalised. The feeling by UK operators is that the UK implements every Directive to the letter of the law (and sometimes more stringently). Evidence suggests that other countries seem to take a more 'industry friendly approach' in both the timetable for implementation and the interpretation of conditions.

9. a. What advantages or disadvantages might there be in the EU having a greater or lesser role in negotiating and entering into agreements internationally or with third countries?

In international climate change policy, the current arrangement, with the EU negotiating en-bloc following an agreed position with member states, is the correct approach.

b. How important is it for the UK to be part of "Team EU" at the UNFCCC?

It is very important that the UK is part of 'Team EU' at the UNFCCC. This is the best way to ensure that the UK has a say in these negotiations and that UK business is not disadvantaged and it makes the EU negotiating position stronger because the UK is involved.

Future challenges and opportunities

10. a. What future challenges or opportunities might we face on environmental protection and climate change?

The challenge for the future is to reconcile the gap between the stringent cumulative legislation of production processes to provide balance and recognition for the benefits that the products give to society. In particular attention is required to climate change adaptation as well as climate change mitigation. It will be important that the UK has industries such as cement and lime as they produce essential materials required for building energy efficient homes, schools, hospitals and offices that will be able to withstand future extremes in temperature and weather. They are also key to building low carbon infrastructure such as wind turbines and nuclear power stations. Burdening these industries with too many costs today will not secure their presence to supply the UK market and assist in transition to a low carbon economy.

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b. Going forward what do you see as the right balance between actions taken at international, EU, UK, and industry level to address these challenges and opportunities?

The right balance should be constructed so that international and global issues are dealt with at that level and that only regional and issues of harmonisation are dealt with at EU level. Where local action is necessary the UK should develop its own measures. It is recommended that the Government undertake a review of UK legislation to establish whether these aims are best placed at UK, regional or global level.

c. What would be the costs and benefits to the UK of addressing these future challenges at an EU level?

The benefit of the UK addressing any future challenges at an EU level is that it may prevent the UK Government from gold plating existing legislation and further burdening industrial sectors with even more cost and regulation.

However, problems with harmonising at the EU level have already been found to increase uncertainty for UK operators (e.g. the unknown allowance allocation for operators in Phase III EU ETS) because it is difficult to make all EU member states work at the same timescales.

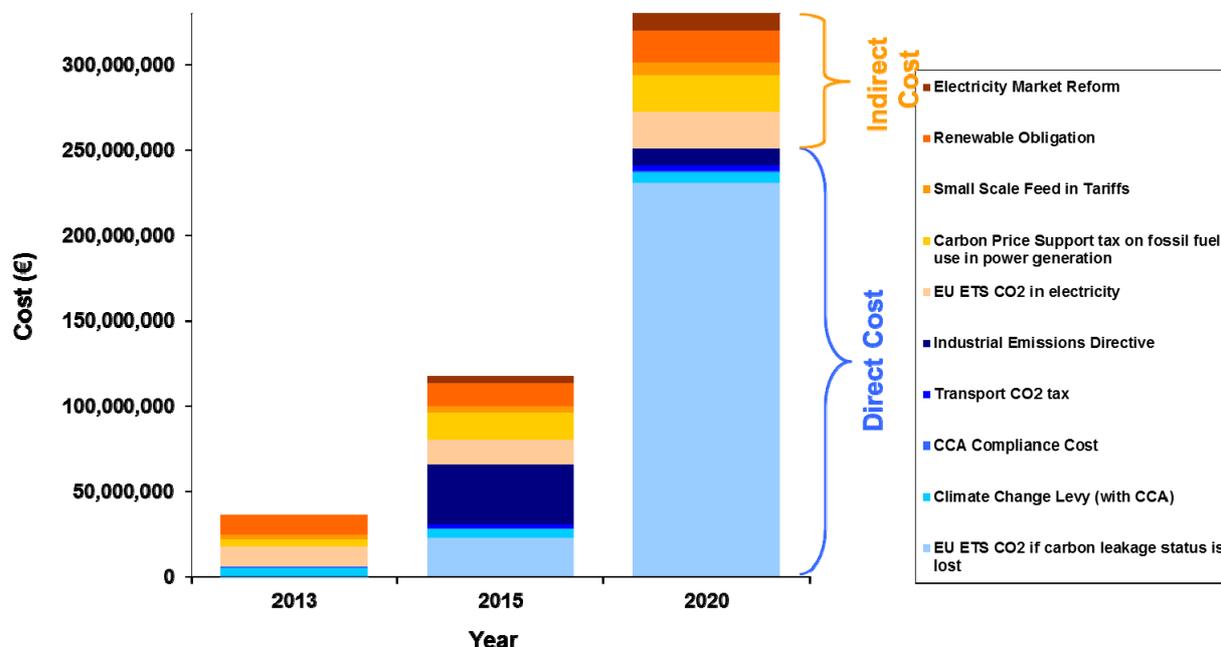
Anything else?

11. Are there any general points you wish to make which are not captured in any of the questions above?

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Annex I

Cumulative Burden of Policies on Portland Cement Manufacture



TOTAL COSTS

		All cost is in €		
		2013	2015	2020
TOTAL INDIRECT COSTS	€m	30.70	51.94	83.47
TOTAL DIRECT COSTS	€m	4.59	65.60	251.01
TOTAL COSTS	€m	35.28	117.54	334.47

Summary of the Main Assumptions

	2013	2015	2020
Carbon Price (DECC) (€)	18.5	22.0	33.2
Level of Auctioning if carbon leakage status is lost (%)	0%	15%	100%
Assumed Production of Cement	10,000,000	10,000,000	10,000,000
Electricity Use (kWh)	1,090,436,171	1,090,436,171	1,090,436,171
Annual CCL inflation	2.5	2.5	2.5
Transport CO ₂ tax	18.5	22	33.2
Transport Efficiency (improvement on 2011)	0.00%	2.50%	5.00%
Exchange rate (DECC) 1GBP = €	1.16	1.16	1.16

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Annex II

Trend of 100% Biomass Fuel Use and Part Biomass Fuel Use.

