

## “ESOS” energy audits: an update



The EU Energy Efficiency Directive requires Member States to introduce requirements for “large undertakings” to carry out an energy audit to identify ways to reduce energy consumption. Here in the UK, it has been implemented through the Energy Savings Opportunity Scheme Regulations 2014 – “ESOS”.

The original compliance deadline was 5 December 2015 but this was extended by the Environment Agency to 29 January 2016. For those businesses who sought to comply by achieving ISO 50001 accreditation, the deadline for this was 30 June 2016.

The two deadlines for compliance have now passed. For those obligated businesses which have failed to carry out an energy audit or achieved ISO 50001 certification, the threat of enforcement action now looms. The EA’s most recent ESOS newsletter confirms that it has now created an ESOS Enforcement Team which has already served

a number of compliance and enforcement notices. The newsletter also confirms that the EA is investigating 1700 organisations who it believes may be within scope of ESOS but have not yet completed an energy audit.

Non-compliance is a criminal offence and can result in penalties of up to £50,000 for failure to complete an audit. Daily penalties can also be imposed which could mean total fines of up to £90,000. A “naming and shaming” approach is also being taken with details of the offending company being published online. Some sources believe that as many as 3,000 obligated businesses have failed to undertake an energy audit.

For those that have completed the audit, the focus should now be considering implementing the changes identified. Whilst there is no legal requirement to do so, the incentive is the cost savings to be achieved.

To help with this, in conjunction with the Carbon Trust, the Department of Energy and Climate Change (which has been recently replaced by the newly created Department of Business, Energy and Industrial Strategy), published guidance in January 2016. This is designed to help businesses implement the energy savings identified in their energy audits and offer insights in presenting viable business cases for the improvements.

## European operations

You may be fully aware of the ESOS thresholds (250 employees **or** turnover of €50m/balance sheet of €43m) and have already completed your audits for UK companies. Have you, however, considered any European operations? If you have any presence in another European country, for example, a branch or subsidiary, you must consider the Directive in all Member States relevant to your business.

The headache for European businesses is that the position across Europe is not coherent – different Member States have implemented different thresholds and taken different approaches, particularly when it comes to corporate groups. Some countries have yet to implement fully the energy auditing requirement.

The position for group companies varies significantly with some Member States requiring employee and turnover figures to be **aggregated** across corporate groups, **irrespective** of where the companies are based. Some require you to combine figures from companies based in that country alone.

The result of this is that no matter how small your European operation is you may have a requirement to undertake an energy audit. Failure to do so can result in fines and offences being committed in the local jurisdictions.

We can support you with assessing what you are required to do across the EU (or indeed in the UK), including the qualification criteria in relevant Member States, any exemptions that you may benefit from and the timescales for compliance.

### For further information, please contact:

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