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Practical Information for Emission Trading
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Connection between MzB (Notification to operation) and Monitoring Plan becomes more and more apparent to Operators - Update of Annual Account Data

While almost all operators in the EU are invited to submit their Notification to operation (MzB) to their authority already in December, German operators will do this only in coming January. The earlier German operators have the chance to elaborate a correct MzB for which the monitoring plan can play an essential role. This is of importance because the verifier is obliged on the verification of the emission report to check simultaneously if the information about the enterprise was drawn up in accordance with the demands of the approved monitoring plan and reports about the plant situation in a correct way. Due to the extremely detailed verification of the MzB by the national authority DEHSt, the very high risk occurs that a reduction of free allocations will be determined because certain modifications took place in the plant or its operating method changed. In order to avoid probably such unintended effects - also by means of a monitoring plan updated still in this year - Emissionshändler.com® offers advice for the very complex connections between the various reports and the monitoring plan.

Furthermore Emissionshändler.com® reports in this Emission News 12-2015 about some innovations on the annual update of an operator's account data.

Ever since the beginning of emissions trading, the annual obligation for compliance requires an emission report about the emissions of the previous year. A verified version of this report has to be presented by the operator to the German Emissions Trading Authority DEHSt until 31st March of the following year.

From the beginning of the third trading period another request showed up which is the handing over of the information about the operations (MzB) until 31st January of the following year, to be addressed to all plant operators obtaining Mistakes on the MzB may cause serious consequences. The following paragraphs describe in detail the dangers (and missed chances).

The Tasks of the Annual Emission Report are principally different from those of the MzB

The emission report requires statements about exhaust gas quantities caused by burning of fuel and - to a lower extent - the fuel emissions caused by processes. Here is only asked which of the polluting substances CO2, N2O, and PFC have left the plant in the producing year. Incidences within the plant are of no importance in this report. The handling how to determine fuel emissions is prescribed in detail in the monitoring plan where for example the accuracy of measuring instruments, emission factor of various documentary systems play an important role.

The kind of question on Information about the operations is completely different. This way of reporting is based on the methods of allocation
request for the third trading period. The former trading periods described allocation requests which were basing essentially on the emissions of the past. Now, however, the allocation requests for the third trading period are basing on the so-called allocation elements. These allocation elements can be drawn on the allocation. Experience values from modern plants are applied for this information. Now if a plant is not modernized and has a comparatively high specific CO2 exhaust for its production volume, it will be "punished" for this production method as it will only obtain so many emission rights it would have The emission rights being needed for the return until end of April of the following year will have to be acquired on the open market.

Important Questions and Consequences on Creation of the MzB

MzB is basing on the structure of allocation elements (see also Emission News 08-2013) and will have to report how large the activity rates for each of these allocation elements have been in the reporting year. Plant operators will have to submit further information to the authorities as there are:

- Did any show up in the previous year?
- kind planned for the coming year?
- Even without technical modifications - have changes in management taken place?
- Have been shut down or have been replaced by other products?
- Did of the plant take place shortly or permanently?

However, on the other hand severe consequences may occur on the allocation of free emission rights. Under certain circumstances the existing allocation notice of the DEHSt will be withdrawn and replaced by a lower one.

Allocation Reduction without technical Modification

Even if no technical modification took place, this adjustment from part of the DEHSt will be realized without explanation to the plant operator if the report about the activity rate requires this. There are threshold levels for the adjustment of the allocation for allocation elements which partially ceased their operating activities according to § 21 paragraph 2 ZuV 2020. The responsible authority cancels the decision for allocation rights of a plant
which ceases its productivity partially. The decision on allocation will be adjusted as follows:

- if the activity rate of the allocation element lowers against the beginning activity rate for 50 to 75 per cent, the allocation element will only obtain 50% of the allocated admissions;
- in case of a reduction of 75 to 90 per cent the allocation element will only obtain 25 per cent of the allocated admissions;
- and in case of a reduction of 90 per cent or more, this allocation element will not obtain any allocated admissions.

The adjustment will be applied for the following

The term initial activity rate refers to the value which has been communicated in the allocation notice for the third trading period of each allocation element. Operators who risk to get close to one of these limits are recommended Losing half of the allocation means a loss of cash money as the probably surplus emission rights could have been sold on the market.

Allocation Reduction with Technical Modification
If a technical modification takes place in a plant reducing the capacity of an allocation element for more than 10 %, this will affect the allocation if it is responsible for more than 30% of plant emissions. Also in this case the DEHSt would reduce the allocation automatically. The information about a technical modification in this or a higher frame is obligatory. In case of changes to a larger extent an information might be necessary under certain circumstances

Allocation Increase with Technical Modification
In this case the information about the technical modification But an allocation increase will not take place automatically. The operator will have to submit a special application according to § 16 of ZuV. This is a complicated procedure with an extra FMS form and an extended detection process. If the operator does not recognize his chance on an increase of his free allocation, delays will start to run which will lead to an expiry of his claims in case of non-observance.

The Monitoring Plan
The facts indicated in MzB can influence the allocation considerably. Nevertheless the description of data recovery in the FMS form is modest if this process is compared with the detailed description of data recovery for the emission report. A detailed description of data recovery in the monitoring plan may in fact be of interest for the operator. The monitoring plan should describe in detail how the operator recognizes a modification of the operating conditions, causing the necessity of authority.

The Verification and the Deadline
Now the question arises for which one of the previously stated reports a certification is necessary and when it will have to take place.

The operator will have to transmit a verified form of the emission report to the DEHSt until 31st March of the following year. A verified monitoring plan approved by the authority will have to be available for the establishment of an emission report. The monitoring plan has to be established in time in case of modifications. In
In case of an exact interpretation of the legal prescriptions, this verified and approved monitoring plan should even be presented on 1st January of the reporting year. The more important it is that the plan will have been modified and verified still in December 2015 in order to build the basis of the annual report for 2015.

An accompanying verification is not necessary for the transmission of MzB

However, this has to be realized additionally by the verifier at the latest on verification of the emission letter.

In this context it is interesting that Germany still chooses a special way for the MzB deadline as according to EU conclusion 2011/278/EU, article 24, a deadline for December is prescribed!

In other words, a deadline for 31st December is much more difficult to realize than a deadline in January. Also operators whose plant did not go through any modifications are concerned by this prescription.

Independent from this, fact German operators should consider in any case to arrange verification by the verifier on their own initiative already before transmission to DEHSt, especially if deviations from an ordinary operation process took place.

Updating of Reports

The operators will have to take care that there are dependencies between the documents which require actions in time (probably still in December!). An emission report can only be written on the basis of the monitoring plan being valid for the reporting year. This monitoring plan will be imported to FMS as a basis for the creation of the emission report. This means: if for example modifications in fuel streams this will be considered in the emission report only if the monitoring plan has been updated in time. As this would require a new verification of the monitoring plan, the time factor plays a role which means that a modification would have to be realized still in December.

The same rules would find application if modifications would have taken place in the course of the reporting year which would have led to a change of the allocating elements. The monitoring plan would have to be adjusted also in such a case because the information about the enterprise MzB will have to take place in accordance with the monitoring plan's prescriptions.

Conclusion for MzB and the Monitoring Plan

Also for the information about the enterprise the monitoring plan plays an essential role. The verifier is obliged to check simultaneously with the verification of the emission report (version) took place in accordance with the requirements of the approved monitoring plan and if it reports the plant situation correctly. In the meantime it has been found out that the DEHSt checks all statements of this context meticulously and allocation reductions will be expressed if the statements of the MzB justify this.

Emissionsändler.com® already warned in Emission News 08-2013 to issue the MzB meticulously and expertly. Again for clarification: probable reductions in allocation will be made automatically by the DEHSt. Only in Germany almost 1,800 Changes of Allocations took place.

That is why it is recommended to verify in November or beginning of December of the running year at the latest if the monitoring plan is still in conformity with the facts of the operation plant and, if necessary, updates will have to be made or caused to be made shortly. The inclusion of an experienced advisor for this verification may considerably reduce the risk to miss out something.

The Difference between Regulation 389 Article 25 (4) and 25 (1)

As already explained in detail in our previous Emission Letter 11-2015, the national Register Authorities are obliged according to article 25 (4) of Register Regulation 389 to check every three years the topicality of a register account's content. Especially the data about the plant, the person being responsible for the plant, the account holder and the authorized persons for the register account are verified here.
This verification of a national Register Authority must not be mixed up with the obligatory testing of a plant operator according to article 25 (1) of Register Regulation 389 which means that the operator has to confirm within one year until 31st December that information referring to the account is still complete, updated, correct, and exact.

Subsequently the authority's request for an update does not only mean the modification and updating of card number, date of expiry, (see graphic below) or the update of phone numbers, e-mail address (attention: may deviate from private e-mail address!) and addresses under menu item "account representative".

But principally also and above all the completeness of any information is concerned which can be called up by constantly advanced searches on the part of the register authority and which does not keep automatically its completeness.

**The Completeness of Account Details has to be ensured every Year**

Authorised persons who conduct transactions in their register account several times a year know already that the register software's appearance may New panels may appear which must be completed respectively the account holder.

This means in practice that the account holder has to be prepared every year between 1st October and 31st December for new information which might be called up from the register account, either because of a regulatory update of the EU or because of curiosity of national authorities. The holder might be obliged to surrender these data.

Many system operators were unaware in October 2014 that according to Regulation 389 attachment VI-I number 6 the plant's activity type was supposed to be updated respectively to be selected, to be found under menu item “plant” and "information about the plant".

Principally a difference is made between any possible information of a register account if **obligatory** or an **optional** information is concerned which means either mandatory disclosures or voluntary information.

In many cases the account holder may not recognize in his register account which information is obligatory and which one optional. He can only find it out by studying thoroughly.

As far as account information is obligatory, it has to be kept updated. If the account holder abstains from his duty, an account lockout may be the consequence in case of "non-updating". As recently presented by the law office BBH Becker, Büttner Held elaborated in the frame of a legal opinion, a number of obligations like this one exists in connection with the account management which might lead to a lockout of the register account respectively a lockout of account representatives (see also presentation on page 3 about account lockouts). As a consequence this may penalty obligation which would affect the enterprise considerably.

**The Presently Most Common or Incorrectly Specified Information of Account Holders**

Beside the information about "activity type of the plant" being an obligatory information for all plant account holders, many more data fields can be found at present. They should/could be completed obligatory or optionally but are not.

The menu item "plant", "information about the plant" data fields can be found where the account holder details This is an and consequently information which serves the register authority's thirst for knowledge (see also the following picture).
However, the question for EPRTR identification number should be taken this one is obligatory and has to be answered in any case if the plant disposes of such a number which means that it is integrated into the corresponding legal compulsory registration of the European Pollutant Release and Transfer Register.

The PRTR addresses itself to plants which perform one or several activities (PRTR activities) in accordance with attachment I of Register 166/2006. Generally big and medium-sized enterprises of the following branches are concerned - among others

- Energy sector
- Metal production and processing
- Mineral processing industry
- Chemical industry
- Waste management and waste water services
- Processing and handling of paper and wood
- Intensive and aquaculture
- Animal and herbal products from the food and beverages sector
- Other industrial branches (among others textile industry, tanneries, surface treatment, electro graphite, wharfs)

Plant operators with a register account who accordingly dispose of such an EPRTR identification number since 2007 or later otherwise an account lockout might happen in case of a "non-updating" (see picture below)

Survey of possible reasons for an account lockout ©Becker Büttner Held

**Data Fields beyond Validity of Regulation 389**

An innovation in 2015 is the introduction of a selection field for the language. This selection field "language preferred" can be found under menu item "statements on the account", "account holder". It obviously aims to find out in which language the national authority is supposed to communicate with the account holder.

Strangely, this query does not show up in former attachments III-VIII of Regulation 389 which

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### Infobox

**- Less Free Certificates instead of more Certificates**

Still in October 2015, the Federal Environment Minister **Barbara Hendricks** surprised industrial plants finding themselves in mandatory emissions trading with probable easements for the free allocation. At first it seemed as if the reforms planned for emissions trading would mean a higher financial burden for system operators than before. In the meantime a change of view seems to have taken place as a sufficient equipment of emission certificates is admitted.

Ms Hendricks is cited as saying that it "would be senseless to oust enterprises from Europe who will then transfer their production and emissions in other world areas". And further: "The climate would not take any benefit, the carbon emissions might even increase because less ambitious rules may find application elsewhere". She furthermore is cited with the words that the economy branches concerned may rely upon the fact that "we will do anything possible to...

If these statements of the Federal Environment Minister were considered as surprising in October, the operators are overtaken by reality in the meantime, but from an entirely different side.

In the running process for the reduction factor across sectors the Advocate General **Juliane Kokott** from the European Court of Justice suddenly stipulates that this factor is too low! Originally the complaints of various European operators from the industrial sector were concerned. The operators had been hoping for a higher allocation. In the meantime, however, the chances had not only decreased but the Advocate General decided to increase the reduction factor which meant to leave less free certificates at the operators' disposal because the European Commission is supposed having made a miscalculation in the past (in favour of the operators!). According to her plans a correction shall take place after approximately one year which in fact should avoid a physical return of the surplus of certificates but is supposed to rectify this "fault" in any case still within the running period.

This will certainly not amuse those system operators in Germany

In this context it is important to know that lawyers of the European Court of Justice often follow the legal interpretation of the General Advocacy. In any case we will know more in spring 2016 when the final decision will be made in court.
Confirmation of Account Data in the Union Register

The way to confirm official statements to each register authority is different in EU countries. Germany transmits the data by means of the virtual Post Office VPS where plant operators have to send their confirmation. Owners of person accounts and merchant accounts can do this by normal post. The verification has to take place always between 1st October and end of December and has to be sent until 31st December. In any case it has to be confirmed that all statements/data of the register account are complete, updated, correct and exact.

All open register accounts of the plant operator will have to be listed in the report which means not only EU-100-accounts but also possibly still existing personal accounts of the enterprise are concerned by this prescription. A report on is not necessary.

Principally the is responsible for the report and not any authorized person. That is why the report has to be signed and sent via VPS by the or accounts need to be signed handwritten. Care has to be taken that the name is legible, otherwise it has to be written again in block letters.

Various ways are possible to send the confirmation. The account holder can do this formless in a letter (considering all required data mentioned above) or he uses a form letter of his register authority according to the

**Subject: Confirmation of Account Statements for our following register accounts**

Account n°:

Dear Madam, dear Sir,

We realized...........................................................................

Place, Date Signature Account Holder or authorized VPS representative

In any case it is very helpful to update first all statements and confirm them afterwards to the authorities in an official letter. It does not leave the best impression if days after despatch of the confirmation letter to the authorities, modifications show up in the register account. Not only the account holder and the authorities would receive a confirmation mail from the EU register system but also the authority itself.

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Kind emission regards

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