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The present issue is only partial readable, as it remains free of charge.

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Emission News 02-2016

Practical Information for Emission Trading

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The Predictability of EUA Volatility at the Beginning of a Year - Emissions Limits in Construction Plans Threaten Systemerators

Since many years, January and February use to be the months where potential gamblers make a lot of money in the EUA market, systematically and in a big style. This way of action which can be observed for 6 years already since 2011 - with one (half) exception in 2015 - could mean a chance for ordinary market participants like system operators but can also mean a high risk if the participation in the trade started at the wrong moment. Price fluctuations at an average of 33.2% having been observed in the years 2012-2016 took place exclusively in January/February. A clear explanation of this fact is that the high surplus of up to 2.4 billion EU-ETA certificates is laying to a big extent in the hands of professional gamblers who either push the price upwards or downwards. How this development took place and continues in January 2016 is explained in the **Emission News 02-2016** of Emissionshändler.com®.

We furthermore add a guest column of Attorney Dr. Marc Rutloff. He reports about an expanding method to fix emissions restrictions in construction plans. These restrictions may include a sudden reduction of the acting radius of local system operators.

Price Analyses of 2015 seems to be Outdated

Price analyses seem to be an uncertain thing. Sometimes they appear at the wrong time and prove to be nearly worthless afterwards. This seems

to be the case with the "Carbon Market Monitor" having been edited by Point Carbon. This analysis is available for market participants since mid-January 2016. The analysis explains that CO2 certificates had been the markets' unchallenged champion in 2015 because these presented a price increase of 33.2% per cent in the course of 2015, contrarily to oil and electricity which entailed a price decrease of 10%.

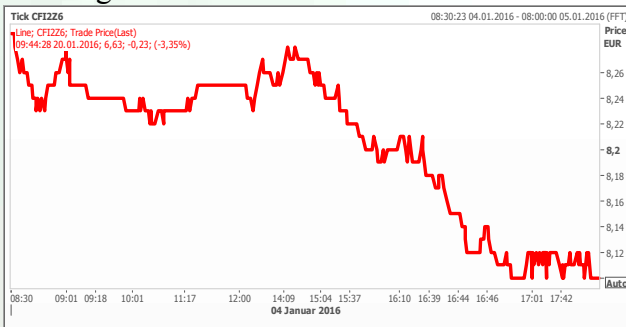
The outstanding role of CO2 certificates will have to be reconsidered completely as soon as it is seen that its price decreased for more than 30% within 17 trading days so far in 2016. Consequently an 33.2% price increase in 2015 actually changes to a reduction of 10% in retrospect if we compare the price of beginning 2015 amounting to 7.23 Euro/t with the latest low price of 5.87 Euro/t on 21st January, 2016.

In the meantime certain doubts will occur after the Point Carbon Analysis. Can we continue counting on increasing EUA prices after the occurrences of the last weeks in January, 2016? This especially because the number of certificates to be auctioned being withheld from the market due to back-loading goes on shrinking. When 400 million EUA had been withheld in 2014, only 300 million were withheld in 2015. These will once again be reduced to 200 million in 2016. It means that the reduction of auction lots will lead to constant yearly emissions and surpluses in the EU-ETS.



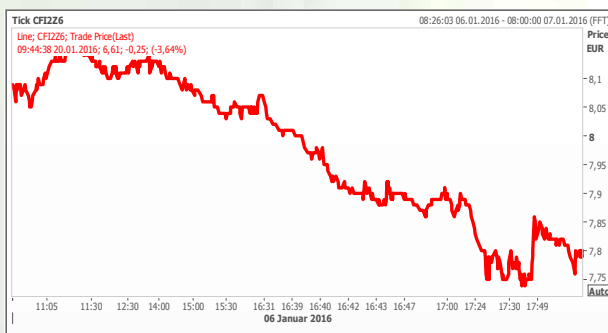
Expectation and Reality

In the opinion of nearly all market participants in December 2015, the EUA price was supposed to remain the same or increase within the coming weeks and months. This especially because of the *Week in Europe Engineering of January, 2016* and the upcoming time of the system operators' Compliance Purchases for April 2016. Certainly one or another operator decided to hold back many certificates, facing the prosperous profit year 2015, thus lodging expenditure in his balance sheet. Promptly with the beginning of 2016, however, the gambling game began as it did in previous years since 2011. The first trading day of the year started with a smaller price reduction of DEC 16, decreasing from 8.29 to 8.10.



January 4, 2016, beginning price reduction from 8.29 Euro/t to 8.10 Euro/t

The next day presented a decrease to 8.03 only but the price reduction speeded up and finished



January 6, 2016, a further price slide down to 7.75 Euro/t

After more price drops, a value of 7.42 Euro/t was reached on *January 7*, followed by 7.33 Euro/t on January 11, and the limit fell below 7 Euro on *January 13*. The price dropped to 6.80 this day which meant a minus of already 20.1% compared with the final 2015 price of 8.29 Euro/t. The complete price gain of the previous year was eliminated and even fell below *percentage points*.

After a 3 days breathing space the racy descent continued on *January 16*, 2016, ending low at a price of 5.87 Euro/t on January 21, 2016, at 3 pm. If we look at the DEC16 price history over a whole year, the massive and notably fast price decline can be seen clearly.

As a result we can summarize that the EUA had not won 11% within 13 months but lost 19%, this because it was laying close to 7.23 Euro/t beginning of 2015. The loss itself, however, came up within 17 trading days only, hence very quickly.



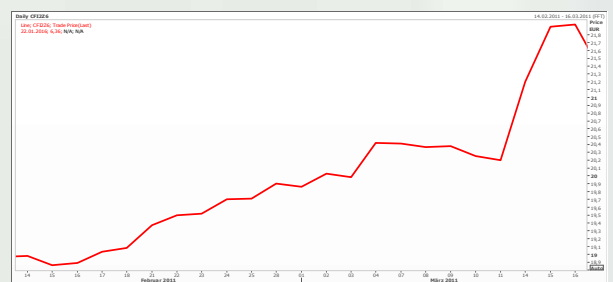
A price drop of 19% within less than 13 months

The Annual "New Year's Gambling" is subject to a System

The DEC16 has been quoted since August 2010 and every year until today we observe extraordinary volatilities at the beginning of a year which obviously are conducted by potential market participants. If we verify systematically the first two months of the previous years, we are surprised *to recognize a system which* nearly proves that a price increase or a drop in prices is pursued by the purchase or sale of large certificates' volumes.

The Year 2011

These kinds of considerable price modifications began in February, 2011. A relatively *increase of 14%* had been noted as a price rise of 3.07 Euro/t within 22 trading days. This had been the only exception in so far as the price jump did not end in February but only on *February 14, 2011*.



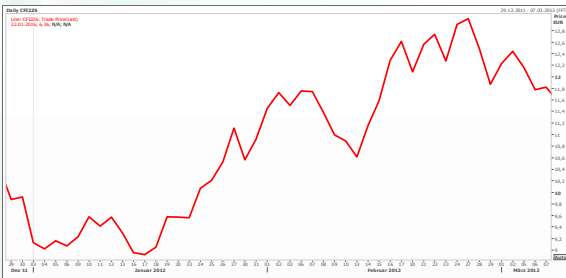
A price increase of 14% in *February 2011* within 22 trading days



The Year 2012

The changes showed up much more obvious already in the following year 2012.

A shopping rally started on January 13, 2012, which produced a price increase from 8.92 Euro/t to 11.50 Euro/t during the coming 30 trading days, that is 2.58 Euro/t. This means an increase of fabulous 31.5% within this time period respectively 1.05 percentage points per day.

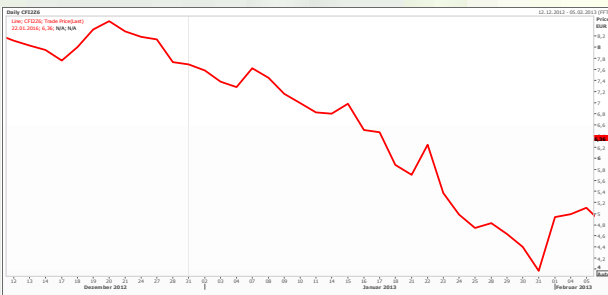


A price increase of 31.5% within 30 trading days in January/February 2012

The Year 2013

In 2013, parts of the EUA purchased beginning of 2012 might have been brought in the market massively which consequently lead to another price direction.

The drop in prices started carefully already at the end of December 2012 before it grew considerably at the beginning of 2013 and reached its lowest point with 5.42 Euro/t on January 31, 2013. This corresponds to a decrease of 4.50 Euro/t or a percentage of fabulous 53.9%. The price drop spread on 28 trading days, thus producing a decrease of 1.925 percentage points per day.

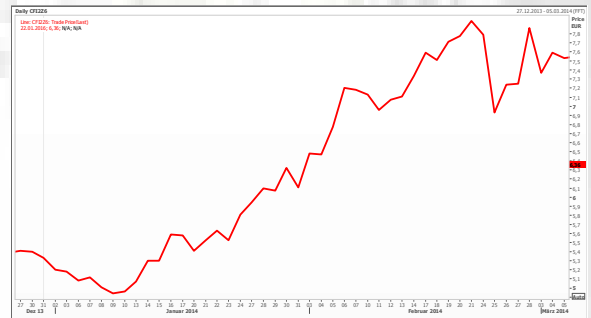


A price drop of 53.9% within 28 trading days from end of December, 2012, until January 31, 2013

The Year 2014

According to Emissionshändler.com's assumption, the game started anew in the year 2014. Again the purchase of EUA began on a large scale which could almost be recognised as a repeating pattern to 2012.

Massive purchases took place at the market beginning on January 9, 2014. The following 32 trading days until February 21 again showed an increase of 3 Euro/t. The EUA price of DEC16 rose from 4.94 Euro/t to 7.94 Euro/t which meant an increase of 37.8% or 1.18 percentage points per day.

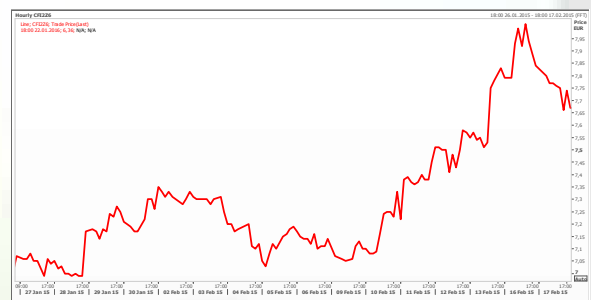


A price increase of 37.8% within 32 trading days in January/February 2014

The Year 2015

The year 2015 seems to deviate a little bit from the rule as the change in price amounted to 1.18% in January and February.

Starting from January 25, 2015, the price increased to 7.12 Euro/t within the coming 14 trading days until February 16, which corresponds to a change of 0.18 Euro/t or 2.54 percentage points per day.



A price increase of 2.54% within 14 trading days in January/February 2015

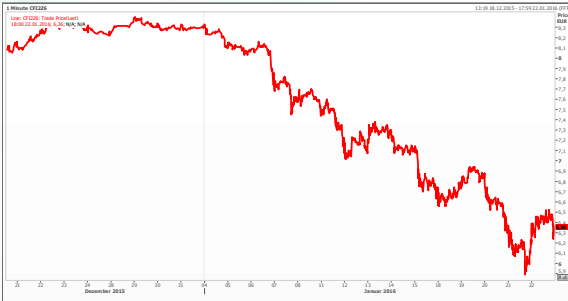
The Year 2016

We may assume that the EUA purchased in 2014 and 2015 had been pressed massively in the market again which lead to a faster and faster price slump. The drop in prices started promptly this time at the first trading day on January 4, 2016 and ended (for the time being) on January 22, 2016 at a low level of 5.87 Euro/t

The lowest level of 5.87 expresses a reduction of 2.52 Euro/t or a percentage of fabulous 30.1%. The price drop spread to 17



trading days (until now) which means a reduction of 1.77 percentage points per day.



A price decrease of 30.1% within 17 trading days from January 4, 2016, until January 22, 2016

As according to the opinion of Emissionshändler.com® the present year's gamblers' circle has not yet finished after 17 trading days only and the average price change factor of 33.2% (see the following chapter) has not been achieved yet, we may assume that the days in January and beginning February will probably be tested.

Volatility Survey of the Beginning Year and Conclusion

The scheme of the annually strong price modifications in January/February becomes quite obvious if we look at the concluding survey below.

Time Period Jan/Feb	Number of Trading Days	Price Modification in %	Daily Price Modification in %
2011*	22	+ 14.0	0.64
2012	30	+ 31.5	1.05
2013**	28	- 53.9	1.93
2014	32	+ 37.8	1.18
2015	14	+ 12.7	0.90
2016	17	- 30.1	1.70
Ø	23.8	33.2	1.23

* Price increase ending only in March

** Drop in prices already starting in December

It becomes recognisable that independent from the "usual" strong price modifications resulting most the time from politically assigned incidents/messages in the course of a year, the changes take place only in January/February - except two restrictions (*). The price fluctuation from the lowest to the highest and from the highest to the lowest price point usually takes place within 23.8 trading days including an average change in price

of 33.20%. Every trading day may produce very different price increases or decreases varying between 0.64% and 1.93%. Basing a price forecast for the period January/February 2017 on the above survey, we could imagine a price increase of 33.2% beginning in January 2017 and presumably producing a price of 11.77 Euro/t within 23.8 trading days. The background of this calculation should be the proceeds having been achieved by the according potential gamblers. Parts of the proceeds are destined for net investments in order to buy EUA which will be waiting to be sold again in y18. In any case a normal system operator will become aware that unnecessary EUA purchases in November/December may produce unpleasant surprises in the following months while purchases at a price of approximately 6 Euro/t will not mean a wrong decision. Other operators participating actively in the market with their speculations may find out now at the latest that emissions trading with its volatilities includes high risks, especially if the speculations take place on their own account.

Below an article from Marc Ruttloff, Attorney Partner by Gleiss Lutz Friedrichstraße 71, 10117 Berlin, Mail: marc.ruttloff@gleisslutz.com

Zoning Planning versus Emission Trading Law Allocation of Air Pollution Rights to stationary Operators?

It is a common practice in many towns and communities to fix emission limits in building plans. System operators often see themselves exposed to various emission limitations when zoning permit laws require other emissions limitations than the real installation permit and the corresponding prescriptions of the pollution control and emissions trading law. Recently the administrative court of Baden-Wurttemberg was obliged to face such a constellation. It made clear that building plans are not allowed to express demands to systems and their operators which exceed the obligations of the green gas Emissions Trading Act.

Emissions Restrictions in Zoning Plans

More and more emissions restrictions have been fixed within the last years, especially for industrial plants. The background is that conflicts in usage rights cannot always be solved by determination of the zoning law which prescribes a spatial separation of the according kinds of usage. In



individual cases many reasons may oppose against a spatial separation as there are soil protection, landscape structure or territorial borders. In order to overcome pollution conflicts, the area development planning can, beside a spatial separation, also impose a quota for emissions (of each emitting plant) or pollutions (at the place of affection). § 9 article 1 n° 24 of the federal building code (BauGB) expressly authorizes 'to take steps for the protection against harmful environmental impacts and other dangers as well as for further structural and technical steps for the protection respectively avoidance or reduction of such impacts'. The installation of filters to be fixed in building plans, for example, can be considered as a technical precaution, thus limiting indirectly the emissions.

Basing on paragraph 9 article 1 n° 23 lit. a of the federal building code BauGB, communities can designate areas where certain air contaminating substances may not be employed or only to a limited extent in order to avoid harmful environmental effects in the sense of the Federal Pollution Control Act (BImSchG). In connexion with the decisions on the concrete ways how to use a building area, the ban on respectively restriction of the employment of certain substances, as there are heating or fuel residues, can delimit the maximum ecological damage of an area.

Background of and Reason for the Litigation

By its judgement of 29th July, 2015, (file reference 3 S 2492/13) the administrative Court of Baden-Württemberg recently dealt with a second possibility for product allocation. Subject of this litigation was the contradiction against a zoning plan with according product allocations in the frame of legal review proceedings. The appeal was lodged by a woman conducting a quarry for exploitation of coquina stone and the owner of a plot of land with an asphalt mixing plant. According to the plan justification the target was to settle the material mixture in the quarry area, to mitigate disagreements, and to show up development perspectives. The textual part defined amongst other subjects that the scope of the building plan may permit "the employment of fossil energy sources in combustion plants with a nominal heat output of more than 1 MW only if the specific CO₂ emissions will not exceed a value of

0,08 t CO₂/fiscal year". The plant operators concerned contradicted this decision in their appeals.

Infobox

In January 2016: Eventual Update Monitoring Plan, Creation of the Message for Operation and annual Report 2015

According to the relevant EU laws and the national implementation of these laws is the requirement to submit the MzB for any operator of a facility which free allocation in the 3rd trading period 2013-2020 and operate a facility subject to emissions trading.

This obligation also exists in principle, if there is no change in the operation was found and also when no CO₂ was emitted. This release includes all the operating allocation elements and their activity rates in the past and future as well as any technical changes to system components or the operation of the plant or individual system parts. The MzB must be create in a software management system provided for this purpose (FMS) by each operator and to 31.01. leave a year for the previous year (§§ 19 - 22ZuV2020). In the case of incorrect, not consistent or not timely fill out the FMS form a reduction of the allocated free emission rights is possible: a so-called ex-post-correction. An ex-post-correction can be made even if the capacity of the plant has been reduced.

Even then, at first created in the summer of 2014, it made sense for many operators to transfer the tasks of creating the MzB to an external consultant in order not to be subject to involuntary allotment reduction or to miss the chance of an allocation increase.

To request a quotation or further inquiries, interested operator contact as possible in January Emissionshändler.com® under +49 (30)398872110.

No Authorization for Emission Restriction in Zoning Plans

The court considered the textual agreement as illegal. On one hand the textual part was not covered by the legal basis of paragraph 9 article 1 n° 23 lit. of the federal building code BauGB. The prescription entitles to fix areas where certain air polluting materials were not allowed to be employed or to be employed only with restrictions. The woman conducting the quarry never agreed with such a regulation because its textual part included no restrictions on certain fuels. Neither certain kinds of fuels were listed nor was the regulation tied on unchangeable characteristics of certain fuels. The regulatory content of the prescription rather affected results of fuel consumptions after concrete combustion processes in concrete plants. Thus the textual agreement had to be considered as direct agreement of plant-



specific emission values or pollution limits for which neither § 9 article 1 n° 23 a) nor other prescriptions of the federal building code BauGB offer a legal basis. As the definable content of a building plan in connexion with the Land Use Ordinance has finally been settled in § 9 of the federal building code, the community was not entitled to settle accreditations going beyond § 9 federal building code BauGB and the Land Use Ordinance *BauNVO*.

Concluding Character of the Immission Control Law and the Emissions Trading Law

The court based its decision also on the finalizing character and the blocking effect of the Immission control law and the emissions trading law. Especially article 2 of paragraph 5 of the Federal Pollution Control Act (BImSchG) only requires specific conditions for running plants being subject to authorization for the restriction of their greenhouse gas emission in order to ensure that no harmful environmental effects may arise nearby the plant's surrounding areas. This means as a supplementary regulation that beside the duties for the greenhouse gas emission trading law, no further conditions were allowed to be imposed on the plant for CO₂ emissions arising from combustion or other processes. This Emissions Trading Law's priority is generally accepted for the immission authorities' responsibilities which include approval and supervision of emitting plants.

These restrictions will have to be applied above all for the construction planning division. No greater latitude may be released for the approval of building development plans. The point of contact being responsible for the building and planning law, that is to say cities and communities, are in this respect subject to the same restrictions as the immission protection authorities. If even immission protection authorities are not allowed to claim stricter requirements for plants than those being employed in accordance with the greenhouse gas Emissions Trading Act, the same rule will have to be applied for cities and communities - even if these refer to urban planning reasons.

Conclusion

The people's Court VGH

§ 9 article 1 n° 23 a) of the Building Code BauGB. The emissions trading scheme and the immission control law provide a closed system for emission limitation. Stricter requirements than the duties according to the greenhouse gas Emissions Trading Act are ~~not possible~~. Paragraph 9 article 1 n° 23 a) of the Building Code BauGB allows

So the building and planning law only treats material related rules, ~~no~~ operation related arrangements for emissions. Thus the decision contains ~~no~~ for plant operators. Especially an aggravation of emission restricting requirements ~~through the building and planning law~~ of the building and planning law will not happen. At the same time a regulatory fragmentation will be ~~avoided~~ could take place if every city or community was authorized to set ~~its own~~ emission restriction rules above their construction plans.

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Kind emission regards - Michael Kroehnert

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