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Emission News 05-2016

Practical Information for Emission Trading

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Art. 35₍₂₎ of Reg. 389 Being massively disrespected by DE-Operators – EU Publishes CO2-Emissions and points out Law Violations

The VET entry per 31st March, meaning the annual reporting of previous year's emissions to the EU, rigorously went wrong for 63 stationary German operators as well as for 10 airlines being registered in Germany. Moreover, their register accounts have been blocked for the moment as Doctor Schütz, the register account's line manager of the German Emissions Trading Authority DEHSt confirmed towards Emissionshändler.com® on 4th April, 2016.* According to article 35 (2) of the EU Register regulation 389/2013, the emissions of the previous year have to be reported to the EU register by means of a so-called VET entry until end of March, enabling the EU to obtain a complete overview of all emissions of all EU operators, thus achieving the position to make internal calculations and controls.

The [list of verified emissions](#) having been published 1st April 2016 at noon now exposes surprising insight in how far also German enterprises failed to obey this deadline dictated by the law.

Discovering who disobeyed the deadline became possible because the EU register identifies all emission values that have not been registered in time. On this way enterprise data can be recognized. If the data are double checked in the [EU-Registry](#) by means of the “permit number”, the violations are shown there, too, and the most relevant data of the enterprise (including possib-

le infringements of previous years) are completely recognisable. Emissionshändler.com® describes in this present [Emission News 05-2016](#) which branches and which enterprises – even with a fine-sounding name – obviously disobeyed this legal requirement according to the indicated lists of the EU and of what approximate emission amounts we are talking about. We are basing our report on the correctness of EU statements as per 1st April 2016, probable mistakes from part of the EU organs on elaboration of the list could not be verified, neither could the question if enterprises listed completed the VET entry within the following days or in the further course.

* *Emissionshändler.com® itself can naturally not verify if an account closure really took place and thus makes this statement with reservation.*

What is the Subject of the VET Entry?

The VET (Verified Emission Table) entry is the notification of a system operator's emission data per 31st March from the previous year. A difference is made (in simplified terms) between total volumes of CO₂, total volumes of NO₂, and total volumes of PFC, being all together integrated into the EU statistics as CO₂ total volumes per 31st March. The **VET Entry** is a legal obligation which must not be mixed up with the **emissions reporting**, the **verified emission report** by an accredited verification body and the **submission of the report by VPS** (in Germany).



The VET entry in this sense is an additional duty. Article 35 (2) of EU Register regulation 389/2013 states in this case:

➤ *“The national administrator, the responsible authority or – by decision of the responsible authority – the account holder or the verification body enter all emission data of the previous year as per 31st March.*

The German law provides that either the system operator performs the VET entry together with a verifier or the entry will be carried out by the operator's testing organisation together with two verifiers. However, the account holder is finally the one who bears the responsibility for the entry, even if the verifier should have forgotten it. After all the account holder exclusively is in charge of the correct register account management. If this VET entry is not realized in time, article 36 (1) of the EU Register regulation 389/2013 will be applied and the corresponding register account will be blocked for transactions of a certain kind in the night of 1st April.

Article 36

Blocking of accounts due to a failure to submit verified emissions

1. If, on 1 April of each year, the annual verified emissions of an installation or aircraft operator for the preceding year have not been recorded in the Union Registry, the central administrator shall ensure that the Union Registry sets the corresponding operator holding account or aircraft operator holding account to a blocked status.

As soon as the VET entry has been made, the EU will switch back the register account to the status “open”, this in accordance with article 36 (2).

Furthermore it is conceivable (according to an assumption of Emissionshändler.com®) that a VET entry not having been carried out or not having been made for a longer time by the national authority could be considered as a violation of the conditions and modalities of the account management (article 34 (2c) of regulation VO) which – in case – would also lead to a longer account lockout. All further consequences of a VET entry not being realized are listed in the chapter **Consequences of such Contraventions** which indeed could be unpleasant for system operators (always basing on the EU list of verified quantities having been published on 1st April 2016).

How Can a Violation of Art. 35(2) 389/ EU be Recognized (VET data not transmitted in time)

All relevant compliance data of all EU stationary

operators and EU aircraft operators can be seen in the public part of the EU register.

A VET entry not made in time shows up in the EU Register (not really easy to handle) by presenting a little star in the column Compliance Code beside the Compliance letter (most the time an A) which is explained with “Verified Emissions entered/updated after deadline of EU ETS Phase Year”.

If a letter B or C shows up, it means according to the EU register's definition that a belated or an insufficiently submission (of emission certificates) took place which entails a sanction of 100 Euro/t CO2.

The following graphic shows per 4th April 2016 under the link one of the ArcelorMittal plants in Germany, which not only violated the Compliance Rules for 2015 as per 31st March 2016, but also for the years 2005, 2006, and 2014, which means four times in total within 11 years of European emissions trading.

Installation ID	Installation Name	Permit ID	Permit Entry Date	Permit Expiry/Revocation Date	Subsidiary Company	Parent Company
44	Stahlwerk Duisburg	14220-0007	2005-01-01		-	-

Address Information							
Main Address Line	Secondary Address Line	Postal Code	City	Country	Latitude	Longitude	24-Prod
Vohwinkeistr. 107		47137	Duisburg	DE			

Contact Information							
Name	Main Address Line	Secondary Address Line	Postal Code				
Thomas Fischer	Vohwinkeistr. 107		47137				

Compliance Information							
EU ETS Phase	Year	Allowances in Allocation	Verified Emissions	Units Surrendered	Cumulative Surrendered Units**	Cumulative Verified Emissions***	Compliance Code
2005-2007	2005	284157	264572	264572	264572	264572	A*
2005-2007	2006	289805	267586	267586	532158	532158	A*
2005-2007	2007	286981	272139	272139	804297	804297	A
2008-2012	2008	269635	257083	257083	257083	257083	A
2008-2012	2009	269635	128827	128827	385910	385910	A
2008-2012	2010	269635	248179	248179	634089	634089	A
2008-2012	2011	269635	237782	237782	871871	871871	A
2008-2012	2012	269635	237189	237189	1109060	1109060	A
2013-2020	2013	9727	243731	265000	265000	243731	A
2013-2020	2014	9558	206954	206954	471954	450685	A*
2013-2020	2015	9387					
2013-2020	2016	9214					
2013-2020	2017	9039					
2013-2020	2018	8863					
2013-2020	2019	8685					
2013-2020	2020	8506					

* Verified Emissions entered/updated after deadline of EU ETS Phase Year

Screenshot Extract from the public EU register – no entry of a **verified emissions** published for 2015 on 1st April 2016. Screenshot established on 4th April 2016.

The code for the compliance violation for 2015 as per 31st March 2016 will only be seen in May 2016, by the way, by means of a little star beside the letter. The field compliance code will remain empty in April because only in May the letter A, B, or C can be assigned according to the mandated emissions declaration for 30th April of a year.

In the present case (see screen above) the domain for verified emissions of 2015 (column heading “Verified Emissions”) is also still empty because the emissions have not been registered yet. In the course of the month of April the empty fields use to be filled up and the emissions will be registered afterwards by the belated account holders.



Additionally the EU always publishes on 1st April a [General Survey](#) Gesamtübersichtsliste of the emissions of all operators that have registered their emissions (in time). This list includes also all plants that made no entry in time and many special cases that are marked with an entry "-1". This identification mark allows experienced viewer and EU-specialist (in case he performs the cross-reference on the exceptions listed in the EU register) to find out which enterprises in which country obeyed the compliance rules and which ones did not.

What are the Consequences of these Law Violations?

Various consequences await the account holder who made his VET entry beyond the time prescribed. These consequences use to be underestimated. As soon as article 35 (2) of the Register regulation 389/2013 prescribing a VET entry until 31st March of a year is not observed, various consequences will (and may) occur.

- 1) An automatic account lockout takes place in accordance with article 36 (1) 389/2013 of Register regulation. It refers to transaction kinds being exactly defined. No more certificates can be transferred to accounts of other operators or traders, for example, and massive restrictions may happen on the occasion of transmitting entitlements per 30th April, if the VET entry will not be rectified in the course of April.
- 2) Due to the belated registration according to 35 (2) 389/2013, the account holder probably disobeyed the conditions and modalities of the account management which, according to article 34 (2c) of Register regulation, may also present a violation and could possibly be prosecuted by the national authority
- 3) Due to the belated registration according to 35 (2) 389/2013, the account holder disobeyed national laws in several European countries and may expect a fine under these circumstances. A big law office in Berlin declared that this happened not yet in Germany.
- 4) Due to the belated registration according to 35 (2) 389/2013 the account holder often also disobeyed internal compliance rules which are supposed to ensure the observance of all significant laws and norms. This misconduct would prove that the enterprise and the employees have not respected the current law and order.
- 5) The enterprise may bear a considerable image loss as the non-observance of the above rules and laws will be made transparent and accessible by the EU. Many

violations of laws concerning the emission trading are published, also the belated declaration of emissions until 31st March.

Another consequence could be a legal dispute with the verifier who – contrarily to written conventions with the operator – failed to make a VET entry in time respectively failed to perform its confirmation.

The EU Statistic about German Enterprises Violating Article 35 (2) of Registration 389/2013

If we review the EU list containing the affirmed violations of article 35 (2) of EU Register regulation 389/2013 in **Germany** as per 1st April 2016, “these enterprises and plants of the list can be confirmed accordingly” says the line manager for the DEHSt register, Dr. Schütz,.

Attention: All following figures, data and assumptions are basing exclusively on the official [EU verification list](#) in its version of 1st April, 2016 (date of extraction) as well as on historical data of compliance behaviour of enterprises and their systems in the [EU register](#).

The figures of the missing VET entries from the EU-list:

- **63** of 2,110 plants made no VET entry in time, this is a quota of **2,9%**
- These 63 German plants belong to **24 German enterprises** who consequently violated the regulation 389
- 6 enterprises in 13 plants belong to **energy suppliers** and **municipal utilities**, a comparatively alarming result if one considers the high standards on their own compliance ability
- 3 plants belong to the **Paper industry** where exclusively roundabout 250,000 t (estimated) not registered emissions have to be assigned to the Finnish-Swedish **Stora Enso Group** (estimations basing on the previous year).
- 7 plants belong to the **ceramic and brick industry** where – considering the small and medium emission rates – “only” 50,000 t totally failed to be registered in time
- Approximately 4.3 million t of emissions (estimated amounts based on the previous year) in 18 plants have not been registered in time by German **steel, iron, and metal companies**
- 5 enterprises of the industry utilizing **steam and heating units** with a VET entry not registered in time. Well-sounding names like **BMW**,



Nestle, Jacobs and Caterpillar were found among them.

- Also the chemical industry is well represented. 5 enterprises failed to register estimated 370,000 t of emissions in time. Enterprises like **Columbian Carbon** (Adityabirla) and **Yara** produced most of the emissions. Basing on emission rates of 2014, approximately 300,000 t of emissions from both factories might have failed to be registered in time in 2015.
- Considering the fact that 2015 includes the previous year's emissions of 2014 of the 63 plants overdue, the course of April might show up **approximately 5 million** further tons of emissions for 2015 after **444,060,744 t** emissions having been registered in time by German system operators per 31st March 2016.
- **10** of 166 aircraft operators (Airlines) failed to make a VET entry in time, this complies with a rate of **6.0%**
- Additionally to **5.19 million t** of emissions declared in time per 31st March 2016 by various airlines registered at the DEHSt, further 247,000 t of emissions approximately might be registered for 2015 because these rates correspond with the previous year's emissions 2014 of the belated 10 airlines.

Individual assessment about enterprises who, according to the EU List, for their plants, violated Article 35 (2) of the EU Register Regulation –

Emissionshändler.com® does not know if the following enterprises identified by name really indeed suffered a blocking of their account or if such blocking may have been cancelled in the meantime. Date of information from the EU register about the enterprises mentioned below is 3rd April 2016.

The **Arcelor Mittal** Group in Germany is the most conspicuous enterprise, the **German Stainless Steel Works**, the **BMW** enterprise, the **public utility** of **Düsseldorf**, the **Brunswick Supply joint stock Company**, **Stora Enso** (Paper), a group of **clinker factories**, as well as a group of ten of **Aircraft Operators** (Airlines).

ArcelorMittal with 8 Production plants in Germany has not duly declared approx. 4 million t of emissions until 31st March. In the course of 1st April, 3.7 million tons of emissions have been

declared belatedly. However, until the date 4th April, 2016, no entries from the plants in Duisburg Vohwinkelstrasse (approx. 250,000 tons) could be registered.

This is a lone record in so far as ArcelorMittal not only succeeded in registering all its emissions of all its German plants belatedly but keeps its record of approximately **4 million tons** of not declared emissions.

ArcelorMittal is also a well-known “repeat offender”: according to EU register, 8 from all 8 German plants failed at least once in the running period to deliver in time data for a VET entry. 3 plants even succeeded three times within the last 5 years not to meet their annual obligation. If also the period before 2013 is taken into consideration, the balance of “compliance ability” with regard to VET entry looks still more gloomy.

If we consider ArcelorMittal in Poland, by the way, where the group conducts 21 steel and rolling mills, we find out that at least 3 of 21 plants were able to declare their emissions in time to the national authority KOBIZE who consequently could forward these data to the EU (the VET process is regulated slightly different in Poland). But the sadness of such a result can hardly be surpassed.

According to EU list dated 1st April, the **German Stainless Steel Works** (situated amongst others in Witten, Krefeld, Siegen) seems to show up almost as prone to a correct compliance with article 35 (2) of the EU register regulation 389/2013. All the 9 plants operating in Germany were unable according to the EU entry list to declare their emissions to the EU register until dead line 31st March. Consequently the EU overall statistic missed roundabout 242,000 tons of emissions arising from the plants of this business group. Supplement: The VET entries of all 9 plants were visible in the EU register on 2nd April 2016. Consequently no account lockout according to article 36 (2) will presumably exist any longer.

Also the **BMW** Group seems to face considerable difficulties on the application of article 35 (2) of the EU Register regulation 389/2013. The German based global enterprise operates 6 plants in Germany being obliged to declare their emissions. All 6 plants failed to submit their VET entry in accordance with the EU register in time. If we take

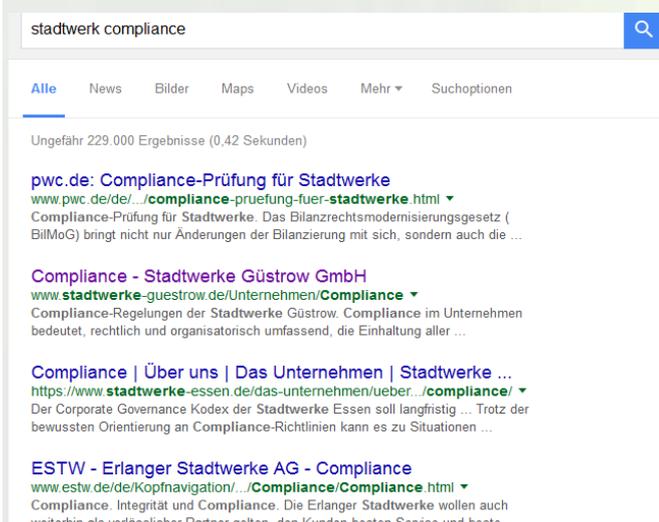


for comparison the emissions of the year 2014, a rate of emissions of approximately 225,000 t not yet being recorded would occur. Particularly piquant: BMW also disposes of a **business jet** being subject to emission trading. Business jets use to be taken by the board of directors, enabling them to get faster to appointments at home and abroad. Also the emissions of this business jet have not been registered in time.

The division of energy and water providers includes beside the public utilities of **Bernau, Stendal, and Kamen** especially the **district heating supplier of Lower Rhine**, the **public utilities of Düsseldorf**, and the **Brunswick Supply Company** who all attract attention by being unable to observe article 36 of the Register regulation 389/2013 EU. If the Lower Rhine includes 2 plants which emissions have not been recorded in time, the Brunswick Supply Company and the public utilities of Düsseldorf even have **4 plants each**.

Apart from that it often happens that on calling up the website of one of the above-mentioned public services and entrance of the term “compliance” in the search panel a message shows up: *“Unfortunately no results to the search term entered could be found”*.

By the way, entering the search term “Stadtwerk(Public Utility)” and “compliance” in the google search line shows that other ways are possible, too. Beside an EnBW also medium-sized and small public utilities like Essen, Erlangen, and, above all, [Güstrow](#) can be found on page 1 of the search network.



4 “repeat offenders” can be found among the **Group of 10 Airlines** who obviously did not make the VET entry in time. Already for the second time since 2012 they failed to respect the delay of an entry in time. These are beside the **Zeman Flugtechnik** from Munich the well-known enterprises **BMW** and **BASF** as well as the business jet of **Steiner Film** nearby Munich. This enterprise already earned attention in 2012 by means of a missing entry per end of April which was followed by criminal sanctions from part of the EU. This is at least what is written in the remark of the enterprise's EU register account.

As for missing entries and a refused transmission of certificates per end of April, the Russian airlines Aeroflot and Rossiya as well as the Mahan Air from Iran are always those who are part of this category.

Beside a small airline from the USA and a small business jet of the **ifm Traviation** Company in Essen, especially the **TUIfly Hanover** stands for belated reporting. This German travel group being number three behind Lufthansa and Air Berlin failed to report roundabout 230,000 t of emissions in time (basing on an estimation of the previous year's rate).

Principally a lack of understanding at least twice as high for the observance of EU compliance rules for emission trading can be deducted for airline companies. These disobeyed twice as much the VET entries as the group of stationary plants. This is an effect, however, which has been realized since 2012.

How can it happen that delays in VET Entries fail to be respected?

If we ask ourselves how it can happen in Germany that enterprises fail to respect prescribed deadlines of the emission trading and disobey rules of the EU register regulation so often, we could find various reasons. One of the main causes is obviously that most simple compliance rules and risk management rules in the emission trading area use to be handled extremely insufficiently.

Moreover it seems to be so that in case of failure of the only “CO2 know-how bearer” of the enterprise due to illness or holidays, the enterprise is unable to face the complex demands of the EU register regulation without problems. This is what is always said behind closed doors.



Considering within the whole process chain of emission reporting the role of the verifier in cooperation with the system operator and his account responsible (see also **Emission News 04-2016**), the admitted verifier and chairman of the [bvek eV](#) **Jürgen Hacker** concludes as follows:

- *“The communication and the properly defined procedures within the whole process of emission reporting as well as the execution and accompaniment of these processes are supposed to be realised by specialists. Especially in order to avoid account lockouts, criminal sanctions and probable fines, nothing to say of image losses resulting from such incidences”.*

From the view of Emissionshändler.com®, the above-mentioned statement can only be confirmed respectively the attention has to be drawn to the availability of external specialists if a company does not possess the required know-how inhouse (see also info box right).

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Kind emission regards



Michael Kroehnert

Infobox

The Account Package helps with Compliance in Emission Trading

Account updates for the course of a year, statements of accounts in December, CO2 reports in February, VET entries in March, Submission of allowances in April, permanent replacement of the second or third authorized account representative by an external authorized person – the account package ensures the compliance of public utilities, industry, and aviation in the emission trading!

Emissionen können teuer werden



The CO2 careless parcel explained quickly (click on the photo) <http://energy-news.tv/2016/03/12/emissionen-koennen-teuer-werden/>

*Beside the consulting package, the trading package, and the info package, the account package is part of the **CO2-hassle-free-package**.*

*Possible legal sanctions and image losses can be minimized providently if an external authorized account holder stays beside the enterprise being obliged to declare its emissions. As a know-how bearer, as “reminder” of appointments and as authorized account holder, if one of the enterprise's two authorized persons required by law are absent due to holidays, illness, etc. respectively if his technique forbids the access to the register account. The **CO2-account-package** of Emissionshändler.com® liberates the enterprise to a great extent from the high risks which may occur during an incorrect account management respectively by technical or human failure. It avoids especially image losses which can happen after a behaviour which is not adequate to compliance in the European emission trading.*

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