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Emission News 04-2017

Practical Information for Emission Trading

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TRILOG Negotiations decide on the EUA outlook for prices - Millions of CO2 emissions not yet registered on March 31

The first meeting of the three parties for the TRILOG process took place on 4 April 2017. The real start of the negotiations where the representatives of EU Parliament, EU Council, and EU commission will decide about their different responsibilities will certainly take some more months. At the end of the coordination and compromising process the system operators concerned will be confronted with a package which may not only contain a heavy burden regarding the financial aspect but will also include additional scopes of duties as there is for example reporting.

How and in which way the various responsibilities of the three parties concerned will clash and what kind of consequences the system operators might have to bear at the end is the subject of this and the following Emission News edited by Emissionshändler.com®.

Furthermore Emissionshändler.com® will cover in the present Emission News 04-2017 the VET records not registered by German system operators and will allow inside views on the emission trade in Ontario/Canada newly started on 01.01.2017.

Just like last year at least 24 German enterprises of 37 stationary facilities failed to submit to the EU the annual emission report the of the previous year's emission in accordance with article 35 (2) of the registry regulation. A direct violation of the law

in Germany, at least under legal aspects.

The question is allowed, however, how it can be that since the corresponding regulation entered into force the EU Commission still goes on watching this behaviour without any consequences – especially because consequential problems arise in the meantime due to this inactivity.

An equitable and unlimited publication is no longer guaranteed

The publication of the previous year's emission quantities in European facilities from the EU-ETS being announced every year weeks before with much fanfare becomes more and more a farce.

The publishing procedure of 2016 emission data, announced already by the EU on [10.03.2017](#), promised that “the European Commission will grant an unlimited access to the published emission data of the year 2016 on the website [Emissionshändler.com](#) on 3. April 2017 at 12 o'clock Central European Summer Time”.

Everybody who intended to click on the announced link since 10.03.2017 at 12h just had the choice to content himself with the following picture.





When the news agency announced accurately at 12:18 h that emissions in 2016 are 1.1% above those of 2015, the question arose where this information, which the news agency apparently generated from another source, actually came from. Furthermore it was announced that the emissions a fact that implicates that more investigations are necessary.

A [corrected list](#) of the EU was published around 2 PM on a [new bottom side](#) of the EU web page which presented completely new figures. These caused among others the DowJones Newsletter to announce in its edition of 05.04.2017 that European emissions shrank by 11%, a statement which, according to the estimation of Emissionshändler.com®, might be as wrong as the former one.

It is a fact in any way that in the different countries of Europe either the national authorities take over the operators' report about the emissions (as for example in Poland) or the system operators themselves

In any case the whole system of reporting emissions at a certain day is completely useless and illogical as long as just essential members of operators fail to report their emissions respectively some big and relevant system operators fail to report their tremendous, partially eight-figured emission quantities (up to 23 million in individual cases!) and violate simultaneously legal regulations.

Emissionshändler.com® has explained already in their [Emission News 05-2016](#) how and on which way every single person can apply the EU register and how the unreported emissions can be comprehended.

Notice: All subsequent figures, numbers and estimates are based solely on the EU list of verified emissions, in its version dated April 3rd 2017 (date of extraction). This also applies to historical data regarding the compliance status of installations and their emission sources taken from the [EU-Register](#).

More than 80 million tons of German emissions not reported in time

If we allow to trust the EU list of emissions published (corrected) on 01.04.2017, one would have to determine that emissions from Germany not reported in time add up to a sum of more than 80 million tons. These are generated by 37 facilities and 24 enterprises which are 17% of the total emissions originated by German facilities.

Taking a closer look at these facilities, it can be recognised clearly that 13 of these 37 facilities have not either reported their emissions in the previous year. 10 of 37 facilities repeatedly violated article

At least more than reported subsequently in the first week of April which nevertheless change a EU statistic to a paper waste and fail to undo a non-fulfilled obligation.

13 facilities in Germany with 2.7 million tons estimated (value from 2015) have not reported their emissions of 2016, a failure which will also entail the account blocking – as for every facility violating article 35 (2).

A listing of those 37 German facilities having been marked by the EU as systems not reported their emissions in time can be seen below:

The TRILOG Negotiations of the EU Parliament, of the EU Council, and the Commission have commenced

The EU's decision-making process regarding a past 2020 modernization of the emission trading system (EU-ETS) has reached the finish line



The process started with the transmission of a legislative proposal submitted by the EU Commission on 15.07.2015 to the EU Council and EU Parliament. The targets of the EU Council's (Head of State and Government of the EU member states) so-called "conclusions" of October 2014 referring to a "frame for climate and energy policy until 2030" were the essential contents of the Commission's proposal – without setting own accents. After long and controversial disputes the EU Parliament finally decided after first reading on 15 February of this year, on numerous

relating to the conclusions. The EU Council followed on 28 February with its "general approach", also with partially significant modifications having been decided under the aspect of very controversial debates. Considering the natural difference of interests, both positions are basing on unequal targets, as expected. But as an EU law can only be achieved if both EU bodies present identically formulated and amended resolutions to the Commission's proposal, now the usual TRILOG negotiation process has started between the three parties concerned (Parliament, Council, Commission).

The first conference of the associated TRILOG negotiation group took place on 4 April. The EU Parliament was represented by the correspondent of the environment committee in charge, the Scotsman Ian Duncan and the "shadow" rapporteurs of the other Parliament fractions. The EU Council was represented by the environment minister and his ministerial team. The minister and his ministerial team hold the presidency of the responsible Council of Environmental Ministers in the first half of 2017. As it is this first meeting produced no decisive modifications because the Parliament's chief negotiator

The next meeting is planned for the All though informal meetings will take place in the meantime in small working groups but it is considered as very unlikely that an overall compromise could be achieved still before Other TRILOG negotiations used to require meetings. But not only are

there different positions of Parliament and Council that hinder a quick achievement of a compromise the individual positions amongst the bodies

That is from the chief negotiators with their appropriate committees are necessary before finally a package of compromises can be achieved which has the chance for a sufficient majority for an approval in the Parliament as well as in the Council.

Concerning the Parliament, these feedback processes seem in fact to be a little bit easier than in the Council, due to the presence of shadow rapporteurs during the negotiations where only the President of the Council which is the Maltese environment minister with his team and in fact no other representative of other governments take part in the negotiations. On the other hand, however,

are harder to be clarified because the fractions do not vote unanimously at all, partially the majority of the fraction refuses to follow the recommendations of their respective reporters, as proven on the occasion of the voting in February.

But if no compromise package will be achieved until the situation arises that afterwards the Council's conduct of negotiations will change and, in conformity with the rotation, will be taken over by the environment minister of Estonia in the second half of 2017. In 2018 the turn would arrive at the environment ministers of Bulgaria and Austria. Moreover, the majority situation in the Council could have changed until then due to the Presidential elections in France and the Federal elections in Germany. It is doubtful if a possible red-red-green Federal Government will simply take over the positions of the present Federal Government and Germany, as the biggest EU state, disposes of an important vote package in the Council.

As soon as finally a compromise package will be achieved by the chief negotiators, both committees will have to agree to it If a committee fails to achieve a sufficient majority, the negotiations will start all



over. That is why the committees assume at present that a final agreement will be achieved at the earliest, probably only in

In this context the various content-related positions of Council and Parliament can be divided in three kinds:

- a) Such positions which allow a relatively simple way for a compromise, for example if one committee pleads for “2” and the other one for “4”. As a consequence an agreement for “3” will find acceptance.
- b) Positions where both committees submit structurally different proposals for modification which requires one decision for only one proposal. The way to a compromise is the following: one party accepts the point of view for a certain subject while the other party obtains the majority for another subject – or an alternative third structural solution will have to be found.
- c) Positions where only one committee wants to achieve modifications of the Commission's proposal while the other committee has not explicitly formulated an own position. This happens especially with many small change requests of the Parliament. It is not clear in this context if the Council definitely wants to keep the Commission's proposals unchanged or if the adoption of an own position is considered as unimportant and probably no scruples occur to share the change requests of the Parliament.

Another subject to be considered is the fact that various positions are very controversial between Parliament and Council but have no direct meaning for German operators of ETS facilities. This is the case, for example, for which purposes the revenues from the auction of emissions rights may be used and who is probably represented in the decision-making or supervisory bodies of the subsidy funds which are nourished by the auctions. Which rights may the representatives exercise or how high may the amount of support be until the Eastern/South Eastern European states are requested to call for (probably Europe wide) tenders.

The following chapter consequently treats only the most important modifications to be expected for the German ETS system operators. Generally the following three subject areas shall be emphasized here:

The significant shortage of emission rights in total, the significant reduction of free allocation of emission rights and other smaller innovations, especially for facilities with low emissions.

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! 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.

Linear reduction factor

The Commission proposed to reduce the annual budgets of emission rights being left at the disposal of EU-ETS to 2.2%/a from 2021 instead of 1.74%/a until 2020. The Council accepted this proposal. In fact the Parliament also adheres to the 2.2% rate. This is a crucial vote but requires a verification of this percentage rate to be realised.

Target of this verification is to realise an increase to 2.4% with the beginning of 2024 at the earliest. But the option of a later increase just seems to be considered as a possibility to be determined by the Parliament. In case of concessions from the Council's side for other privileges the Parliament might renounce of the increase of reduction of emission rights. That is why it can be considered as sure that the percentage rate will

In comparison with a maintenance of the present percentage rate, approximately million emission rights less will be left at the disposal of U-ETS within the third period between 2021 and 2030.



Modifications of the Market Stability Reserve (MSR)

Initially the Parliament and Council agree that deliveries of emission rights to the MSR from 12% to 24% of the emission rights being in circulation as well as the total volume shall be doubled. Slight differences occur with the question *from when and how long* this doubling shall happen. All in all approximately 100 million EUA might be withdrawn from the EUA market by this measure. Furthermore both parties agree to the aim that a part of the emission rights in the MSR shall be “deleted” respectively made “invalid” during the obligation period after 2021. The Parliament, however, intends to realise just one single “deletion” of 100 million EUA for the 01.01.2021. The Council, on the contrary, intends to act structurally different which means “to cease the validity of 100 million EUA being under reserve from the beginning of 2024 and being above the total number of the EUA having been auctioned in the previous year”. This means that the invalidation of 100 million EUA quantities will be realised every year after 2024 and to an extent which will be fixed only shortly before. It depends how many EUA will be consumed for the fulfilment of duty of ETS facilities. More or less 100 million EUA will become “invalid”. Thus the total number is uncertain and can only be estimated roughly. Estimations being known so far amount up to 100 million EUA.

Here the Council and the Parliament are requested to agree upon a structural procedure. A one-time deletion number having been determined before would definitely be better. All ETS system operators and the participants in the EUA market can get along much better with such a solution. The one-time increase of the deletion volume could serve as a compromise.

Moreover the collateral damage of the Council's solution could be avoided. The collateral damage is to destroy the basis for the use of EUA for a voluntary emissions compensation while buying up and deleting these in order to achieve a “climate neutrality”. The more “voluntary deletions”, the less collateral damage later. The voluntary EUA deletions would no longer have a climate protection effect in such a case.

Additional options of the member states for the deletion of emission rights

The Parliament intends to leave two options to the member states. These are the allowance to delete emission rights instead of auctioning them. Firstly it is planned to allow this already with the beginning of 2021 for those EUA which will neither be needed for the free allocation nor be transmitted to the MSR (approx. 100 million EUA potentially estimated) and secondly for compelled closures of electricity generating capacities (e.g. coal-fired power plants in Germany) due to “national measures”. EUA no longer needed for the performance of duty belong to this second category.

Until now the Council expressed no meaning to these intentions. But as these deletions are part of the individual member states' discretion, any resistance by the Council may hardly be expected.

Part n° 2 about the TRILOG-negotiations and the emissions trading system in will follow with Emission News 05-2017

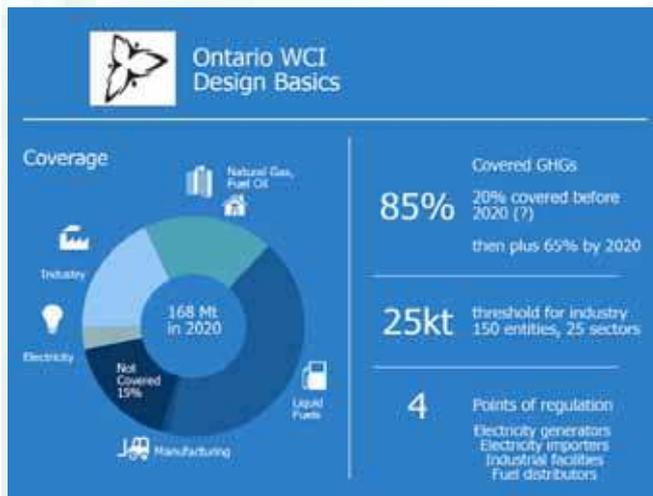
A guest commentary from Dr. Marc Ruttloff, Associated Partner, Attorney Lars Kindler, Associate, Attorney of Gleiss Lutz Attorneys.

Canada on the way to emission trade and CO₂ tax - The Ontario Cap and Trade-Regime – A current example for the North American Emission Trade

Canada's largest and by far most important Federal State Ontario where also the economic and financial centre Toronto is situated operates of emission trading system since 1 January 2017. It is called the **Ontario Cap and Trade Regime**. Meanwhile emission trade is a proven system also elsewhere for the limitation of harmful environmental emissions, especially CO₂. Beside the European emissions trading system (European Union Emissions Trading Scheme – EU ETS), Ontario's regulators had the opportunity to orient themselves to emissions trading systems on the doorstep which is in California and in their own country, the Federal State Quebec.



The emissions trading system in Ontario principally captures CO₂ emitters with a CO₂ volume of 25,000 tons as well as natural gas providers with emissions of more than 25,000 tons CO₂, suppliers of petroleum products with a delivery quantity of 200 litres of petroleum products or more, and electricity importers who import electricity to Ontario.



Source: [EnviroEconomics](#)

Also the system in Ontario is unable to get along without exceptions. Consequently some of the most emitting economic sectors, especially the transport sector, are excluded from the Cap and Trade-Regime as far as possible. In return other market participants are included on a voluntary basis: emitters with a CO₂ emission of only more than 10,000 tons have the choice to get registered voluntarily as participants in the emissions trading system. Target of this expansion is the increase of liquidity and price formation on the secondary market for CO₂ certificates.

Like comparable emission trading systems in the EU, the program is subdivided in individual steps (Compliance Period). The first Compliance Period runs until 31 December 2020. Follow-up periods of three years each are planned for the time after this date.

The requirements of the emissions trading system are complex and are equipped with some particularities. Essential elements have been borrowed from the European emissions trading system, however. Ontario followed a similar path

on the way to promote renewable energies and took over essential elements of the EEG promotion regime. Conforming with the European example, CO₂ certificates were distributed free of charge to large industrial CO₂ emitters during the first program period. Contrarily to this strategy, natural gas suppliers and petroleum product providers have to purchase certificates on the quarterly auctions or procure themselves on secondary markets.

A significant detail of the emission trading system's introduction was also its intended linking with the Californian system and the system in Quebec which already build a unified emissions trading market. The trade with different certificates beyond the various jurisdictions and with integration of Ontario is planned to be realised already in 2018.

Part n° 2 about the emissions trading system in Ontario will follow with Emission News 05-2017

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Our offer

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Kind emission regards

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