

Compliance & Enforcement in Relation to Expansion of the EU ETS: Issues & Policy Options

**ECCP Meeting “Robust Compliance & Enforcement”
Brussels, 26 April 2007**

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Outline

- New activities
- Flexible legal architecture
- Summary

New activities

Case Study: N₂O from Chemical Industry

- Thresholds set out in Annex I and XII of MRG define the achievable accuracy
- Commission is currently developing dedicated monitoring guidelines for emissions of N₂O from the chemical industry
- N₂O guidelines will be proposed as new Annex XIII to MRG 2007
- Approval through committology procedure as specified in Article 14 of Directive

CCS: Issues

- More than geological storage site to be considered: range of monitoring & verification issues to be considered
- Draft CCS Interim M&R Guidelines submitted to EU Commission
- Revised Directive needs a legally robust approach on carbon capture, transfer, use and storage
- Key objectives: Transparency, environmental integrity and consistency with IPCC/UNFCCC accounting

Aviation: Monitoring & Reporting

- Monitoring and reporting for one installation has little overlap with that of an aircraft operator (tonne kilometers and fuel consumption)
- General provisions of Directive in Article 14 applicable
- Annex IV is inappropriate for aviation data
- Guidance on monitoring in MRG 2004 and MRG 2007 is insufficient for aviation
- Dedicated guidance on monitoring and reporting of aviation data needed

Aviation: Verification

- Verification of activity data reported for an aircraft operator (tonne kilometers / fuel consumption) different from situation for single installations
- General provisions of Directive in Article 15 and Annex V applicable with few exceptions
- Guidance on verification in MRG 2004 and MRG 2007 limited and inappropriate for aviation
- Dedicated guidance on verification of aviation data essential

Shipping

- Many issues similar to aviation – combined or analogous legal or stand-alone approach on MRV issues?
- EU Flag vs. non EU Flag?
- Purchase of fuel outside of EU ports?
- Potentially more challenging verification than for aviation

Domestic Projects & Sinks

- Domestic projects: Development of clear criteria to ensure additionality and avoid double counting
- Verification: “baseline and reduction” needs new elements in addition to “cap and trade”
- Could be informed by CDM system and ISO 14064
- Biological sinks: Permanency and quantification of net effects on entire forest and soil systems
- Conservative dealing with large uncertainties
- Verification: very different approaches from other EU ETS activities

Flexible Legal Architecture

Basis for new activities and gases in MRG 2007

Annex IV and V of ETS Directive

EU Monitoring & Reporting Guidelines

- Annex II flexible for broad range of combustion activities
- Fall-back approach of Annex I
- Requirements for continuous measurement in Annex XII

Flexibility and Legal Stability

- For technical matters (like details of monitoring, reporting, verification and accreditation) a high degree of flexibility is desirable:
guidance documents and guidelines
- A harmonised implementation in the EU ETS, the need for regulatory stability issues may need more binding instruments:
annexes of the Directive or regulation
- The administrative burden for adoption of future changes should remain limited and response times be kept short

Right Hierachy of Instruments

- Directive and Annexes should comprise political cornerstones of what Member States and Commission want fixed
- Commission regulation appropriate if more detail is needed and high degree of harmonisation is needed
- Guidelines if a reasonable level of harmonisation is sufficient and response times of a year suffice
- Guidance documents and FAQs where testing and quick reactions are needed

Risk: Hierarchical legislation becomes fragmented and internally inconsistent

Summary & Outlook

Summary

- Mid- to long term strategy on expansion has important implications on legal architecture of the compliance system
- Fundamentally different philosophies “Lean and simple” vs. “Comprehensive and water-tight”
- Risk: patchwork of fragmented and partly inconsistent legislative compliance instruments optimised for rather distinct activities
- Challenge: agree on common principles and basic design features and maintain flexibility for future expansion and learning

Outlook

- Avoid creation of parallel (27 x N) compliance systems for different activities
- Ideal: All activities to be covered by one uniform EU legal framework
- Proposal for legal architecture: Directive with Annexes, an overarching EU Compliance Regulation plus activity specific guidelines

Thank you for your attention!

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