



Analysis of EU ETS compliance and enforcement mechanisms

ANALYSIS OF MS IMPLEMENTATION

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Achieving compliance in ETS

How to achieve and increase compliance with rules?

- Clear and enforceable rules
- Stakeholder knowledge of rules & preventive measures
- Enforcement mechanisms to identify and address potential non-compliance
- Effective, dissuasive and proportionate sanctions to deter non-compliance

Measures implemented in EU ETS
to ensure these key prerequisites

Top down
regulations
(MRR, AVR, FAR,
ALCR, Registry,
Auctioning)

Robust MRV of
annual emissions
& allocation

Independent
verification by
accredited
verifiers

MS Enforcement
mechanisms to
prevent & identify
non-compliance

Article 16 (1)
penalties
&
Excess penalties

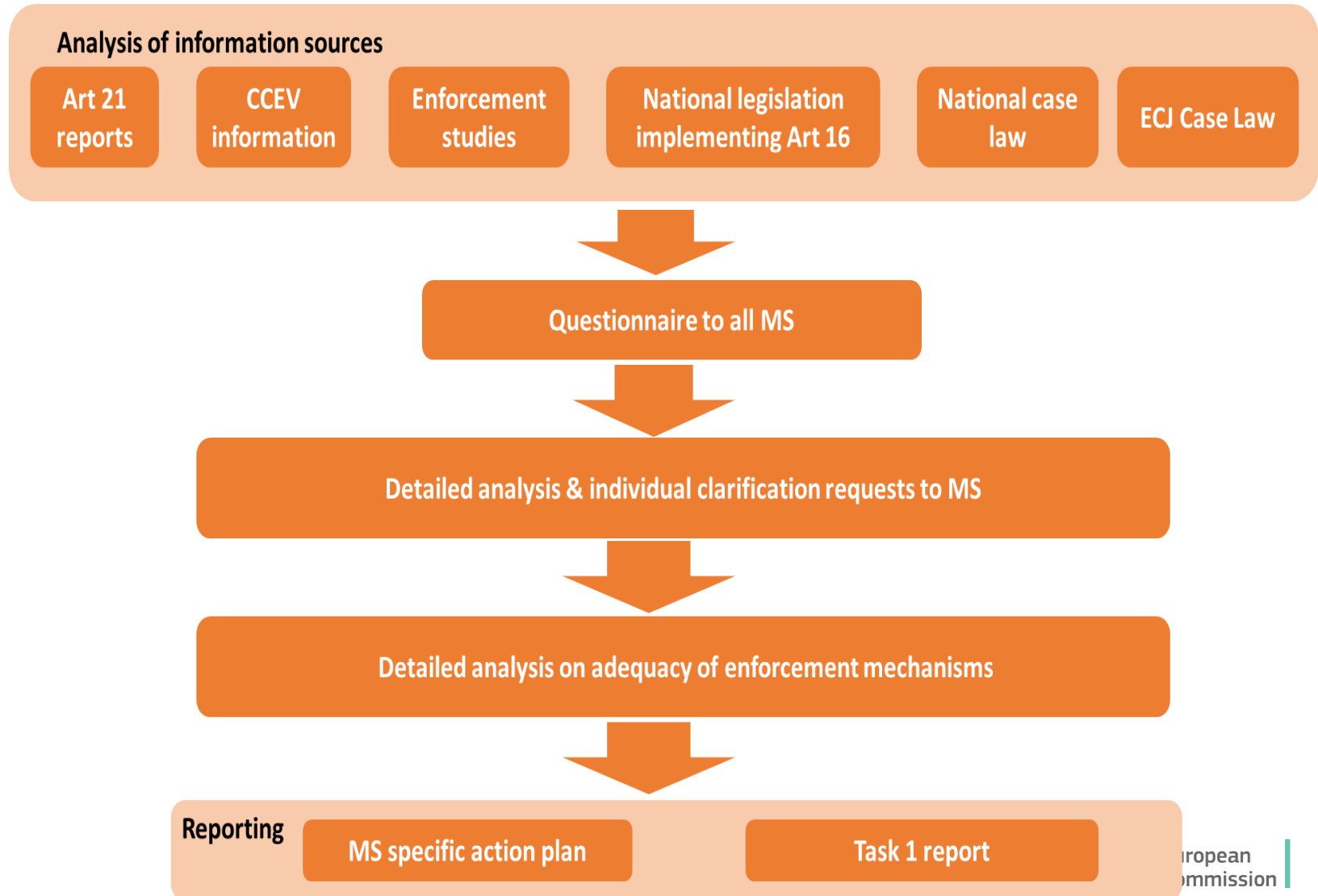
Objectives of the project

- Analyse national legislation implementing Article 16 of the EU ETS Directive
- Analyse the effectiveness of MS implementation of Article 16 EU ETS Directive and the mechanisms to enforce compliance of operators and aircraft operators
- Make recommendations to improve the effectiveness of compliance and enforcement mechanisms and procedures to implement Article 16 ETS Directive.
- Look for opportunities to harmonise elements in implementation and enforcements and identify needs for guidance

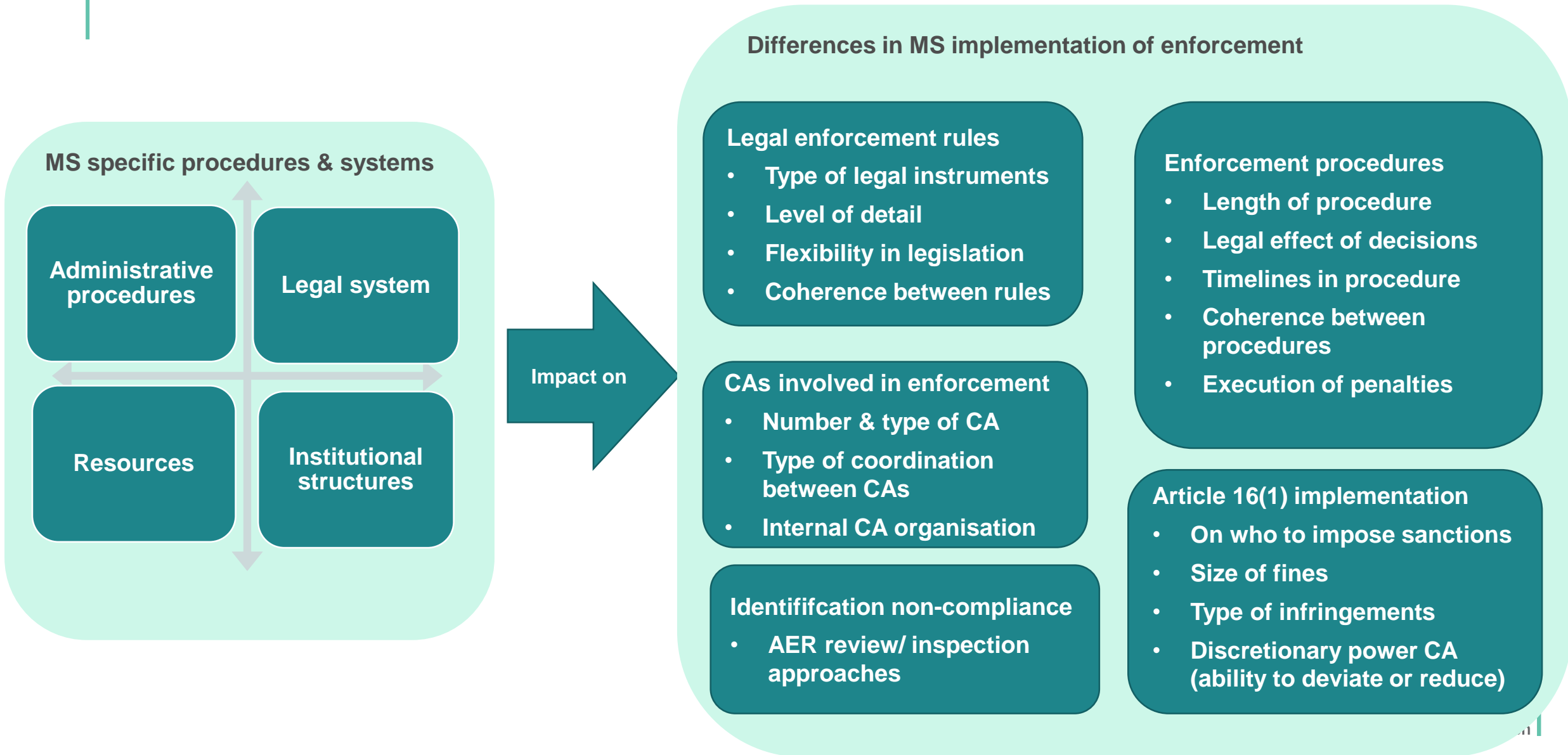
Methodology for analysing information

Structured analysis of information sources based on criteria covering building blocks

- ✓ Legal framework implementing Article 16 EU ETS Directive
- ✓ CA organisation and coordination
- ✓ Preventive measures to ensure compliance
- ✓ Methods to identify non-compliance (verification, AER review, inspection)
- ✓ Enforcement procedures
- ✓ Infringements and sanctions
- ✓ Follow-up of enforcement



Differences in enforcement implementation



On other areas there are commonalities

- No flexibility in Article 16(2) implementation of excess penalties
 - ✓ MS implementation as in the Directive: some MS apply excess penalties also to other areas (opt-out installations)
- Commonalities in enforcement procedures
 - ✓ Giving the operator the opportunity to address non-compliance or issuing a warning
 - ✓ The decision to impose sanctions needs a clear legal basis and needs to be in writing
 - ✓ Opportunity to appeal the decision to impose sanctions
- Key preventive measures such as reminders for operators to submit reports
- Some type of infringements are common across MS (e.g. not having permit/MP)

Development of enforcement procedures

- Increased use of IT, which has a positive impact on effectiveness of enforcement
- Since phase 3, more MS have introduced specific procedures/ approaches to review AER/VRs and to carry out inspection
- At least 16 countries amended legislation over time
 - ✓ To include additional infringements or new sanctions because of phase 4 legislation
 - ✓ To strengthen the approach to imposing sanctions and legal basis for enforcement
 - ✓ To implement improvements to ensure proportionality, consistency and equal treatment (e.g. implementing different categories of infringements, changing size of penalties)
- Some MS adapted their enforcement procedures in order to improve effectiveness of enforcement

Good practices in implementation

- Effective preventive measures, such as regular contact with operators and stakeholders, training, helpdesk, automatic reminders
- Use of IT systems and tools to facilitate enforcement of non-compliance issues
- Tailored approaches and tools in the AER/VR review and inspection
- Clear criteria/ tools that are taken into account when defining the size of sanctions
- Structured information exchange and coordination between CAs
- Experiences with virtual inspections
- Dealing with specific issues such as bankrupt operators, withdrawal of permits

Common challenges in enforcement

Temporary challenges

- Decrease in inspections due to COVID restrictions
- Capacity problems

Challenges related to stakeholders

- Stakeholders having insufficient knowledge of rules
- Inability of operators to comply (bankruptcy)

Specific challenges

Aviation

Enforcement of 3rd country AOs

Unfamiliarity small emitters with rules

Permitting

Transfer obligations to new operator

How to deal with operating without a permit

Withdrawal of permit

Allocation

Complexity of rules

Return excess allowances

Impact of suspension of operation/ cessation

MRV

Conservative estimation of emissions

Registry

Opening registry/ providing documents

Reluctance to transfer account after liquidation

Lack of awareness by small emitters

Specific challenges to some MS

- Appeals launched against decisions to impose sanctions – in some cases appeals led to revisions in legislation
- Lack of coordination or communication in the case of multiple CAs
- Higher law prevent CA from carrying out inspection or returning allowances
- Limited resources do not allow MS to carry out inspection or to review AER
- Lengthy procedure with high level management, courts & other CA taking decisions
- Limited experience for some MS in imposing sanctions

Some MS have developed specific legislation, guidance or tools to address challenges

These good practices could be of use to achieve more harmonisation on these issues

Need for harmonisation

Need for harmonization mostly on:

- Measures to identify non-compliance → learning from good practices
- More clarity on the type of infringements under EU ETS
- More clarity on procedures for imposing sanctions (factors that play a role in imposing sanctions/ key steps and principles to follow)
- How to address specific common challenges



Measures to address the need for harmonisation

- Guidance on specific interpretation issues
- Commission MRR and AVR Training
- Task Forces under Compliance Conference

Next steps

- Further analysis on specific challenges is being carried out to identify good practices
- Individual MS may be contacted if clarifications are needed
- Final draft report of study to be shared with MS in March. The final report will also be published.
- MS specific recommendations to be shared bilaterally with the MS concerned, but will not be included in the public report.

Thank you

Please address further questions to the functional mailbox: CLIMA-MRVA@ec.europa.eu



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