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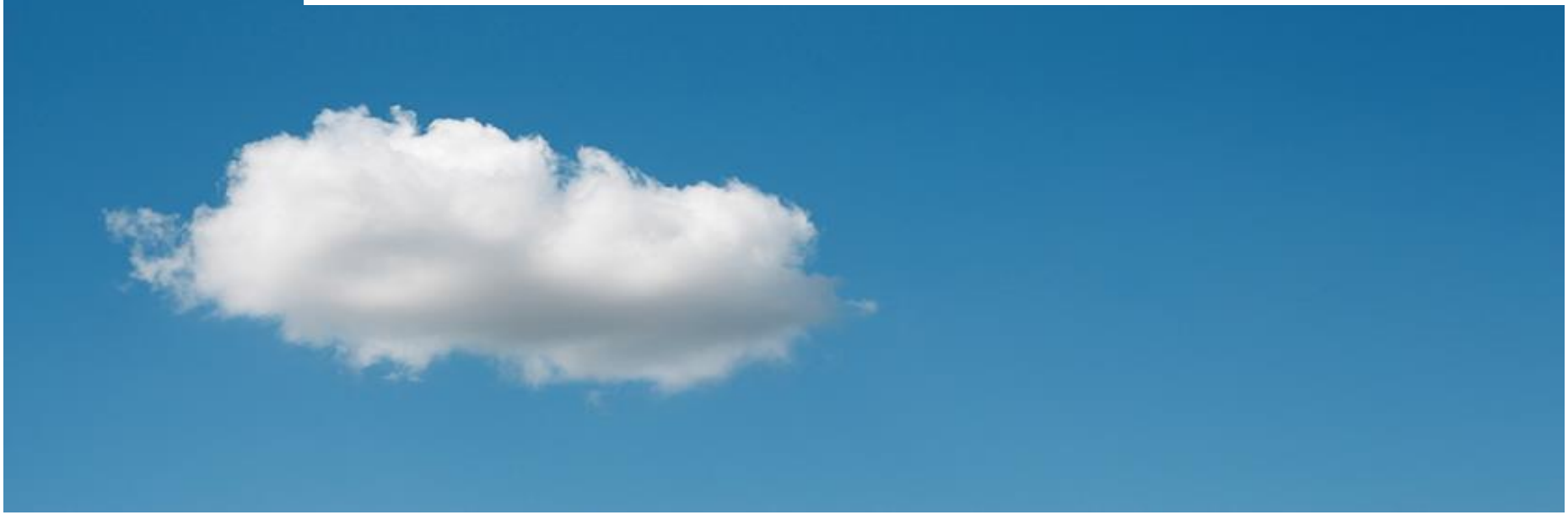

Transfer of CO_2 and CCU

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Transfer of CO_2 (other than CCS) for 3rd Trading Period

European Court of Justice ruling in case Schaefer Kalk (C-460/15)

- Background:
  - special procedure in the lime industry:

    CO_2 of a lime installation is transferred to another installation for the production of PCC (not subject to EU-ETS)

  - CO_2 is not emitted into the atmosphere but chemically bound in the PCC (lime of higher quality)

- Legal opinion COM/DE:
  - in the case of PCC, a subtraction of the transferred CO_2 from the emissions subject to the monitoring obligation is not allowed under Art. 49 (1) s. 2 and point 10 B of Annex IV MRR

Transfer of CO_2 (other than CCS) for 3rd Trading Period

- Ruling of the European Court of Justice:
  - European Commission altered an essential element of ETS Directive and overstepped the limits laid down in Art. 14 (1) ETS Directive
  - CO_2 used for PCC production shall not be considered emitted by the installation producing the CO_2, because it is chemically bound in a stable product (PCC) → Art. 3 (b) ETS-Directive: 'emissions' means the release of greenhouse gases into the atmosphere from sources in an installation
- "*Art. 49 (1) s. 2 and point 10 (B) Annex IV MRR are invalid in so far as they systematically include the carbon dioxide (CO_2) transferred to another installation for the production of precipitated calcium carbonate in the emissions of the lime combustion installation, regardless of whether or not that CO_2 is released into the atmosphere.*"

Transfer of CO_2 (other than CCS) for 3rd Trading Period

Key messages of the European Court of Justice:

- Relevant MRR-provisions do not comply with ETS-Directive
  - ➡ COM shall revise MRR and introduce compatible provisions
- Particular case of Lime/PCC
  - ➡ CO_2, that is transferred to and used in a PCC-installation, shall not be included in the emissions of the installation producing the CO_2, no release of greenhouse gases into the atmosphere

Consequences of Schaefer Kalk ruling from DEHSt perspective:

- MS do not have competence to reject MRR provisions
  - ➡ DEHSt continues to apply the provisions in Art. 49 (1) s. 2 and Annex IV 10 MRR, except for CO_2 used for the production of PCC
- Schaefer Kalk: correction of operators MP/AER and withdrawal of surrender obligation for transferred CO_2

Transfer of CO_2 (other than CCS) for 4th Trading Period

Possible implementation of the ECJ ruling:

- Revision of Directive 2003/87/EC
  - amendment of the definition of 'emissions' has not been proposed by MS or COM
- Revision of MRR/AVR:
  - What kind of emissions are deductible?
    - transferred or bound CO_2 should only be deductible, if it is proven chemically/permanently bound in a stable product (→ no release of greenhouse gases into the atmosphere from sources in an installation)
    - CCU exception list for deductible emissions would be helpful
    - obligation that the operator has to prove that emissions are deductible
    - Problem: transfer to a non EU-ETS-installation

      (limited possibility for CA to verify the operators evidences)

Questions

Is transfer of CO_2 for CCU purposes a relevant issue in your MS?

1. Are there products in your MS based on transferred or included CO_2?
2. Is the permit in those cases based
   - on the installation or
   - on the site?
3. What is your impression: will operators in your MS lodge appeals against the MP approval (not allowing subtraction of CO_2 transfers), e.g. bound in ammonia?

For a more substantial discussion,
please get prepared for the next
Task Force Monitoring meeting in February/March 2018 in Berlin.

Thank you for your attention!

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