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Role of verifiers in identifying capacity changes/changes to the activity level and checking procedures under Art. 12 (3) MRR

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Outline

- European Legal Framework
- Limitations of the current provisions
- Implementation in Germany
- Example
- Observations / Conclusions / Questions

Starting Point – European Legal Framework

- **Decision 2011/278/EU („CIMS“): amount of allowances allocated/issued to be adjusted** in cases of
 - significant capacity reductions of sub-installations (Art. 21)
 - (full) cessations of installations (Art. 22)
 - partial cessation of sub-installations (Art. 23)
- **Objective of adjustments: individual allocation amount should reflect changed operation** compared to the baseline/reference period
- **Art. 24 (1) – reporting obligation:** all relevant information on effective/planned **changes to capacity, activity level and operation of an installation** have to be submitted to the CA **by 31 December**
- **BUT: no verification requirement in CIMS** (except significant capacity reductions)
- **Monitoring & Reporting Regulation (MRR) 601/2012 / Accreditation & Verification Regulation (AVR) 600/2012 provided an option for MS to address this issue**
 - Art. 12 (3) MRR: procedure to monitor the operation
 - Art. 17 (4) & Art. 27 (3) AVR: verifier obligations

Limitations of the current provisions

- **No ex ante data verification**
- **Diverging time frames**
 - Art. 24 (1) CIMs: 31 December
 - Art. 67 (1) MRR: 31 March
 - „**Verification**“ takes part **subsequently** and has no impact on the quality of the data submitted by the verifier
- „**Reasonable level of assurance**“ has not to be applied
- **No precise „verification opinion“ required**
- **Misstatements regarding allocation related data have no impact on the verification opinion pursuant to Art. 27 (1) AVR**

Implementation in Germany

- **§ 22 German Allocation Regulation 2020** (Zuteilungsverordnung 2020):
 - **Significant capacity reductions** and **cessations to be notified immediately**
 - **Additionally, all operators receiving an allocation have to submit an annual report** („information on status of operation“) by 31 January of each year
- **Options provided** by Art 12 (3) MRR & Art 17 (4), 27 (3) o) AVR are used
- **Verifier should apply a risk based approach to comply with the AVR**, taking into account, inter alia, the following criteria:
 - Observable indications for an significant capacity reduction or a partial cessation, e.g.
 - physical changes to an installation,
 - remarkable decreases in production or emissions
 - Minor changes of the activity levels which are far from exceeding relevant thresholds and there is no reasonable doubt
 - Subinstallations that can not lead to a partial cessation as laid down in Art. 23 (1) CIMs (at least 30 % of the installations allocation amount or 50.000 allowances) doesn't need to be checked in depth

Example

An operator notified a reduction of the **activity level of a sub-installation; emissions and production data decreased correspondingly; no physical change** to the installation has been implemented. What do we expect from the verifier, if the reported reduction amounts to...

...48 %

- **Verifier has to assess**, whether the **procedure** approved in line with Art. 12 (3) MRR **has been applied correctly**
- Verifier has to carry out an **assessment of the activity level** with the aim **to ensure that the reduction** of the activity level **doesn't exceed the 50 %-threshold**
- If there are **any doubts** regarding the correctness of the notified activity level the Verifier has **to highlight this in the VR** in line with Art. 27 (3) (o) AVR

...20 %

- **Verifier has to assess**, whether the **procedure** approved in line with Art. 12 (3) MRR **has been applied correctly**
- **Verifier does *not* need to carry out an in-depth assessment of the activity level** notified

Observations / Conclusions / Questions

- **Drawing the options provided by MRR & AVR to involve Verifiers in the assessment of actual/planned operational changes of installations was, at least, helpful** – in several cases
 - **VRs contain useful hints/indications for the CA** to reassess whether a partial cessation or a significant capacity reduction took place / could have taken place
 - **Operator submitted revised data** (revised „information on status of operation“) regarding partial cessations or significant after the verifier has carried out his assessment
 - Operators and Verifiers agreed **voluntarily** on an **ex-ante verification of the data to be submitted to the CA**
- **However, deficiencies remain and should be addressed during the revision of the CIMs.**
- **What are your experiences?**
- **Would you think, it would be helpful, if...**
 - **an ex-ante verification** of the information on changes to the activity level, capacity and operation of installations **would be required?**
 - **reporting deadlines** in CIMs and MRR **would be the same?**

Thank you for your attention!

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