

European Union Climate Change Policies and Regulations

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EU Approach & Actions

- EU committed to fighting climate change
 - ◆ IPCC 4th Assessment Report, Stern Review (The Economics of Climate Change)
- Wants to contribute to achievement of 2°C goal
- EU Climate Change Programme of 2000
- Wide array of actions:
 - ◆ Energy efficiency
 - ◆ Renewable energy
 - ◆ Carbon Capture and Storage
 - ◆ Emissions Trading
 - ◆ CO2 standards for fuels

Climate & Energy Package

- Integrated approach to climate change and energy security
- Known as 3 x 20 to be reached in 2020:
 - ◆ A reduction in EU GHG emissions of at least 20% below 1990 levels
 - ◆ 20% of EU energy consumption to come from renewable sources
 - ◆ A 20% reduction in primary energy use compared with projected levels, to be achieved by improving energy efficiency

EU Emissions Trading Scheme

- Both the EU and the Member States are signatories to the Kyoto Protocol
 - ◆ EU reduction goal: 8% (base year: 1990)
 - ◆ Individual goals for non EU-15 Member States (e.g. Poland: 6% compared to 1988 baseline)
- EU ETS as a tool for achieving Kyoto goals
- EU ETS Members: 27 EU MS + Norway, Iceland, Lichtenstein
- Non-EU ETS sectors: Effort Sharing Decision

EU ETS Framework

- Based on the cap-and-trade idea
- Free of charge, tradable allowances allocated on the basis of grandfathering
- One allowances (EU Allowance, the EUA) = right to emit one tone of CO₂
- Progressive decrease in the amount of free allowances
- Currently only CO₂ covered
- Legal nature of the allowance
- National Registries
 - ◆ Recent „phishing scams” for ca. EUR 30 million

Phases of the EU ETS

- Organized around Kyoto commitment period (2008 – 2012)
- Phase I (2005 – 2007): Learning By Doing
 - ◆ Over-allocation
- Phase II (2008 – 2012)
 - ◆ Effects of the economic downturn
- Phase III (2013 – 2020)
- Basic framework for Phase IV (2021 – 2027)

Who's covered?

- Only some 50% of the EU CO₂ emissions
- Energy-intensive industries, like combustion installations with a rated thermal input exceeding 20 MW, oil refineries, coke ovens, production and processing of ferrous metals, mineral industry (cement clinker, glass and ceramic bricks), paper production
- Type of activity + threshold (expressed in thermal input, tonnes of product per day / hour)

EU ETS Mechanics

- Allocation method
 - ◆ Allowances allocated mostly for free
 - ◆ National Allocation Plans approved by the European Commission
 - ◆ Litigation re NAPs
- Emissions MRV
- Surrendering of allowances
- Banking and borrowing
- Use of offset credits under Kyoto Protocol (Joint Implementation - ERU, Clean Development Mechanism - CER)
- Sinks not allowed

Post 2012 changes

- Expansion to new sectors (petrochemical, ammonia, aluminium) and new gases (nitrous oxide and perfluorocarbons)
- Inclusion of aviation since 2012
- National Registries replaced by EU Registry
- Auctioning through one or several platforms
- New rules for allocation:
 - ◆ Benchmarks for most sectors
 - ◆ No free allowances for electricity generation
 - Exception: new Member States

Carbon Leakage

- Basic rule of free allocation post 2012: 80% resulting from the benchmark, decreasing to 30% (2020) and 0 (2027)
- Sectors exposed to carbon leakage (164 sectors): 100% of allocation through 2020
 - ◆ Problem with legal certainty: list revisited in 2014

Challenges to the system

- Past cases: case C-127/07 Arcelor Atlantique (violation of the principle of equality)
- Aviation litigation (Air Transport Association, Continental, American, United)
 - ◆ Challenge before the UK courts
 - ◆ Request for preliminary question to the ECJ
- Potential forthcoming litigation
 - ◆ Benchmarking decision
 - ◆ Allowances for electricity generation

Implication of a (lack of) post-Kyoto agreement

- Increase in the EU reduction goal
- Commission's Roadmap 2050
- Increased use of ERU, CER
- Lack of Kyoto means discontinuance of Joint Implementation projects
- CER credits disallowed in the lack of international / bilateral agreements

Carbon Capture & Storage Framework

- Role of the CCS up to 2050 according to the Roadmap
- CCS Directive
 - ◆ Exploration Permits
 - ◆ Storage Permits (storage sites: deep saline aquifers)
 - ◆ CO2 pipelines and transportation
 - ◆ Transfer of responsibility after closure (20-year period)
 - ◆ Financial security
 - ◆ CCS-Ready Assessment

Character of legal work

- Regulatory advice
- Strategic advice, including negotiations with the European Commission, preparation of position papers
- Litigation before the EU courts
- Transactional work (Emission Reduction Purchase Agreements)
- Development of JIs and CDMs
- Specialized exchanges like Nord Pool, BlueNext

Thank you!

Please stay in touch:
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