Articles 16, 17, 19 of the EU ETS Directive – Penalties, Access to Information, Registries

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Penalties (Art. 16): Introduction

• Penalties developed by Member States – effective and proportionate

• The excess emissions penalty - EUR 100 for 1 tCO2\text{eq} for which the operator or aircraft operator has not surrendered allowances

• Member States - publication of the names of operators and aircraft operators who are in breach of requirements to surrender sufficient allowances

• Aircraft operator fails to comply with the requirements of this Directive and where other enforcement measures have failed to ensure compliance - can be banned
Common infringements in the EU ETS

The following common infringements:

• Emitting emissions while not having a valid ETS permit
• Violation of the permit conditions
• Violation of the MP requirements
• Violation of reporting requirements by not submitting an AER/VR or not reporting correctly
• Withholding information or giving false or misleading information
• Not surrendering emission allowances equivalent to the emissions reported
Penalties in the EU (1)

- Varies from no penalty to EUR 15 mln. (in Ireland) and EUR 2 mln. Euro (Spain)
- Operation without permit – in most countries up to EUR 50.000, highest penalty in France – EUR 75.000
- Failure to submit a verified emissions report in due time – from several hundred to several thousand Euro, highest penalty of EUR 40.000 in Slovenia
- Failure to notify planned or effective changes to capacity, activity levels - from several hundred to several thousand Euro, with a highest penalty in Spain (EUR 50.000)
- Overall, the highest fee on average in Ireland, Slovenia, France and Spain

Source: own calculation based on the country responses on the questionnaire for reporting on the application of Directive 2003/87/EC
Penalties in the EU (2)

• Potential jail sentences for some infringements, of up to 120 months (max. in Ireland)\(^1\) in 9 countries

• Six countries also report potential jail sentences for some infringements for the aircraft operators\(^1\)

• None imposed in 3\(^{rd}\) Phase of EU ETS\(^1\)

• In case of fraud, the level of penalties will often depend on the seriousness of the fraud. In most cases - between 6 months and 10 years of imprisonment

State of compliance in the EU ETS

- High compliance rate: each year around 99% of the emissions are covered by the required number of allowances on time\(^1\)

- In 2017 appr. 1% of the installations did not surrender allowances covering all their emissions by the deadline of 30 April 2018\(^1\)

- Aircraft operators responsible for 98% of EU ETS aviation emissions complied\(^2\)

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\(^1\) COM(2018) 842- Final Report on the functioning of the European carbon market

Typical mistakes in the reporting under EU ETS

The most common offences reported for 2017 were:

- Failure to report capacity changes (24 cases)
- Failure to submit verified annual emission reports by the due deadline (23 cases)
- Operation without a permit (17 cases)
- Failure to hold a duly approved monitoring plan (11 cases)

1 COM(2018) 842 final Report on the functioning of the European carbon market
State of compliance in the EU ETS (2)

- In 2013 - 2016 most fees were imposed by IT (ca. EUR 40 mln. + EUR 12 mln. on aircraft operators), PL (EUR 4 mln.) and NL (EUR 1 Mln Euro)

- For 2017, the application of excess emissions penalty was reported for 30 installations by nine countries (with RO 6 and UK 8)\(^1\)

- For aviation, excess emission penalties were reported for 61 aircraft operators (DE 7 and UK 35)

- 21 countries have never reported names of aircraft operators with excess emission penalties

- The remaining 10 countries have reported 187 such cases in the 3\(^{rd}\) phase of EU ETS\(^2\)

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\(^1\) COM(2018) 842 Final Report on the functioning of the European carbon market

State of compliance in the EU ETS: Summary

• Excess emissions penalty has not been imposed very often in the different Member States

• Different enforcement and sanction policies the Member States, e.g.:
  - Dutch competent authority (NEa) provide compliance assistance rather than imposing sanctions. If the NEa detects non-compliance it will first issue a warning notice and try to persuade the operator into compliant behaviour
  - In Greece the competent authority GEDE invites the non-complying operator for an interview before handing the dossier to its superiors in the Ministry of Environment, Energy and Climate Change (YPEKA) for possible enforcement measures
Difficulties in the EU ETS enforcement

• MS have encountered some practical difficulties bringing enforcement against operators and/or aircraft operators. The most common of these are:

  - Enforcing in instances where installations have become bankrupt (or changed ownership)
  - Contact with and enforcement of aircraft operators, specifically from other countries (such as China or India)\(^1\)

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\(^1\) Ecofys (2015) Fourth ETS MRAV Compliance Review Annex II: Country fiches
Good practice for compliance mechanism

• Much more attention should be focused on the role of domestic enforcement

• Site visits shall be part of the standard enforcement strategy

• Different authorities shall hold different competences regarding the functioning of the ETS (issuing of permits, inspection and sanctioning)

• Competent authorities shall provide compliance assistance throughout the whole compliance cycle
Article 17: Access to information in EU

- In 1998 in Aarhus UNECE\(^1\) adopted Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

- Main provisions:
  - The right of everyone to receive environmental information that is held by public authorities
  - The right to participate in environmental decision-making
  - The right to review procedures to challenge public decisions (access to justice)

- Parties submit to the secretariat a national implementation report on the legislative, regulatory or other measures to implement the provisions of the Convention, and their practical implementation

\(^1\) The United Nations Economic Commission for Europe
EU ETS - Directive 2003/4/EC

- EU ETS Directive prescribe the use 2003/4/EC on public access to environmental information

- Public authorities shall make available environmental information held by or for them to any applicant at his request and without statement of an interest

- Environmental information shall be made available to an applicant within a month, in case of complex data within 2 months of the applicant's request

- The public authorities may, where they deem it appropriate, refuse the request if the request is formulated in too general a manner

- Decisions relating to the allocation of allowances and the reports of emissions required under the greenhouse gas emissions permit shall be made available to the public

Refuse for the requested information also inter alia in the following cases:

• The information requested is not held by or for the public authority to which the request is addressed

• The request is manifestly unreasonable

• The request concerns material in the course of completion or unfinished documents or data

• The request concerns internal communications, taking into account the public interest served by disclosure
Directive 2003/4/EC Article 4 (2)

Disclosure of the information can be affected by:

• The confidentiality of the proceedings of public authorities, international relations, public security or national defence

• The confidentiality of commercial or industrial information

• Intellectual property rights

• The confidentiality of personal data relating to a natural person where that person has not consented to the disclosure of the information to the public

• The protection of the environment to which such information relates (e.g. location of rare species)
Public access to the data on GHG emissions

- Aarhus Convention: The confidentiality of commercial and industrial information where such confidentiality is protected by law in order to protect a legitimate economic interest\(^1\)

- Emissions into the environment are at stake, the confidentiality of commercial and industrial information may not be invoked\(^2\)

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\(^1\) Aarhus Convention (art. 4, para. 4 (d))

\(^2\) Case C-442/14, Bayer Crop Science and De Bijenstichting, Case C-673/13 P, European Commission v Stichting Greenpeace Nederland.

- The requirement of 1 month for information delivery mostly implemented correctly\(^1\)
- Slovakia fixed the response time to 8 working days. Belgium, Croatia, Lithuania allow 15 days for reply, Slovenia and Switzerland 20 days\(^2\)
- Common issue - difficult to provide the requested information in time- e.g. information spread across different departments or large volume of requests to handle at the same time
- Financial constraints and a lack of human resources, qualified staff and/or relevant equipment during disclosure
- Decrease in the number of requests for an access to information, as more information is actively made available by public authorities online\(^2\)

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Implementation of Directive 2003/4/EC (2)

- Many Parties reported to have designated officers or departments tasked with assisting citizens looking for public information or having other requests.
- A few Parties mentioned separate governmental bodies dealing with environmental requests of citizens (e.g. Ireland).
- Some countries reported on legislative provisions obliging officials to provide guidance to the public on how to request related to access to information (e.g. Belgium, Denmark and Germany).
Important Links


• Eurostat provides statistics and GHG data (e.g. GHG inventories or intensity) - https://ec.europa.eu/eurostat/data/database


• European Union Transaction Log (EUTL) - http://ec.europa.eu/environment/ets/
Registries (Article 19): Introduction

• Purpose: establishment of standardised and secured system of registries in the form of standardised electronic databases containing common data elements to track the issue, holding, transfer and cancellation of allowances

• MS Registry accessible to the public and contain separate accounts to record the allowances

• Any person may hold allowances

• EU ETS operations for all EU ETS countries in 2012 were centralised in a single EU registry operated by the EC
The Union registry: Introduction

• The Union registry - online database that holds accounts for stationary installations and for aircraft operators

• Each registry should contain one Party holding account, one retirement account and the cancellation and replacement accounts

• The national registry administrators in the 31 participating countries remain the point of contact for the representatives of around 15 000 accounts (companies or natural persons)

• Respective Member States consider account applications, check documents required for opening an account and provide ad-hoc support to the users
The Union registry: Introduction (2)

Union registry records:

• National implementation measures

• Accounts of companies or individuals holding such allowances

• Annual verified CO\textsubscript{2} emissions from installations and aircraft operators

• Annual reconciliation of allowances and verified emissions, where each company must have surrendered enough allowances to cover all its verified emissions

• Transfers of allowances ("transactions") performed by account holders

• The European Union Transaction Log (EUTL) http://ec.europa.eu/environment/ets/ - automatically checks, records and authorises all transactions between accounts in the Union registry. This ensures that all transfers comply with EU ETS rules
Architecture of the Union registry

Union registry with consolidated Kyoto registries of the EU member states

**UNION REGISTRY**

- **Kyoto section**
  - Kyoto registry of the European Union (EU)
    - National account (EU-100...) and other account types
      - EU ETS section administered by Germany
        - Operator holding account (EU-100...)
        - Aircraft operator holding account (EU-100...)
        - Person holding account (EU-100...)
        - Trading account (EU-100...)
        - Verifier account (EU-0...) and other account types
      - EU ETS section administered by France
        - Operator holding account (EU-100...)
        - Aircraft operator holding account (EU-100...)
        - Person holding account (EU-100...)
        - Trading account (EU-100...)
        - Verifier account (EU-0...) and other account types
      - EU ETS section administered by EU
        - EU wide issuance account (EU-100...)
        - Deletion account (EU-100...)
        - Aviation surrender Set-Aside account (EU-100...)
        - and other account types and EU sections for all Member States
  - Kyoto registry of Germany (DE)
    - National holding account (DE-100...)
    - Former operator holding account (DE-120...)
    - Person holding account (DE-121...)
    - Voluntary cancellation account (DE-230...)
    - Retirement account (DE-300... and other account types
  - Kyoto registry of France (FR)
    - National holding account (FR-100...)
    - and other account types and Kyoto registries for all Member States
Union Registry Design (2)

• The Kyoto Protocol (KP) national registries of the Member States have also been consolidated with the Union registry

• The KP national registries have their distinct obligations and connections to the UNFCCC system

• All Member States now all use the same registry software which is maintained and hosted by the Commission

• Since 2014 the Union registry also implements the rules related to the Effort Sharing Decision - emissions from sectors not included in the EU ETS, (e.g. transport (except aviation and international maritime shipping), buildings, agriculture and waste)

1 COM(2018) 842 final Report on the functioning of the European carbon market
Union Registry Design (2)

• The Union Registry can be accessed online in a similar manner to online banking systems

• The operational/technical requirements are specified in a Commission Regulation (Registry Regulation\(^1\))

• Following account types are available:
  – Operator holding accounts
  – Aviation operator holding accounts
  – Verifier accounts
  – Person holding accounts
  – Trading accounts
  – National accounts

\(^1\) COMMISSION REGULATION (EC) No 2216/2004 for a standardised and secured system of registries
Union Registry Design

Member States’ national administrators

Authorised representatives of the account holder

Confidential account data

Verified emissions

Firewall

Public data

Normal data connection

Public

Secure data connection

Only access to verified emissions

Authorised representatives of the verifier
Commision Regulation (EC) No 2216/2004 for a standardised and secured system of registries

Publicly available information from each registry and the Community independent transaction log:

• account holder name
• alphanumeric identifier
• contact data of the primary and secondary authorised representatives of the account specified by the account holder for that account
• verified emissions figure for the installation related to the operator holding account for year X
• allowances surrendered
• a symbol identifying whether the installation related to the operator holding account is or is not in breach of its obligations
## EUTL Overview

### CLIMATE ACTION

**European Union Transaction Log**

#### Allocation Table Installation Information

- **EU ETS Phase:** Phase 3 (2013-2020)
- **National Administrator:** Poland
- **Allowances for operators:** 516568665
- **Allowances from NER:** 113467117

#### Detailed Information on the Allocation Table Installations

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</thead>
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EUTL Overview (3)
Fees charged by Member States for the accounts in the Union registry

• An operator holding account costs 0 € in Cyprus, Germany, Estonia, the Netherlands, Italy, Luxembourg and Sweden and a maximum of 11 773 € in Austria and 12 000 € per year in Spain

• Other Member States charge a fee per tonne of emitted CO$_{2e}$ or per free allowance with no maximum fee indicated. E.g.:
  - Norway charges 0.07 € / tCO$_{2e}$
  - In Denmark operators have to pay 0.02 € / tCO$_{2e}$ compared to 0.007 € / tCO$_{2e}$ in the Czech Republic

• Fees for person holding accounts also varies: lowest fee for a person holding account is 25 €/year in Poland and the highest fee is 3 000 €/year in France

Technical Assistance for Developed Analytical Basis for Formulating Strategies and Actions towards Low Carbon Development

Thank you for your attention!

http://www.lowcarbonturkey.org/