Building Registries to Support the Next Generation of Carbon Markets

PMR Technical Workshop
The Legal Framework of the German/EU Registry

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Architecture of the EU Registry

Registry Architecture
Union Registry with consolidated Kyoto Registries of EU Member States

UNFCCC International System (Kyoto Protocol)
Logical structure of the Union registry in the UNFCCC's view

Union registry with consolidated Kyoto registries of the EU member states

**UNION REGISTRY**

*Kyoto section*

Kyoto registry of the European Union (EU)
- National holding 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
Figures of the German registry between 2008 and 2012

- > 2,000 accounts
- > 1,500 account holders
- ~ 3,000 authorised representatives
- ~ 100 additional authorised representatives
- ~ 140 verifiers
- > 100,000 performed transactions
- > 5,000,000,000 units held on the accounts
- ~13,000,000,000 transferred units

Assuming a value of 10 € of one unit, this means a total transferred value of 130 Billion €!
**Legal Framework**

**Rules and Regulations**

- EU Regulation No. 389/2013 Establishing a Union Registry
  - Directly binding, no transposition into national law necessary

- Few accompanying rules in the German GHG Emissions Allowance Trading Act

- Accounts fall under the jurisdiction of the Member States and the units held in them are considered to be situated in that Member State's territory
  - Member States law is applicable
Legal Framework

Terms and Conditions for the EU registry accounts managed by Germany

- Public law relationship between DEHSt and the national users

- DEHSt administers the German union registry exclusively by means of instruments of public law

- Content: account opening, KYC checks, fees, closure of accounts, authorized representatives, authentification, transactions, recording of annual emissions, confidentiality and privacy…
Legal Framework

Underlying principles according to EU Registry Regulation

- Units are fungible, dematerialized, tradable instruments
- Record of registry constitutes evidence of title over units
- Transactions become final and irrevocable after their finalization
- A purchaser or holder acting in good faith acquires title to units free of any defects in the title

➢ These rules provide certainty for the participants in the EU ETS
Legal Framework

German Property Law

- Units are considered property

- Transfer by agreement and entry in the account of the purchaser (German ETS Law)
  - Transfer is a contract under public law
  - Underlying contract is civil law

- Content of the registry is deemed to be correct, insofar as allowances have been issued, unless the recipient is aware of the incorrectness
Legal Framework

German Tax Law

- The Reverse-Charge Procedure (the buyer is paying the tax instead of the seller) was introduced in Germany
- VAT fraud in emissions trading has stopped in July 2010 when Germany introduced this procedure

- For accounting units are considered to be current assets
- For issued units it is required to set the value at the time of issuance, for purchased ones the cost of acquisition
- If sold with profit the difference between profit and value at the time of issuance needs to be accounted
- The compliance obligation is subject to passivation, the value of the reserve results from the book value of the issued units and the book value of purchased units
Legal Framework

Financial Regulation

- Germany: Units are not financial instruments yet
  - Not applicable to derivatives

- EU: Market in Financial Instruments Directive II (MiFID), from 2017 onwards units are considered as financial instruments; now spot transactions are covered too
  - Treatment like financial instruments (Licenses, Reporting, Controls)
  - But exemptions for compliance buyers, entities providing investment services for EU ETS if the activity is ancillary and they are not part of a financial group, joint ventures of local electricity and gas undertakings and operators under certain conditions
Lessons learnt

Experiences and recommendations

- Security and certainty considered very important factors
- Legal treatment of units needs to be decided on
- If linking is an option
  - Type of linking (bilateral needs more comprehensive legal basis than unilateral)
  - Legal form of the underlying agreement
  - Legal recognition of units
  - Change management
  - Dispute Settlement
  - MRV arrangements
- UNFCCC ITL with Data Exchange Standard (2.0) provides good documentation and a good basis for own developments
Recommendations

Registries and Transaction Logs

- Realize registry with a transaction log only
- Transaction log to be maintained independently from the registry

- Examine as basis for developing your registry system:
  - existing registry software systems (e.g. EU, CH, NZ, CDM)
  - existing transaction logs (ITL, EUTL)
  - existing linking standards (DES 2.0)
  - planned systems (e.g. China)

- Contact registry administrations to learn from their practical knowledge and experience (Germany welcomes any request)
- Involve your users (user group)
Thank you for your attention!

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Unit Types

Kyoto unit types used in the EU-ETS

- EU-Allowances (EUA)
  - Generated by labelling AAU as used for the EU-ETS
  - EUA are allocated for free to operators or auctioned
  - EUA can only be transferred between European registries

- Units allowed to be surrendered by operators
  - EUA
  - ERU (converted from AAU) and CER with a limited amount

- From 2012 onwards: aEUA (Aviation EU Allowances)
  - Only transferable in the Union Registry
  - Aviation operators can surrender EUA, aEUA, CER and ERU
Transaction Types in a Kyoto Registry

Different transaction types for different purposes

- Kyoto transaction types (examples)
  - 01-00 Issuance – Initial creation of a unit (AAU, CER)
  - 02-00 Conversion – Transformation of AAUs to create an ERU
  - 03-00 External – External transaction of units between registries
  - 10-00 Internal – Internal transaction of units within a registry
  - 04-00 Voluntary cancellation
  - 05-00 Retirement – Transaction in order to fulfil Kyoto requirements
  - 06-00 Replacement – Replacement of tCER or ICER
  - 07-00 Carry-over – Change of validity to subsequent Commitment Period
  - 08-00 Expiry date change

- The element left of the dash is the Kyoto transaction type
- The element right of the dash can be used by supplementary systems
Legal Framework

Security measures in the German registry

- SSL Data transfer (Secure Socket Layer)
  - all data transferred between users and the registry is encrypted
- Two-factor authentication mandatory for login (name, password, sms)
- SMS confirmation of transactions
  - SMS contains acquiring account, amount, unit type
  - World wide delivery within seconds
- Additional authorised representative (optional double-verification)
- Possibility to set transaction limits on accounts
- Change of personal data by additional SMS confirmation
- 26h delay in completion of transfers
- Trusted account list
- Transaction Monitoring
IT-Structure DEHSt

External Users

Internet

Internal Processes

Operators

Verifiers

Account Holders

Public

Website

Forms Management System (FMS)

Virtual Post Office (VPS)

Registry

Installation Database

DOMEA (Record Management System)

Adress-management