Exposé

Working Title:

Emission trading post-2012
and its transformation into Austrian law

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1. Introduction

The goal to stabilize greenhouse gas emission in order to prevent dangerous changes in the climate system was first defined in 1992 by the United Nations Framework Convention on Climate Change\(^1\). The Kyoto Protocol to this Framework Convention set out firm obligations for the signatory countries to reduce greenhouse gases in the commitment period 2008 to 2012\(^2\). As a result of the obligation on the international level the European Union set up an emission trading system which started in 2005 and which was designed to support the efforts in achieving the Kyoto obligation.

We are now at the end of the Kyoto commitment period and can look back on several years of emission trading in the European Union. At the same time the rules for the years after 2012 are partly still undefined. Due to the ambiguity of the international rules post-2012 and new EU regulations in order to reach the self-imposed 20%-emission-reduction-target by 2020 several legal aspects are not fully investigated yet. The goal of my dissertation is to analyze the latest developments on both the international and European level and to identify the consequences for the European emission trading system. The dissertation will also scrutinize the latest amendment to the Austrian Act on Emission Allowance Trading, which was necessary due to substantial changes in European regulation.

In the following I will outline some of the questions I want to answer with my dissertation.

2. Research Questions

2.1 Non-compliance consequences for Austria under the Kyoto Protocol

According to latest available data, Austria will not fulfill its emission reduction obligations for the period 2008-2012\(^3\). While recent newspaper articles suggest that the consequence for Austria would be massive financial penalties under the Kyoto Protocol, the Protocol itself does not specify any consequences in case of non-compliance. In Art 18 it merely decides that the rules shall be defined at a later stage and become legally binding in the form of an amendment to the Protocol. Such rules were worked out and written down a few years later in

\(^{1}\) United Nations, Framework Convention on Climate Change, Article 2.
\(^{2}\) United Nations, Kyoto Protocol, Article 3.
\(^{3}\) Umweltbundesamt, Klimaschutzbericht 2011, 12.
the so-called Marrakesh Accords⁴, which, however, were never transformed into an amendment under the Kyoto Protocol. Apart from the question whether these non-compliance procedures are legally binding, the dissertation will also investigate if Austria can be subject to these procedures since it is part of the EU-15 group, which has a common group reduction goal under the Kyoto Protocol.

2.2 Set-aside of emission allowances post-2012

Due to the persistent over-allocation of emission allowances in the market and the ensuing deterioration of the market price of these allowances, the European Union intends to hold back a still undefined number of allowances from the original allocation for the period 2013-2020. On what legal ground this “set-aside” is supposed to be based is not decided yet. The dissertation will investigate if such a move can be based solely on the existing Emission Trading Directive (2009/29/EC) or if other instruments have to be used.

2.3 Eligibility of Kyoto-Credits under the European Emission Trading System

Emission reduction credits under the Kyoto Protocol can also be used to fulfill obligations under the European Emission Trading System⁵. As the market is already well supplied with European allowances, the European Union tries to limit the eligibility of Kyoto-Credits. In my dissertation I will examine how the European Union limits the extent to which European installations may use such credits and how the new rules for 2013-2020 look like. These rules are subject to change in case a binding agreement on the international level is reached. As there has been a general commitment to such an agreement in December 2011, the question remains if this was sufficient to alter European rules.

2.4 Breach of the principle of equal treatment in new allocation rules

As the European Union made substantial changes to the rules of allocation of free allowances in the trading period 2013-2020, the dissertation will analyze these changes and compare them with the current method. Furthermore, I will investigate whether the new allocation rule for installations with capacity expansions is a breach of the principle of equal treatment.

⁴ United Nations, Marrakesh Accords, FCCC/CP/2001/13/Add.3, Section XV.
2.5 Conformity of Austrian law with European law
The latest amendment to the Austrian Act on Emission Allowance Trading entered into force in December 2011. The amendment was necessary in order to cater for the new regulations regarding emission trading after 2012. In my dissertation I will investigate this amendment and discuss whether the Austrian rules deviate from European law and the consequences thereof.

3. Personal motivation and status of research
My interest in the topic of emission trading was raised in the course of my specialization in environmental law during my studies at the University of Vienna. My current employment at one of Austria’s biggest utility companies gave me further insight into the subject, as I am responsible for the emission trading activities of this company. I am therefore closely following the developments on both the international and European level and am responsible that my employer complies with Austrian rules.

The status of my research and understanding of this topic is therefore already advanced. For the purpose of the dissertation the depth of the legal analysis has to be further developed.

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6. Literature

The following list is indicative for the literature and legal sources used in the dissertation.


*Court of Justice of the European Union: Rs C-127/07, Société Arcelor Atlantique et Lorraine, 16 December 2008*

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