

The EU's ETS Legal System and Implementation in Germany

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Overview of the EU ETS

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Official Journal of the European Union

25.10.2003

DIRECTIVE 2003/87/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 October 2003

establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Economic and Social Committee (2),

Having regard to the opinion of the Committee of the Regions (3),

Acting in accordance with the procedure laid down in Article 251 of the Treaty (4),

Whereas:

- (1) The Green Paper on greenhouse gas emissions trading within the European Union launched a debate across Europe on the suitability and possible functioning of greenhouse gas emissions trading within the European Union. The European Climate Change Programme has considered Community policies and measures through a multi-stakeholder process, including a scheme for greenhouse gas emission allowance trading within the Community (the Community scheme) based on the Green Paper. In its Conclusions of 8 March 2001, the Council recognised the particular importance of the

- (3) The ultimate objective of the United Nations Framework Convention on Climate Change, which was approved by Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change (5), is to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level which prevents dangerous anthropogenic interference with the climate system.

- (4) Once it enters into force, the Kyoto Protocol, which was approved by Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder (6), will commit the Community and its Member States to reducing their aggregate anthropogenic emissions of greenhouse gases listed in Annex A to the Protocol by 8 % compared to 1990 levels in the period 2008 to 2012.

- (5) The Community and its Member States have agreed to fulfil their commitments to reduce anthropogenic greenhouse gas emissions under the Kyoto Protocol jointly, in accordance with Decision 2002/358/EC. This Directive aims to contribute to fulfilling the commitments of the European Community and its Member States more effectively, through an efficient European market in greenhouse gas emissions allowances, with the least possible

System Design

Overview

- **Market for CO₂e emission allowances**
operational since 1 January 2005
- **First transboundary emissions trading system**
implemented in very limited time after initial EU
market skepticism
- **Largest emissions trading system worldwide**
>11.000 installations and >45% of EU greenhouse
gas emissions (around 2 Gt CO₂e)
- **Trading periods: 2005-2007, 2008-2012, 2013-
2020, 2021-2030**, with significant development
between periods

Trading Periods



Scope and Coverage

- All **activities** listed in an Annex:
 - **Combustion installations** with a capacity ≥ 20 MW
 - Oil refineries
 - Coke ovens
 - Production and processing of ferrous metals
 - Mineral industry (cement, glass and ceramics)
 - Pulp and paper
 - Starting 2012 also **aviation**
 - Starting 2013 also petrochemical, ammonia and aluminium
- Only **CO₂ emissions** at the outset, extended to N₂O and PFCs starting 2013

Scope and Coverage

2005

Direct CO₂ emitters
~10,000 installations
in all 25 EU Member States
~2 Gt of CO₂
> 40% of EU emissions

2007

Romania, Bulgaria
join EU ETS:
27 Member States

2008

N₂O emissions from
fertilizer production
CO₂ from refineries,
soot production

2012

Aviation to and from the EU, with temporary exclusions

2013

Certain chemical sectors, aluminum, PFC emissions

2008

Norway, Iceland, Liechtenstein: 30 Countries in EU ETS

2013

Croatia becomes an EU Member State

2016

Linking to Switzerland agreed; other links under discussion

Obligations for Participants

- Obligation to hold installation-specific and non-transferable **permit** with detailed monitoring and reporting obligations
- Allowances are distributed through a mix of free allocation and auctioning or sales, with growing share of the latter
- By April 30 of each year, operators must surrender **sufficient allowances** to cover emissions in the previous year; these can be freely transferred
- **Penalties** of €40 (2005-2007) and €100 (2008-) for each unaccounted ton of CO₂e, and duty to make up shortfall
- Central **registry** accounts for issue, holding, transfer and cancellation of allowances

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Having regard to the opinion of the Committee of the Regions⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽⁴⁾,

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(3) The ultimate objective of the United Nations Framework Convention on Climate Change, which was approved by Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change (5), is to achieve a stable system of greenhouse gas concentrations in the atmosphere at a level which prevents dangerous anthropogenic interference with the climate system.

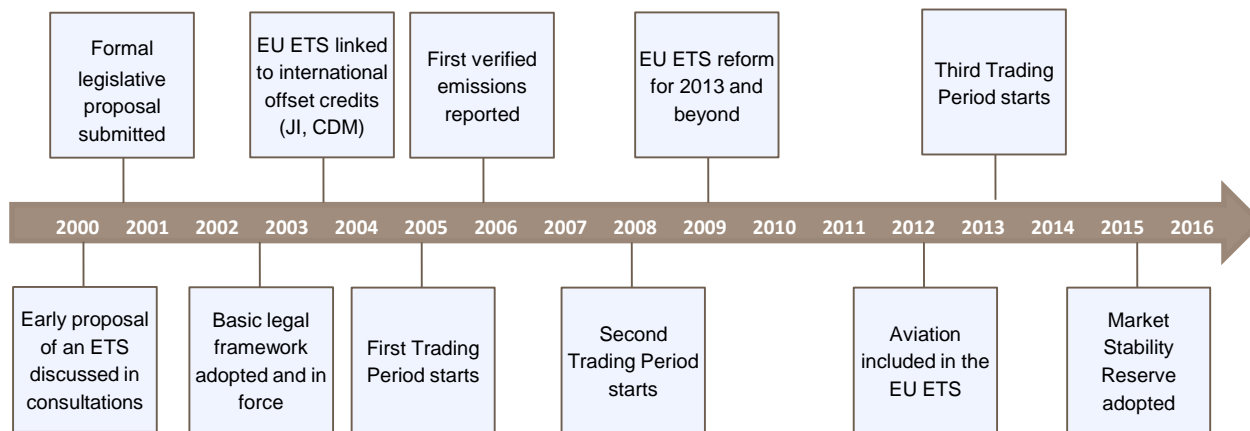
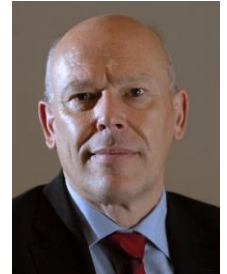
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(5) The Community and its Member States have agreed to fulfil their commitments to reduce anthropogenic greenhouse gas emissions under the Kyoto Protocol jointly, in accordance with Decision 2002/358/EC. This Directive aims to contribute to fulfilling the commitments of the European Community and its Member States more effectively, through an efficient European market in greenhouse gas emissions allowances, with the least possible

Legal Implementation

History and Evolution

- Initially strong focus on **fiscal options** throughout the early and mid-1990s, and **opposition to carbon markets** in the 1997 Kyoto Protocol
- Political economy** of fiscal measures, growing capacity with markets and **synergies** with existing instruments resulted in an “extreme about-face” on carbon trading



Timeline of the EU ETS

Legislative Process

- **8 March 2000: Green Paper (COM(2000)87)**
- **23 October 2001: Commission Proposal (COM(2001)581)**
 - Opinion of the Committee of Regions (14 March 2002)
 - Opinion of the Economic and Social Committee (29 May 2002)
 - First Reading of the European Parliament (10 October 2002)
- **27 November 2001: Amended Proposal (COM(2002)680)**
 - Council Common Position (18 March 2003)
 - Second Reading of the European Parliament (2 July 2003)
- **18 July 2003: Commission Opinion (COM(2003)463)**
- **13 October 2003: Directive 2003/87/EC adopted**

Legislative Framework

Function	Norm
Legal Mandate	Directive 2003/87/EC, as amended by Directive 2018/410/EU Article 192 TFEU
Scope and Coverage	Directive 2003/87/EC (Annexes) EEA Joint Committee Decision No 146/2007
Data Collection and Inventory Generation	Directive 2003/87/EC, as amended by Directive 2018/410/EU Regulation (EU) No 525/2013
Nature and Stringency of Target	Directive 2003/87/EC, as amended by Directive 2018/410/EU Decision No 406/2009/EC
Issuance of Units and Definition of Benchmarks	Directive 2003/87/EC, as amended by Directive 2018/410/EU Commission Regulation (EU) No 1031/2010
Price Management and Compliance Flexibility	Directive 2003/87/EC, as amended by Directive 2018/410/EU Decision (EU) 2015/1814 Decision No 1359/2013/EU Directive 2004/101/EC
Registry	Commission Regulation (EU) No 389/2013 Commission Regulation (EU) No 920/2010
Monitoring, Reporting, Verification (MRV)	Directive 2003/87/EC, as amended by Directive 2018/410/EU Commission Regulation (EU) No 601/2012 Commission Regulation (EU) No 600/2012 Guidance documents and compliance tools
Compliance and Enforcement	Directive 2003/87/EC Directive 2014/57/EU
Market Oversight and Regulation	Directive 2014/65/EU Regulation (EU) No 596/2014 Commission guidance on the application of VAT to emission allowances

Legislative Approach (1): Framework Directive/Specific Regulations

- Core architecture and principles defined in **framework legislation**: Directive 2003/87/EC establishing the EU ETS
 - legislative act that sets a binding framework for all EU Member States; these decide on form and methods when transposing it into national law
- **Operational details** set out over time in **subordinate legislation**, including Commission Regulations and Decisions
 - binding legislative acts that are directly applicable and binding in their entirety in all Member States
- Directive 2003/87/EC authorizes **European Commission** to regulate technical details agreed upon in the Climate Change Committee, subject to scrutiny by EU legislature

Legislative Approach (2): Framework Directive/Specific Regulations

Key Design Features:

- **Cap setting:** criteria in Directive 2003/87/EC \leftrightarrow detailed calculation in subsequent rules
- **Auctioning:** definition of shares in Directive 2003/87/EC \leftrightarrow auctioning amounts and calendar in Commission Regulation No. 1031/2010 on Auctioning
- **Allocation:** criteria & calculation methods in Directive 2003/87/EC \leftrightarrow list of specific allocation rules applicable to each installation in subsequent rules
- **Monitoring:** basic rules and criteria in Directive 2003/87/EC \leftrightarrow details in Commission Regulation 601/2012 on Monitoring and Reporting; Commission Regulation 600/2012 on Verification and the Accreditation of Verifiers

Legislative Approach (3): Centralization/Decentralization

Decentralized implementation and enforcement of:

- Emissions permits, definition of installation boundaries
- Elaboration of allocation list
- Administration of registry accounts
- Technical support desk

Centralized implementation and enforcement of:

- Approval of monitoring plans
- Approval of allocation list
- Calculation of cap and auctioning shares
- Maintenance of Union Registry

→ Significant changes over time!

Market Oversight and Financial Market Regulation

ETS becomes Part of Financial Markets

- Trading at established exchanges → integration in commodity trading
- Trading of future contracts and derivatives → market for hedging
- Legal qualification of derivatives as financial instruments

Market oversight needed to keep pace with the dynamics of the market for EUAs

Challenge: insider trading, money-laundering, tax fraud

Inclusion of ETS allowance in Financial Market Laws:

- Markets in Financial Instruments Directive (MiFID)
- Market Abuse Directive & Regulation (MAD, MAR)
- Criminal Sanctions for Market Abuse Directive (CSMAD)

Contract for Transaction: Emissions Trading Master Agreement (ETMA)

Overview of Provisions

- 1 Interpretation and Construction
- 2 Confirmation Procedure
- 3 General Obligations, Representations and Warranties
- 4 Allowance Transfers
- 5 Effecting Transfers
- 6 Transfer Failure
- 7 Value Added Taxes
- 8 Billing and Payment
- 9 Force Majeure and Suspension Event
- 10 Confidentiality
- 11 Assignment
- 12 Termination
- 13 Liabilities
- 14 Miscellaneous

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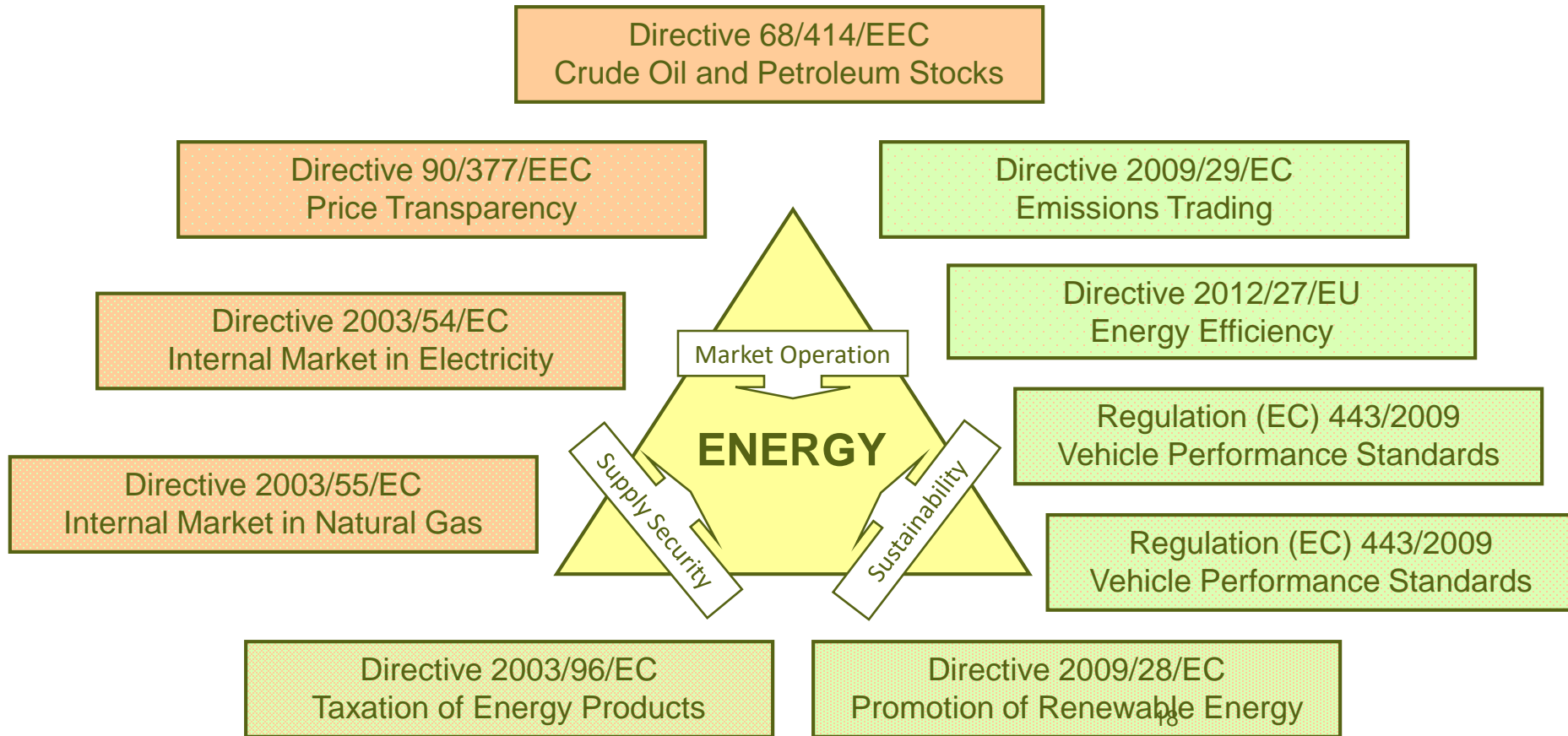
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Implementation in the Member States: Germany

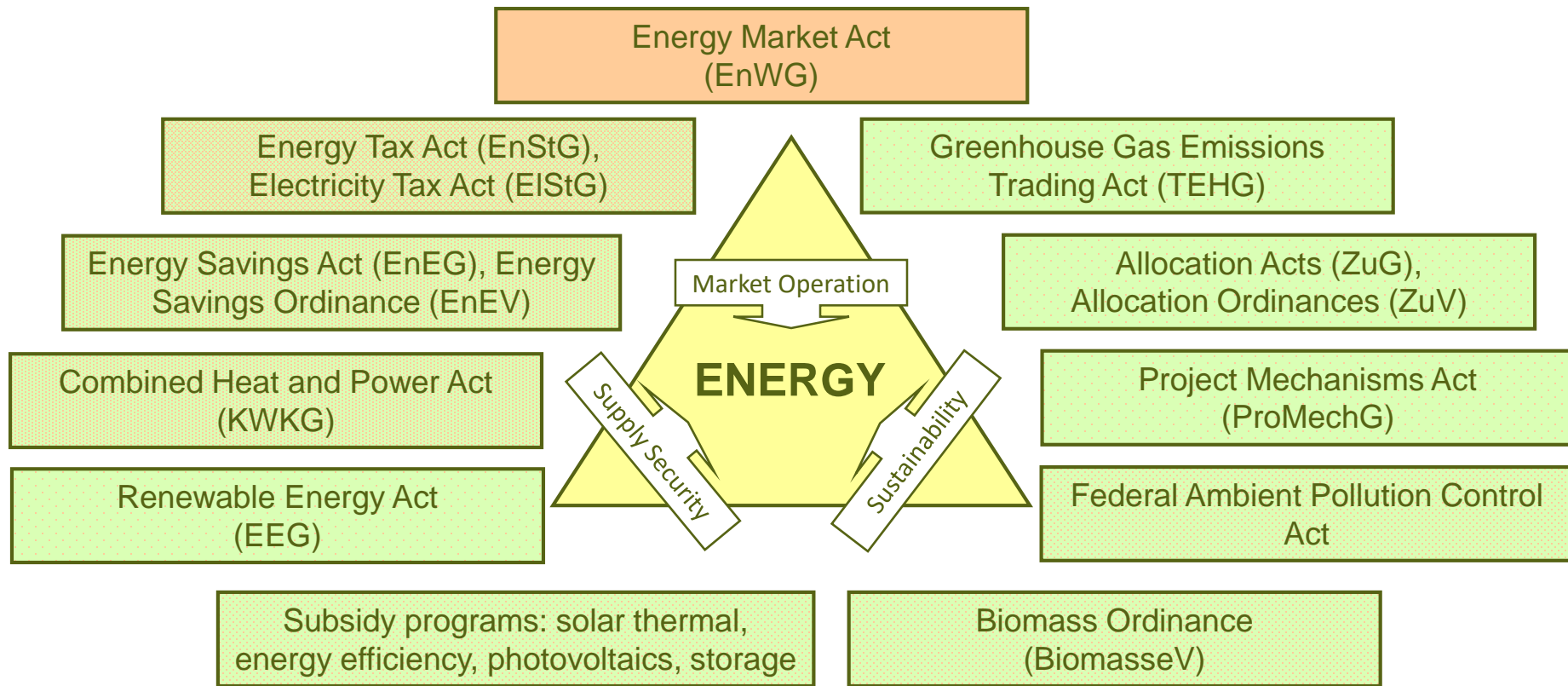
European Policy Framework ...



Energy Market Focus

Environmental Focus

... and German Response



- Energy Market Focus
- Environmental Focus

Legal and Institutional Basis in Germany

- Transposition of Directive 2003/87/EC:
Greenhouse Gas Emissions Trading Act (TEHG)
- Formulation of **National Allocation Plans**:
Transposition into **Allocation laws 2007** and 2012,
complemented by allocation ordinances
- Monitoring, Reporting and Verification (MRV) rules:
Germany declared the European Guidelines to be
legally binding
- Designation and establishment of a national
Competent Authority: German Emissions Trading
Authority (DEHSt)
in the Federal Environment Agency
- Establishment of a **National Registry**

Distribution of Responsibilities (1)

	EU Level	Germany
Cap setting	Cap is set at the European level (no national targets)	
Allocation	Harmonized allocation rules	Implementation
Free Allocation	Common rules based on European Benchmarks Commission consolidates data, determines cross-sectoral correction factor and approves National Implementation Measures (NIMs)	Collects and approves applications of national installations and submits data and allocation proposal (National Implementation Measures – NIMs) to European Commission
Auctioning	Member States have auctioning budgets; European Energy Exchange (EEX) conducts auctions of allowances on a common platform for most Member States	Germany receives revenues. Germany has its own auctioning platform subject to the same rules as common platform

Distribution of Responsibilities (2)

	EU Level	Germany
MRV including Accreditation	Harmonized rules	Implementation of rules, accreditation of verifiers, peer-to-peer review of accreditation bodies
Registry	Union Registry	National implementation
Market Oversight	Regulated in other general legislation at the European level	Implementation
Sanctions	Sets level of penalty	Implementation and additional fines

Thank you for your attention!

Questions?

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