

BCLP Environmental Bulletin Series - Greenhouse Gas Emissions Trading and Chemical Regulation

Transcript

Speaker	Dialogue
Isabelle Laborde	<p>Hello everyone, and welcome to this afternoon's next 20 minute instalment of our BCLP Environmental Bulletin series. I'm Isabelle Laborde, from the BCLP Environmental team, and I will be asking the questions today, with answers coming from my colleagues Aidan Thompson and Sam Levy. If you have any questions during the session, then please do ask them using the Q&A function at the bottom of your screen. We will reply to these in writing after the session. Right. So let's get started.</p> <p>We're here today to talk about greenhouse gas emissions trading and chemical regulation, and what these two mean for property and corporate transaction. Aiden, out of all the areas of environmental regulations, why are we talking about these two areas in particular?</p>
Aidan Thomson	<p>Oh, well. First of all, these are really big areas of regulation. Emissions trading is the flagship carbon reduction initiative that affects thousands of energy companies, airlines and manufacturers across the EU and the UK. And chemicals regulation is very important too, right from manufacturers and importers, all the way down the supply chain to the ultimate user. There are loads of companies that are directly affected by these two areas of regulation. But second, and we're talking about this today because the split from EUE law after BREXIT in these areas wasn't straightforward. For good reason, and the past key components of the regulatory regimes in the UK, were hard-wired into the EU. Say, a couple of examples for EU chemicals regulation, the European Chemicals Agency, or ECA, plays a key regulatory role. And for EU emissions trading, the European Commission operates a single accounting mechanism in the Union registry for the EU's trading system. Because of the approach that the UK decided to take following BREXIT, we couldn't really stay involved with these EU regulators, so we really needed to set up our own domestic equivalents.</p>
Isabelle Laborde	<p>So, what you're saying is that the way chemicals regulations and emissions trading works for businesses in the UK is essentially the same in substance as it was before? But the regulatory bodies, systems and structures to implement them have now changed?</p>
Aidan Thomson	<p>Yeah. So for example, now the Health and Safety Executive in the UK has taken on a regulatory role for the UK chemicals regulation. And for emissions trading, the UK government and the devolved administrations are collectively acting as the UK emissions trading authority overseeing all of UK emissions trading.</p>
Isabelle Laborde	<p>Is that all it is, basically, just a change in regulators?</p>
Aidan Thomson	<p>Well, that's a big part of it, but there is a little bit more to it than that.</p>
Isabelle Laborde	<p>OK. Let's start with emissions trading. Sam – what is greenhouse gas emissions trading?</p>
Sam Levy	<p>Well, in Europe, it takes the form of the EU ETS, that's the greenhouse...that's the emissions trading system – EU's emissions trading system. It's a fundamental part of the EU's climate change policy. And the UK was a leading light in developing that, back in the day.</p>
Isabelle Laborde	<p>So, how does that work?</p>

BCLP Environmental Bulletin Series - Greenhouse Gas Emissions Trading and Chemical Regulation

Transcript

Speaker	Dialogue
Sam Levy	Well, operators of certain types of activity have to count their carbon emissions and cover them every year with special allowances surrendered to the Union Registry.
Isabelle Laborde	But were these – well, where did these allowances come from?
Sam Levy	Well, they're created by the EU, and they're effectively just artificial bits of paper, each allowing the emission of 1 ton of carbon. And the EU only creates a certain number of these allowances, in line with its carbon reduction ambitions and obligations. It doles out some of those for free to certain operators through free allocation. But other allowances are auctioned off. And in some cases, the allowances are then bought and sold – i.e. traded – on the financial markets.
Isabelle Laborde	And were the allowances only created by the EU?
Sam Levy	In the main, yes, although there was a link to the Swiss equivalent to the EU ETS. So there's mutual recognition of EU and Swiss allowances. And you could also access some compatible international allowances, called CERs and ERUs. So, there's a bit of flex, there.
Isabelle Laborde	But, what if you couldn't get your hands on allowances?
Sam Levy	Well in that case, you're in trouble. You'd have to acquire them on the market and risk price fluctuating. Or worse, you couldn't fulfil the surrender obligation on the due date. And the whole idea was to get operators to rein in their emissions, so that they didn't run those risks.
Isabelle Laborde	And, what sort of operators were subject to all this? Presumably, we're only talking here about big emitters.
Sam Levy	Yes, that's right, broadly. We're mainly talking about carbon dioxide from electricity and heat generation on a large or local scale. Energy intensive industry sectors like metal production, for example, and commercial aviation within the European economic area. These operations emit about 40% of EU greenhouse gas emissions overall. So, the EU ETS had the control over the allowances in relation to those carbon emissions is a really key lever for bringing greenhouse gases under control.
Isabelle Laborde	So, going back to what we were discussing at the beginning, Aidan – what does BREXIT means for all of this?
Aidan Thomson	Well, before BREXIT, the UK was firmly ensconced in the EU system. All of our operators, each had an EU greenhouse gas emissions permit. Some operators were getting some free allocations of allowances, and buying the rest through auctions or on the market. Then they were surrendering the allowances to the EU registry.
Isabelle Laborde	And, what exactly happened as a result of BREXIT?
Aidan Thomson	Well, for the reasons that I mentioned, the EU... the UK decided to leave the EU ETS, and develop its own UK ETS for installations here and for airlines. The UK ETS is also a cap and

BCLP Environmental Bulletin Series - Greenhouse Gas Emissions Trading and Chemical Regulation

Transcript

Speaker	Dialogue
	trade system. And it's generally similar in virtually every way to the EU ETS. The UK – it uses its own allowances, and the overall number allowances available is set by the UK and its carbon emissions, rather than against the backdrop of the EU's overall aims. And not that those two are really that dissimilar. And the trade deal between the UK and the EU indicates that there may be some prospect in the future of the EU ETS and the UK ETS linking up. Like the way that EU ETS is linked up with the Swiss ETS. And that would mean that the old amount of flexibility around allowances can be restored. But for now, the two separate – the two systems – are separate.
Isabelle Laborde	So, what are the main wrinkles for UK operators?
Aidan Thomson	Well, first of all, it's worth noting that for certain operators in northern Ireland, specifically electricity generators, they're remaining in the EU ETS for technical reasons associated with the northern Ireland protocol. So that's the first wrinkle. That aside, it's inevitably a smaller system, at least for the moment, a smaller overall pool of allowances. So the market for allowances will behave differently to how operators are used at the moment. By dealing [inaudible] the UK carbon market from the EU carbon market and creating the smaller UK market, this effectively decreases liquidity, and may result in less efficient emissions reductions. And furthermore, the independence that the UK now has means that the UK can slip additional activities into the regime if it wants, and makes them participate. Or it could lower the numbers of allowances available. And that hasn't happened yet, but there is a prospect of it, because as a nation, we have been pretty proactive in the past when it comes to carbon reduction. So, it wouldn't be surprising to see a [inaudible].
Isabelle Laborde	Isn't there a problem relating to duplication for companies that operate in both the UK and the EU?
Aidan Thomson	Yes, and that is an issue. Companies that had installations across the UK and the EU only used to have to worry about buying up enough allowances to satisfy one regime overall. Now, it's two regimes, so there's an additional thing to think about there. And this duplication plays out at its most complicated in relation to aviation.
Isabelle Laborde	Sam, could you explain the rule of law why duplication is more complex regarding aviation?
Sam Levy	Sure. This is because most airlines are inevitably international to some degree. And of course, we are talking here about stationary installations with permits, like energy generating stations or industrial plants. We're talking about numerous aircraft back and forth to numerous countries. So allocating individual flights and the emissions associated with them to one ETS or the other, and doing lots... to whole.. to chunks of admin rather than just one is extra hassle the operators didn't have before.
Isabelle Laborde	So, where do things stands, in summary, in relation to emissions trading?
Sam Levy	Well, this is the first year of a new system for a large number of airlines that operate within it, to and fro in the UK and also the installations based in the UK. The principals of the UK ETS are broadly the same as the EU ETS, but certain nuts and bolts are different. For properties with installations on site, environmental permits compatible with the UK ETS should already have been received in two stages. Firstly, before the end of 2020, operators should have received the first part, their permits. And then, secondly, earlier this year, the

BCLP Environmental Bulletin Series - Greenhouse Gas Emissions Trading and Chemical Regulation

Transcript

Speaker	Dialogue
	<p>UK regulators should have attached the monitoring methodology plan to – and that would be attached to the back end of these permits. And, the regulators may also have made consequential amendments associated with free allocation. And in relation to this free allocation, which is regarding the allocation of allowances, this already should have taken place for this scheme year. So, just focusing in here, again, on properties with installations on site, one final point worth noting is that, if you do own one of these UK-permitted properties with an installation on site, then you need to take care to ensure proper compliance. And, you're going to make sure that you could provide procedures to cover this compliance in place specifically, at the moment, for the current scheme year, 2021. Failure to comply with your permit and obligations under the UK ETS rules can lead to significant civil penalties being applied, so it's important to know that.</p>
Isabelle Laborde	<p>And what about UK ETS in a transaction context, Aidan?</p>
Aidan Thomson	<p>Okay, well – making allowances for northern Ireland, as I said before – if you're buying property or a piece of property that's classed as an installation in the UK, and that could be something as simple as a generator or a heating system, as well as a property that contains much more or serious bit of industrial [inaudible] use of energy, you'll need to make that it's moved over from the EU ETS and is now locked firmly into the UK ETS. And that it's also got a plan for acquiring the necessary UK ETS allowances to cover its emissions.</p>
Isabelle Laborde	<p>Alright. So, that's all understood on emissions trading regulation. Let's move on to chemicals. Aidan – how were these regulated in the UK prior to BREXIT?</p>
Aidan Thomson	<p>Well, it was done mostly by way of something called REACH – that's the EU's regulation registration evaluation authorization and restriction of chemicals – which, as I mentioned right at the start, was organized centrally via the EU, the European Chemicals Agency based in Helsinki.</p>
Isabelle Laborde	<p>And, what happened under REACH?</p>
Aidan Thomson	<p>Well, anyone who manufactured a chemical in the EU or imported it from outside above the relatively low threshold of 1 ton a year, and to go through an onerous registration requirement with the European Chemicals Agency in order to be able to put it on the EU market. The EU's catch phrase here was "No deal, no data, no market." And the same thing went for certain manufactured objects, known as articles under REACH, that contained chemical substances. If you didn't register and you put your chemical or your article on the market, you could wind up in quite a bit of trouble. But once you had registered, you could then distribute the chemicals or the articles anywhere in the EU. Although you then need to make sure that you communicated certain information on the chemicals down through the supply chain.</p>
Isabelle Laborde	<p>And so, what's changed, exactly?</p>
Aidan Thomson	<p>Well, it was going to be difficult following BREXIT to run the regulation in the UK via an EU organization based in Helsinki. So the decision was taken for the UK to set up its own regulatory system, just like REACH, the EU version of REACH, but just relating to the UK.</p>

BCLP Environmental Bulletin Series - Greenhouse Gas Emissions Trading and Chemical Regulation

Transcript

Speaker	Dialogue
Isabelle Laborde	OK. Why, I suppose a bit like the breakaway of the UK ETS from the EU ETS – you can see very quickly that carving out a new geographical system out of an existing one has implication, particularly for companies with international supply chains.
Aidan Thomson	Yes, and take a company in the UK that manufactures chemicals or articles or imports them from outside the EU above the threshold – now that company, once it had satisfied its registration obligations, its manufacturer or importer under EU REACH, was then able to distribute into supply chains in the UK and also throughout the EU without people down the chain needing to do anything further apart from pass on the relevant safety information that it had received. Was very easy, and I suppose in that sense, that was the EU's single market doing its job. But now, the UK manufacturer or importer isn't subject to EU REACH. It's subject to UK REACH. It has to satisfy the manufacturer or importer obligations of UK REACH. And having done so, it can distribute into supply chains into the UK. But if it wants to distribute into the EU and into EU supply chains, it can't, or at least not straightaway. If it wants to distribute in the EU, the EU customer becomes the EU importer and subject to all of the EU REACH obligations that come with being an importer, buying something in from outside the EU from a third country, which is essentially what the UK is now.
Isabelle Laborde	Presumably, EU customers will not like this?
Aidan Thomson	No, they won't, and I'm sure they don't. They'll – they will make themselves responsible as importer for the substance or article in the EU in place of the UK company. So they put themselves in the firing line, so to speak. And, it's quite a change from how things were before with the operation of the single market.
Isabelle Laborde	Okay. Sam, can that be mitigated?
Sam Levy	Well, the UK company can try to do everything it can to help its EU customer with the paperwork. Or it could set up an EU representative to import the goods into the EU and distribute from there. But it's all extra admin and hassle.
Isabelle Laborde	What about the other way around, where a UK company has been supplied with chemicals or articles from an EU company?
Sam Levy	Well, previously, that UK company had no registration responsibilities of its own in relation to the chemicals or articles from the EU supply. But now it's classed as a.. the UK importer with registration obligations and responsibilities under UK REACH. So, it will have to persuade the EU supplier to provide as much help as it can or hope that the EU supplier sets up a UK representative to import the chemicals or articles and observe the registration rules and take on the responsibility.
Isabelle Laborde	Has anything been done to try to help people who have been doing business with EU companies for years get over these new regulatory hurdles?
Sam Levy	Yes. Well basically GB-based companies that were being supplied by EU companies for at least the last two years up until the end of last year could now apply for something called a Downstream User Import notification, which is a due. And that effectively acts to defer the need for a registration under UK REACH for a period of 2, 4 or 6 years, depending on the quantities or tonnage involved.

BCLP Environmental Bulletin Series - Greenhouse Gas Emissions Trading and Chemical Regulation

Transcript

Speaker	Dialogue
Isabelle Laborde	And is there any new REACH equivalent to a [<i>inaudible</i>]?
Sam Levy	Not as far as I can see, no.
Isabelle Laborde	So, it sounds like the big issue is that the splitting of the market post-BREXIT has caused some downstream users to now be classed as importers.
Sam Levy	That's right; exactly.
Isabelle Laborde	And, anything else?
Sam Levy	Well, just at the moment, EU REACH is applied in northern Ireland rather than UK REACH, and that's, again, to do with northern Ireland protocol. So, UK REACH, arguably, should actually be called GB REACH.
Isabelle Laborde	And the northern Ireland protocol is all pretty topical at the moment. So Aidan, if you're involved in a real estate or corporate transaction, how is all of this relevant?
Aidan Thomson	Well, I mean it's relevant where you're buying a UK property that has a business attached, either through an asset sale or a share sale. If it's a manufacturer, you need to make sure that it's moved over to UK REACH and fundamentally, this means that the manufacturer should hold a valid registration for any chemicals or articles under UK REACH. If you press the right buttons, then EU REACH registrations can be recognized under UK REACH, and that's what's called grandfathering. If the business that's being bought is an importer, bringing substances into GB from outside the EU, it will or should have been observing EU REACH importer registration formalities in the past. But it should now have moved over to the UK REACH system. If the business is an importer, bringing substances into Great Britain from outside the EU, there are some important formalities under UK REACH that now need to be observed, even though they didn't need to be observed prior to BREXIT. And you must be sure, or need to make sure, that they're being observed. And if the business is exporting, either manufactured or imported chemicals or articles to the EU, it will need to make sure that there's now a satisfactory entry point onto the EU single market, either by persuading the business... either by the business appointing a representative in the EU, or by persuading EU customers to take on whatever registrations or obligations that there might be.
Isabelle Laborde	What are the penalties for getting it wrong?
Aidan Thomson	Well, enforcement for REACH in the UK is by the Health and Safety Executive by their Chemicals Regulation Division. So this can be serious stuff, with criminal penalties attached. So, UK REACH compliance is very important.
Isabelle Laborde	Understood. Well, I think it's time for us to leave things here. Managers and owners of installations generating greenhouse gases or using, producing or importing chemicals should definitely be wary of the obligations relating to emissions trading or chemicals regime. Although both regimes are largely [<i>inaudible</i>] to those previously applicable, it seems that BREXIT has created a potential new minefield for companies to navigate by requiring those trading with the EU to satisfy obligations both at UK and EU levels. Thus,

BCLP Environmental Bulletin Series - Greenhouse Gas Emissions Trading and Chemical Regulation

Transcript

Speaker	Dialogue
	not only making compliance more complex and costly, but also risking operational shutdown. Thank you for attending today's session. I hope you found it helpful. This is the last one of this series, and we will be circulating links to all of the past instalments, in case you missed one. Have a great afternoon.