

Norway's new system for Emission Allowance Trading

Answers to the list of questions.

by Hans Chr. Bugge

Question 1

As Norway is not (yet) member of the EU, we are not party to the burden sharing between the EC Member States regarding the Kyoto commitments. Our Kyoto obligation is to keep average 2008-2012 level within *1 % increase* from 1990 level. This is mainly due to the expected increase in off shore oil and gas production. Part of our gas production and export will give other member states the opportunity to replace coal with gas for energy and other purposes. In fact, this limit will require a reduction of 10 % from the present emission level, and up to 17% compared to a “business as usual” development.

This result was not very much discussed, although it came as a surprise to those who expected more ambitious results from Kyoto in general. However, it was quickly accepted as a *fait accompli*, and found to be a reasonable compromise from both an industry and environment point of view. Today, it is recognized that it is going to be a very tough obligation to meet – probably impossible.

Question 2

a) Although directive 2003/87 is defined as EEA relevant, Norway has not accepted that it applies to Norway.¹ However, we have as from January 2005 introduced a *national emission trading system* by a separate act, which is based on the directive and which in fact establishes the same principles and methods of such a system as the directive.

The basic approach was easily accepted at this stage. Some years ago, there was political disagreement in the parliament – Stortinget - over the choice of instruments in the climate policy. Some parties preferred emission taxes as the main tool for controlling CO₂ emissions from industry, but the majority opted for emission trading. In 2000 a governmental commission proposed a very extensive national emission trading system in a major report,² based on the principle that activities should pay for their quotas. The general reaction to the report was positive, although industry was strongly against the principle of payment for quotas, and the idea of a separate national trading system. Some also favoured the use of agreements with industry as an alternative.

¹ The main reason for this is that we want to keep the petroleum industry outside the system. This industry is now subject to a CO₂ tax, with a much higher tax level than the expected price of CO₂ emission permits. Negotiations with EU has started.

² Norway's Public Reports Series NOU 2000:1 Et kvotesystem for klimagasser.

(Norway supported strongly the concepts of joint implementation and flexible mechanism from the early stages in the FCCC negotiations and at Kyoto. This is partly due to the strong influence of economists on environmental policy, and partly due to the simple fact that Norway will be totally dependent on these mechanisms to be able to fulfil our Kyoto obligations.)

The act on emission trading was adopted by Stortinget in December 2004. It differs from the commission's proposals in many ways. It is close to a blueprint of the EC system and thus much more limited than the proposal. The main criticism of the system is that it is too limited as it covers only 10 % of the national emissions of greenhouse gases. The answer to this is partly that activities with CO₂ tax are exempted because the CO₂ tax is more expensive than the expected price of emission rights and thus a stricter measure than emission trading. Off-shore petroleum industry and pulp and paper industry are among the industries covered by a CO₂ tax, and a CO₂ applies to *i.a.* fuel oil and a "CO₂ part" on the tax on petrol. Furthermore, emissions from important industry branches such as ferro-, aluminium, chemical and petrochemical industry – which are very important in Norway – are covered by an agreement between these industries and the Ministry of the Environment which commits the industry to reduce their emissions by 20 % compared to their 1990 level. It is fair to assume that these industries wanted such an agreement in order to stay out of a national emission trading system.

b), c) and d) do not apply to Norway.

Question 3

- a) Article 6 in Norway's Emission Trading Act (NETA) states that the "allocation plan" is a *decision* by the Government on the total amount of emission allowances to be allocated nationally for the period 2005-2007 (see question 4 below). No regional allocation is foreseen.
- b) The public was informed in connection with the proposal of the new Emission Trading Act.
- c) The criteria for this decision are laid down in Article 6. They correspond by and large to the criteria mentioned in Article 9 of the directive, with reference to Annex III.
- d) and e) not relevant for Norway

Question 4

- a) The decision was made by the Government on March 11.

The general principles of the system had been subject to public discussion in connection with the proposal of the Emission Trading Act and the debate in the Stortinget of that proposal.

The March 11 decision was based on applications from the activities covered by the act (altogether 51 units). The State Pollution Control Authority reviewed the applications and adjusted the baseline levels, *i.a.* with a view to the BAT principle.

There was no public hearing procedure before this decision was made as this was regarded as superfluous.

b) All applicants got 95 % of the quotas they applied for, with some adjustments made by the PCA. This was in principle decided by the Stortinget, with reference *i.a.* to the EC directive.

A few of the allocations have been appealed by the applicant, and a few by environmental organisations (mainly allocations to new gas fired power plans.

Question 5

a) Trading is supervised by a new institution, the National Register for Climate Allowances, which is attached to the state Pollution Control Authority. It register information on all allocations, stocks, trade in, and cancellation of allowances. An owner of allowances has an “account” in the register. Public authorities have the necessary access to the register. Detailed rules on the register are laid down in a regulation.³

b) NETA establishes a free market of allowances. Trading is open to anybody, without limitation. NETA article 1 lays down the principle. The regulation article 3-3 states that “Any physical or legal person is entitled to establish an account in the register.”

c) Before May 15 each year the register makes public information on the amount of emission during the preceding year of all subjects covered by the trading scheme, and the extent to which they are covered by emission allowances.

d) The Norwegian word for “allowance” is “*kvote*” which means “quota”. This does not directly convey the idea of a right. However, it is clearly meant to give a right to emit the amount covered, as well as to sell the allowance in the market.

e) There is no doctrinal controversy about the possibility of trading of emission “quotas”. It is generally accepted as a good instrument to achieve efficiency in combating climate change. Of course, it raises legal questions but in our view mainly questions of a technical nature, not questions of principle.

Quota systems are used in other areas as well, such as fisheries. This is more controversial, not on legal grounds, but politically because it in fact leads to an accumulation of fishing rights on a few powerful hands. This is so far not seen as a problem with emission rights.

f) There has not really been much discussion on legal aspects of this system. A study of a number of legal issues was carried out by myself in 1999 as basis for the above mentioned commission’s report NOU 2000:1. Here I discussed a national

³ Regulation no. 1851 of 23 December 2004.

emission trading system in relation to i.a. Norwegian constitutional law (annual tax decisions), administrative law (principles of procedure for the various public decisions to be made, the relationship with the existing pollution permit system, the application of legislation on securities' registration and transfer, and – not least – EEA law, including the IPPC-directive and the PPP and BAT principles.

Some of these issues have been solved in the NETA and the regulation, such as the relationship to the general pollution permit system, and the general right to buy and sell allowances. Other problems have simply been avoided by the technical solutions that have been chosen, such as the special register. But some problems are still apparent, such as the BAT issue which in my view has not been properly solved in the act.

Some of these issues were discussed during the preparation of the Act, and some are reflected in the government proposal to Stortinget. But they did not raise much discussion.

Question 6

a) Every unit which is obliged to have an emission quota must report within March 1st each year its total emissions the precedent year to the Pollution Control Authority (article 16). The regulation lays down detailed rules about the content of the report. The PCA controls and approves the report, and may in certain situations require that an independent body verifies the report. The PCA may order the unit to give further information in order to clarify facts.

b) The act contains several types of sanctions:

- *Suspension* of the right to trade emission quotas (art. 19), and the use of *coercive fine* (art. 20) in case of non-reporting pursuant to art. 16
- *Excess emissions fee* of EUR 40 per tonne of CO₂ emitted for which the unit has not surrendered quotas (art. 20).
- *Penalties* (fines or prison) in case of non-reporting by intent or negligence (art. 21).

So far we have no experience with this sanction system.

c) Within May 15 each year the registered information about approved emission reports and any non-fulfilment of the obligation to have sufficient emission quotas shall be made public (Regulation art. 3-12).

Question 7.

a) No, to my knowledge there has not been a discussion of this question.

b) The Norwegian system reflects the directive art. 26 in the sense that all activities covered by the emission trading system must have a pollution permit pursuant to the Pollution Control Act (PCA). By an amendment in PCA it is now

stated that pollution permits for these activities shall not lay down emission limit values for CO₂.

The problem in relation to the BAT principle has been raised by several (also by myself in a comment to an earlier draft), in particular as concerns allocation of quotas to new actors. However, this has been “toned down” by the government and Stortinget in order to keep as much freedom as possible for the treatment of new industry. On this point our system is - in my view - not fully consistent, formally, with the IPPC directive (which applies to Norway). However, it appears that the authorities have applied the BAT principle when allocating quotas to each actor.

Question 8.

a) and b) Directive 2004/101 does not (yet) apply to Norway. However, it follows from the act (art. 14) that quotas from JIs and CDM may be part of the system. Pursuant to the regulation (regulation art. 3-8), certified emission units from CDM are accepted (with the exceptions of units linked to nuclear power projects and forestation/reforestation projects). Emission units from EU member states are also accepted (regulation art. 3-7) – an agreement with EU is envisaged.

There are no specific limitations or conditions to these possibilities.

Question 10.

Emission trading has so far not been discussed in our national legal literature.

Question 11.

As mentioned, several types of instruments are used in Norway in addition to the emission trading system:

CO₂ tax for several activities and products, i.a. petroleum industry and pulp and paper industry, heating fuel and petrol.

Voluntary agreement on reduction of CO₂ emissions between the Ministry of the Environment and important branches of industry such as ferro, aluminum, chemical and petrochemical industry.

The use of the ordinary *pollution permit system* of the Pollution Control Act for smaller industry and other activities not covered by the other instruments.

As mentioned, all activities covered by the emission trading system must have a pollution permit pursuant to the Pollution Control Act.
