CO2 krediit

This section provides a general explanation of innovative technological trends (DAO, DeFI, NFT, tokens, etc.) that may be related to the provision of financial services or similar activities.

This information does not constitute legal advice or an explanation. We recommend that related parties assess and legally qualify their activities in advance, if necessary, with the help of a professional legal adviser. Consumers of innovative solutions are advised to assess the risks they may be exposed to when using their financial means.
We also recommend that you consult the draft EU Regulation on Markets in Crypto-assets (MiCA) and related proposals.

In order to meet the objectives set in the Paris Agreement, the European Union has pledged to reduce greenhouse gas emissions by at least 55% by 2030 and to reach a level of zero emissions by 2050, which means that emissions have to be matched by offsetting emissions. It is important for companies to reduce CO2 emissions if they are to meet their climate objectives, but it is not always possible to do so quickly enough. That is why companies are looking to buy carbon credits to offset their own emissions.

Carbon markets are divided into mandatory and voluntary. The mandatory carbon market is managed by countries with emission allowances and their aim is to achieve zero emissions at the national level. The carbon market is coordinated by the EU ETS (European Union Emissions Trading System), which in turn is regulated by Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.

Emission allowances apply to certain industrial sectors with large carbon emitters. Outside the allowance market, there is a voluntary carbon market, where carbon credits are traded. This market is managed by corporations or companies, with their aim being to achieve emission reductions at the company level, thereby reducing the negative environmental impact of their activities. Participants in the voluntary market are companies that care about their ecological footprint and do not produce carbon credits themselves, and partners from whom they buy these credits to voluntarily offset their greenhouse gas emissions.

A carbon credit is a certificate which certifies that a company has paid to remove a certain amount of CO2 from the environment, for example, it is given to a forest owner for conserving a forest or to a farmer for sequestering carbon in the soil or reducing fertiliser use. Each carbon credit is equal to one tonne of carbon dioxide that is no longer emitted into the atmosphere due to the reduction of these gases during production or the introduction of new technologies. Carbon credits must be truthful, incremental, and verified according to a recognised methodology; therefore, verification is required before they are purchased. Otherwise the carbon credit is worthless.

What is the regulation of CO2 credits?

In order to determine whether authorisation by the Finantsinspektsioon is required for the issuance and possible tokenization of carbon credits, the company must carry out a legal analysis of whether the tokens offered may constitute securities within the meaning of the Securities Market Act and whether these tokens have the characteristics of financial instruments within the meaning of MiFID II, including transferability, tradability on the capital market, and maintainability. Transferability is to be understood as the general characteristic of an instrument to be transferable, i.e. it is technically possible to transfer ownership of an instrument. Tradability on the capital market should also be understood as the general property of an instrument to be freely transferable in an environment where buying and selling interests in a security can be matched. The definition of a capital market is therefore broad and does not cover only regulated markets.

It is also essential that the securities can, at least in theory, be traded on the capital market (i.e. that there are no general restrictions on their tradability and that they are standardised to a sufficient extent). A broad interpretation implies tradability also outside the regulated market, for example, in the blockchain. It is also necessary to analyse whether the holders of the tokens acquire any rights in the issuer, such as the right to profits, voting rights or the right to participate in the management decisions of the company; whether the tokens to be issued constitute a separate asset class or whether they have the characteristics of derivatives.

Tokenized carbon credits may also be similar to emission allowances within the meaning of both the Atmospheric Air Protection Act and MiFID II, as they are a confirmation of the amount of CO2 emitted into the atmosphere, and therefore the concept of a security may be extended to such tokens. In addition, when tokenizing carbon credits, it is necessary to analyse the possible need for an activity licence for a virtual currency service provider and to consult the Financial Intelligence Unit, which grants such licences.