

EU ETS review - Legal implications for Latin America

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Content

- Introduction
- Current access to CERs in European Union Emissions Trading Scheme (EU ETS)
- Brief overview of EU ETS review
- Main proposed amendments regarding access of CERs
- Possible implications for Latin American CDM projects

Introduction

- International law firm based in Amsterdam, offices in New York, London and soon Beijing
- Firm has been involved in CDM since 2001
- Advising governments (Annex I and non-Annex I), multilaterals, carbon funds and private sectors participants (sellers, buyers and project developers)
- Ongoing advise on Kyoto and EU ETS rules

Current access to CERs in EU ETS

- EU ETS in Phase II (2008-2012)
- Use of CERs up to a percentage defined by each Member State (supplementarity)
- All CERs issued and that may be used in accordance with UNFCCC and the Kyoto Protocol may be used, except for nuclear and LULUCF
- Large hydro projects (exceeding 20 MW) must comply with WCD guidelines

EU ETS review – European Commission proposal

- 23 January: European Commission presented European Union Climate Action package, including integral review to EU ETS and draft proposal on effort of Member States to meet EU reduction commitments
- 2 scenarios, depending on a possible post-Kyoto treaty:
 - In any case at least 20% reduction by 2020 (compared to 1990 levels)
 - Increased reduction objective of 30% in the context of an international climate agreement

EU ETS review – European Commission proposal (*cont.*)

Access to CERs for compliance

- 1st scenario (20% by 2020):
 - Use CERs only to the extent that the levels of CER/ERU use allowed by Member States for Phase II have not been used up
 - Credits must stem from project types which were accepted by all Member States in the EU ETS during Phase II
 - If these conditions are met, Phase III allowances (valid from 2013 onwards) can be obtained in exchange for:
 - CERs issued during Phase II;
 - CERs issued after Phase II from projects established before 2013; and
 - CERs issued after Phase II from new projects started from 2013 onwards in Least Developed Countries

EU ETS review – European Commission proposal (*cont.*)

Access to CERs for compliance

- 2nd scenario (30% by 2020):
 - Limit on the use of CERs/ERUs would be increased up to half of the additional reduction commitment
 - Credits additional to those left over from Phase II only accepted from projects in third countries that ratify the international agreement or from additional types of projects approved by the Commission
 - If agreement is delayed, credits will be allowed from new projects or other emission reducing activities to be used in accordance with agreements concluded with third countries, only to the extent that the Phase II levels of CERs/ERUs have not been used up

EU ETS review – proposed further restrictions to CERs access

Amendments proposed by Environmental Committee of EU

Parliament:

- Not clear what would happen if no new international agreement is agreed, presumably Commission proposal
- From 2013 only use of “**high quality**” CERs that incentivise the linking of trading systems from third countries which have ratified the future international agreement
- Quantitative limit (up to 40% of the 2008-2020 reduction effort can be achieved through CERs/ERUs)

EU ETS review – proposed further restrictions to CERs access (*cont.*)

Amendments proposed by Environmental Committee of EU Parliament:

- High quality CERs that incentivise the linking of trading schemes:
 - real, verifiable, additional and permanent emission reductions from projects with clear sustainable development benefits and no significant negative environmental or social impacts;
 - from projects in countries which are contributing appropriately to global emission reductions under a future international agreement which they have ratified; and
 - are accepted, or are likely to be accepted, in other major emission trading systems, specially in a US federal Emissions Trading System.
- Measures confirming which projects or project types meet these criteria shall be adopted later in a regulation

EU ETS review – proposed further restrictions to CERs access (*cont.*)

Amendments proposed by Environmental Committee of EU Parliament:

- Use of credits for afforestation, reforestation and forestry, upon ratification of future international climate change agreement:
 - up to 5% of the amount to be reduced by installations
 - from sustainable, verifiable and permanent forestry activities in developing countries:
 - with which agreements have been entered into
 - in compliance with new international agreement
 - that meet high quality criteria

Possible implications for Latin American CDM projects

- Possibility of retroactive implementation of changes to EU ETS to projects registered and approved by EU before 2012
- Market uncertainty until further clarity in the review process
- Acceptance/delivery default or termination of ERPAs by buyers which could not use CERs for compliance in EU ETS anymore
- Perspectives for forestry projects!?
- Not clear what would the situation be between 2012 and conclusion of new international agreement

Issues to consider

- LAC countries to ratify new international agreement for CDM projects to be eligible in EU ETS
- Contractual provisions in ERPAs regarding change of law and use of CERs for compliance in EU ETS
- Bear in mind stringent qualitative criteria when developing new projects
- Follow the discussions
- Examine opportunities in other emission trading schemes (e.g. Japan and New Zealand)

Muchas gracias!

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