

Is the adoption of a 2nd commitment period under the Kyoto Protocol an " international agreement on climate change" in the sense of Art. 11a(7) of the EU ETS Directive and Art. 5(3) of the Effort Sharing Decision?

The ETS Directive (Directive 2009/29) and the Effort Sharing Decision (Decision 406/2009) make clear that the term "international agreement on climate change" refers to the "future" agreement that was expected to be reached at COP15 in Copenhagen and that would apply for the period "beyond 2012". This, however, did not happen in Copenhagen.

Negotiations have continued ever since, resulting in the decision in Durban in December 2011 to "launch a process to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties", to be adopted by 2015 and to come into effect and be implemented from 2020.

The adoption of a second commitment period of the Kyoto Protocol without a legally binding agreement for the period beyond 2012 under which other developed countries commit themselves to comparable emission reductions and economically more advanced developing countries commit themselves to contributing adequately according to their responsibilities and capabilities is therefore not an international agreement as referred to in Article 11a(7) of the EU ETS Directive and Article 5(3) of the Effort Sharing Decision.

Would reaching an international agreement pursuant to Article 11a(7) of the EU ETS Directive and Article 5(3) of the Effort Sharing Decision (ESD) reopen the EU ETS and ESD to CDM credits from projects registered post-2012 other than in Least Developed Countries (LDCs)? What would an agreement mean for eligibility of credits from LDCs?

Articles 11a(7) of the EU ETS Directive and Article 5(3) of the ESD limit the acceptance of CDM credits to those from countries that have ratified the new "international agreement on climate change". They do not "broaden" access in any way.

Thus, once an international agreement pursuant to Article 11a(7) of the EU ETS Directive and Article 5(3) of the ESD is reached, the limitation to CDM credits from new projects from the LDCs for the period starting in 2013 continues to apply. Any broadening of the eligibility criteria to allow new credits from other countries, with the exception of credits used under Article 11a(5), would require an amendment of the ETS Directive. Credits from projects in LDCs and other countries started before 2013 will only be accepted if they originate from countries that have ratified the agreement.