



Commissioner Connie Hedegaard
Directorate General for Climate Action
European Commission

2 September 2010

Call for Stakeholder Input: Quality restrictions on the use of credits from industrial gas projects in the post-2012 EU ETS.

Interpretation of the Directive 2009/29/EC regarding the use of JI and CDM credits

Dear Commissioner Hedegaard,

after carefully analyzing the EU ETS Directive (Directive 2009/29/EC) regarding the use of JI and CDM credits (ERUs and CERs) after 2012 one can see that important issues were left open, which led to uncertainty among private investors. On the one hand, relevant articles (11a and 28) are characterized by vague formulation, on the other hand, it is already mentioned that subject to the outcome of negotiations on an international agreement on climate change substantial changes might be done. Nevertheless, a guaranteed regulatory certainty and business continuity is essential that private investors regain the confidence in the climate change policy of the EU. In order to give a positive signal to investors and to establish legal certainty for the industries covered by the Community scheme, a decision on open issues is needed badly.

Please find in the following possible solutions of relevant Articles for two options:

Option a) No conclusion of an international agreement on climate change

Article 11a Para. 2 regulates the exchange of credits (CERs and ERUs) issued in respect of emission reductions up until 2012 and that haven't been used up, for allowances valid from 2013 onwards. The competent authority shall make such an exchange until 31 March 2015.

From an investor's perspective it is important to know, whether this Paragraph refers a) to credits that were issued after 31 December 2012, but in respect of emission reductions up until 2012 or b) to credits issued up until 31 December 2012. Due to delays in the verification process on the part of UNFCCC it would be necessary to implement case a) – issuance after 31 December 2012 possible.

Article 11a Para. 5: As the negotiations on an international agreement on climate change were not concluded by end of 2009, credits from projects or other emission reducing activities may be used in accordance with agreements concluded with third countries.

So far it is still open, who (each Member State or only the EU Commission) is entitled to enter into negotiations with which third countries. In order to facilitate and to accelerate the process, negotiations on Member State level would be preferred by investors.

Article 11a Para. 6 contains qualitative restrictions for project types referred to in Paragraph 5. Preferred projects are renewable energy or energy efficiency technologies, which promote technological transfer and sustainable development.

In order to establish legal certainty, all project types permitted in the EU-ETS from 2008 to 2012 shall be eligible for use after 2012 – only such industrial gas projects shall be excluded that can be kept operational by the sole income stream out of CDM/JI revenues.

Article 11a Para. 8 regulates that all existing operators are allowed to use credits from 2008 to 2020 up to a certain amount. Nevertheless, the overall use of credits allowed must not exceed 50 % of the Community-wide reductions below 2005 levels of existing sectors under the Community scheme from 2008 to 2020 and 50 % of the Community-wide reductions below the 2005 levels of new sectors and aviation over the period from the date of their inclusion in the Community scheme to 2020.

The exact amount of credits transferable into the EU-ETS III will remain uncertain as long as not all transactions and reports of the second trading period have been concluded and the basic conditions for new sectors and aviation have not been established. In the meantime, the determination of minimum credit quantities would not only inform existing operators about their scope of action, but also give a positive signal to investors.

Article 11a Para. 9 gives the EU the possibility to restrict the use of specific credits from project types within the EU-ETS III from 1 January 2013 on. Those measures shall also set the date from which the use of credits under Paragraphs 1 to 4 shall be in accordance with these measures.

Although an EU-position paper prepared for COP15 states that “no new CDM projects involving HFC-23 emission reductions from HCFC-22 production should be available and that other incentives for HFC-23 destruction should be found, while existing CDM projects should be honoured”, this Paragraph leads to an unpredictable uncertainty for investors. Therefore a clear determination of permitted project types needs to be done soon (see our comment to Art. 11a Para. 6).

Option b) Conclusion of an international agreement on climate change

Article 28 Para. 3: Operators shall be allowed to use, in addition to the credits provided for in Directive 2009/29/EC, CERs, ERUs or other approved credits from third countries, which have ratified the international agreement on climate change.

The amount of credits is limited by the fact that only up to 50 % of the additional reduction taking place in the Community scheme may be used, and only high quality CDM credits from third countries should be accepted from 2013 onward, once those countries have ratified the international agreement. As mentioned under Art. 11a Para. 8, a determination of minimum credit quantities in the coming months would be important for investors.

Article 28 Para. 4: Where required, any other measures that may help to reach the mandatory reductions shall be implemented in addition to those referred to in Paragraphs 2 to 5 of Article 11a.

So far, there are no official proposals on what kind of measures might be implemented and how they might look. Since more and more intact forests are endangered and due to their significant role in the fight against climate change, credits from REDD and REDD+ (Reducing Emissions from Deforestation and Degradation) projects shall be eligible in the Community scheme after 2013.



Concluding we would like to point out that our intention with this statement is to show you the investors' point of view regarding the use of JI/CDM credits after 2012 and to ensure a sustainable development of JI/CDM projects in future. Many thanks for giving us this opportunity.

In case you have any further question please don't hesitate to contact us.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'F. Heilig', written over a grid of horizontal and vertical lines.

- Ferdinand Heilig -

Managing Director

A handwritten signature in blue ink, appearing to be 'T. Gulden', written in a cursive style.

- Thomas Gulden -

Managing Director