



Trading Secondary CERs from Hydropower Projects above 20MW

Recently debate has arisen regarding EU Member State recognition of Certified Emissions Reductions from hydropower projects above 20 MW. On basis of EU law Climate Focus argues that (1) Hydro CERs are mutually recognised and thus freely tradable on the European Union Emissions Trading Scheme secondary market, and 2) a Member State has no title to impose restrictions on Hydro CERs generated by a hydro project that another Member State has approved.

Hydro CERs are mutually recognised and freely tradable

The relevant section of the Linking Directive regarding Hydro CERs shifts the responsibility for verifying the quality of projects above 20MW projects to the Member States. It does not exclude the use of CERs from large hydro projects. In this respect, it merely confers EU individual countries the duty to ensure that all hydropower plants above 20MW, regardless of type - dammed or run-of-river-, follow widely endorsed standards, including those of the World Commission on Dams, to prevent negative impacts. Nothing in the language of the Linking Directive provides a Member State with direct authority to create its own unique restrictions on CERs generated from such projects once a project has received Member State approval. Neither does the Linking Directive mandate any additional approval by an “acquiring” Member State of Hydro CERs. Once a hydro project above 20 MW has obtained a Letter of Approval by a Member State the respective CERs eventually issued will have full recognition and unrestricted circulation among national registries in the EU.

Member States have no title to exclude or limit the use of Hydro CERs

For a Member State to adopt more stringent measures on the use of Hydro CERs acquired from another Member State it would first need to justify to the measures to the Commission. The Commission is granted the power to check the compatibility of those measures with other Treaty provisions, particularly those relating to the free movement of goods. A Member State would be required to demonstrate that its more stringent standards are fully necessary and are undertaken in a manner strictly limited to what is necessary to achieve a pursued objective. Because all CERs are fully fungible, the Member State would have to demonstrate that there is a direct link between the project itself, which is developed outside the EU, and the credit to which access or use within the Member State would be restricted. In other words, it would be required to demonstrate a direct link of causality between the restriction put on the use of the credit in the Member State and its effect on the improvement of environmental protection at the site level. Apart from arguing that the possibility to use these credits within the EU ETS creates a demand for them by stimulating investments in such projects, it can hardly be argued that generally all hydro projects are bad for the environment. Therefore it is unlikely such measures could be justified.



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Further, refusing CERs recognised by another Member State would be contrary to the well established “mutual recognition principle” that holds any products legally originating in a Member State must be allowed onto the market of any other Member State.

Finally, the Registry Regulation does not provide for additional measures limiting or excluding Hydro CERs. If a Member State would decide to restrict some CERs it would need to give explicit instructions to its registry administrator to do so. The Registry Regulation does not provide registry administrators with the authority to implement limitations beyond those recognised under the Regulation.

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