Submitted to: 13 March 2024

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Re: IETA comment to proposed prohibition of use of UERs starting in 2024

IETA appreciates this opportunity to provide input in response to the draft the *Ordinance amending the Thirty-sixth Ordinance on the Implementation of the Federal Immission Control Act* (the Amendment), which would prohibit the use of Upstream Emission Reductions (UERs) by obligated parties starting in 2024, amended from the current eligibility date of 2026.

About IETA

For 25 years, IETA has been the leading international business voice on robust markets solutions to tackle climate change, while driving clean finance at scale. Our non-profit organization 300 companies, including many with operations and investments across Germany and Germany's largest global trade partners. IETA's expertise is regularly called-upon to inform carbon market solutions that deliver measurable climate outcomes, address economic competitiveness and carbon leakage concerns, balance efficiencies with social equity and support a just transition.

Our Understanding of the Issue

IETA's understanding is that Germany is planning to amend its national legislation to reflect the changes to the Directive 98/70/EC amended by Revised Directive EU/2023/2413 that repelled Article 7a allowing for use of UER credits for FQD compliance. While IETA will not provide comment on the substance of this perspective, we will provide our view of **some negative impacts that may be brought about by the way in which Germany is planning to implement these changes**. Specifically, we believe that by amending an important financing tool for global greenhouse ga reductions on short notice and with little public consultion, Germany may be creating a number of new, material problems and risks.

The proposed Amendment arbitrarily disrupts stakeholders that have used – and are using – the UERV market to support significant decarbonization efforts and investments within and beyond Germany's borders. If the Amendment is enacted, as proposed, not only will material near-term decarbonization opportunities be lost, but it will also strand investments needed for Germany's climate goals and international commitments. As a result, Germany's international reputation could be affected. **For these reasons IETA must respectfully oppose the Amendment, as it is currently being proposed**.

IETA expands upon our concerns in the following three (3) sections below.

1. The proposal would strand a number of promising and immediate climate action projects. The proposed amendment would disrupt, delay or halt the development of large-scale greenhouse gas reduction projects that are currently in progress and that would be funded (in whole or in part) by revenues from UERs. Typically, these projects have a project development period of 12 to 18 months. Any policy that reduces the certainty of financing for investors could drastically effect the willingness of project financiers to move these projects forward.

UERs are greenhouse gas reductions that take place before the raw materials for petrol, diesel, and LPG fuels enter a refinery or storage facility, including reductions by avoiding flaring of associated gases in crude oil production. Taking place across oil and gas operations in countries that lack access to capital, and which do not face legal requirements, UERs are a textbook definition of legal and financial additionality. Further, UERs undergo a rigorous third-party verification process, signed off on by the Deutsche Emissionshandelsstelle (DEHSt). This means eans that UERs represent real and immediate emissions reductions that would not have occurred without this critical financing pathway.

For those projects for which final financial resources have already been committed, the economic value of potential UERs is a critical consideration in the final investment decision. The Amendment, as proposed, may mean that the projects will not realize the full 12 month value of UER crediting, if any at all, which could result in significant financial losses. Importantly, this also could create legal risk for Germany if developers of UERV projects are unable to complete their projects as planned.

2. The proposal could undermine investor confidence and increase perceived risk for energy transition investments. Many greenhouse gas reduction and clean energy investment decisions are predicated on strong supporting policy. It is imperative that Germany maintain predictability and stability in its climate legislation and regulation to retain investor confidence to pursue decarbonization investments. At such a critical juncture, stakeholders must be able to make investments trusting the government will uphold the regulatory environment that pushed final investment decisions over the line.

With many projects proceeding based on the current UERV, the enactment of the proposed Amendment could significantly undermine this trust. This would reinforce investor concerns about “stroke of pen risk” in which previously un-signalled policy changes are enacted hastily, removing important policy and market certainty, on the basis of which investment decisions have been made, and placing those (and future) investments in jeopardy.

Further, the Amendment may conflict with the principle of protecting legitimate expectations under the rule of law. It can be argued the Amendment interferes with a protected legitimate expectation without sufficient justification and without taking account of the project developer’s and lead partners legitimate interests.

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3. The Amendment may harm Germany's reputation and credibility amongst developing nation partners. Abrupt cancellation of the UERV would negate a policy mechanism that provides critical financing to greenhouse gas and methane reductions in developing countries, many of which Germany has important economic and political ties with. This significantly undermines the goals of the Paris Agreement, of which Germany is a signatory, and Germany's own climate change commitments. UERs also support two other international initiatives to which Germany is signatory: 1) the Zero Routine Flaring by 2030 target; and 2) the Global Methane Pledge to reduce methane emissions by 30% from 2020 to 2030. Both of these would be weakened by the proposed implementation of the Amendment.

The lack of operationalization of the Article 6 mechanisms means that vital climate finance tools that are required in developing countries are not yet available or deployed at scale. In this context, the German UERV program has provided an important, carbon finance price mechanism that is building capacity and trust in developing nations, and an openness to the energy transition. If the Amendment to the UERV is adopted as is, this bridge will be broken, calling into question Germany's commitment to collaborative, multilateral action and the enactment of Article 6, and more importantly, North-South commitments to help support the energy transition.

Summary

Again, IETA stands for enabling emissions reductions using market mechanisms. Disrupting the use of UERs by ending the program earlier than prescribed jeopardizes real, additional, verifiable, and permanent emission reductions at a critical juncture on the path to 2030 and **we urge the German government that, if it must implement such a change, it do so in a way that eliminates any stranded assets, reputational and stroke of the pen risk**. IETA's position and these valid concerns are shared in good faith, and we welcome the opportunity to share additional insights and alternative legislative, regulatory and/or best practice guidance angles.

We appreciate your time and consideration of these comments.

Sincerely,

[redacted]

CEO and President
IETA