

Massimiliano Montini  
*Editor*

# Developing CDM Projects in the Western Balkans

*Legal and Technical Issues Compared*



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Massimiliano Montini  
Director, Environmental Legal Team  
University of Siena  
Italy

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*Cover illustration:* The Secret Garden by Andreina Guerrieri

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# Foreword

It is my pleasure to write a foreword for this publication, focusing on the implementation of the Kyoto Protocol with particular regard to the so-called Clean Development Mechanism (CDM) envisaged therein.

It represents an interesting contribution to the current fundamental worldwide debate on climate change and provides a valuable legal, scientific and technical perspective, lighting some shades on the interaction and the possible integration between the several challenging issues related to the implementation of the Kyoto Protocol and of the CDM.

This publication arises from the experience of the international cooperation programme of the Italian Ministry for the Environment Land and Sea with the Western Balkan Countries, performed with the legal assistance of the University of Siena – Environmental Legal Team, as a part of the broader technical support of a dedicated Task Force for Central and Eastern Europe.

In this framework, the book analyses the most relevant legal and technical issues related to the establishment of the institutional, regulatory and legislative framework for CDM scouting, assessment and concrete realisation.

Therefore, the scientific analysis provided by the publication is enriched and deepened by the concrete experience gained by the legal and technical experts, and presents the ratio of the political, institutional and regulatory choices made by the Western Balkan countries as well as the achievements of the Italian bilateral cooperation programme. At the same time, it points out the ongoing unresolved controversial aspects and the outstanding challenges characterising the implementation of the Kyoto Protocol in Albania, Macedonia, Montenegro and Serbia.

Corrado Clini

Director General, Department for Environmental Research and Development  
Italian Ministry for the Environment, Land and Sea (IMELS)

Rome, 15 June 2009

# Preface: The Experience of the Italian Cooperation for the UNFCCC and the Kyoto Protocol Implementation in the Western Balkans

Martina Hauser\*

## The Task Force for Central and Eastern Europe

The Task Force for Central and Eastern Europe is a working team within the Department for Environmental Research and Development of the Italian Ministry for the Environment, Land and Sea (IMELS). Firstly instituted in Belgrade in 2004 and subsequently moved to Rome, it develops and coordinates the activity of bilateral cooperation for environmental protection with the support of both Italian and local legal and technical experts. It has been established to create a geopolitical network in Central Eastern Europe in the environmental field. In particular, it focuses on the Balkan area promoting bilateral cooperation initiatives to encourage political and environmental dialogue.

The starting point of the Italian bilateral cooperation in the region was to provide institutional, legal and economic assistance to a group of countries wishing to get closer to the International and European Union standards. In particular, the Italian Ministry for the Environment Land and Sea offered its help to reform their institutional and legislative framework and to promote sustainable development, according to the relevant *acquis communautaire*. In the past few years, the Task Force extended its activities in the whole Balkan area and beyond (Albania, Bosnia Herzegovina, Macedonia, Montenegro, Romania, Russia, Serbia, Turkey, Ukraine) involving more than 50 people (coordinators, managers, local representatives, technical and legal experts). Up to now, IMELS signed about 16 Memorandum of Understanding (MoU) with related Technical Annexes and it is currently negotiating technical agreements with Russia and Turkey.

In the field of climate change, the MoUs concluded with the competent local authorities (Ministries for the Environment, Energy, Economy, etc.) have been the reference framework allowing the development of about 70 projects related to the implementation of the UNFCCC and the Kyoto Protocol. In particular, the agreements, through activities of scouting and drafting of the required legislative framework, promote the implementation of projects finalized at reducing greenhouse gas emissions as prescribed by the Kyoto Protocol.

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\* Director, Task Force for Central and Eastern Europe, Department for Environmental Research and Development, Italian Ministry for the Environment, Land and Sea (IMELS)

These projects, JI (*Joint Implementation*) and CDM (*Clean Development Mechanism*), effectively encourage the use of renewable energy, energy efficiency, waste management, afforestation and reforestation.

The Task Force's mission includes activities of technical and legal assistance for the harmonization of the Western Balkan's legislative systems with the environmental *acquis communautaire*, for the implementation of international conventions in the environmental field, for the improvement of institutional capacities and for the ratification of the Kyoto Protocol and the establishment of the competent national authorities (*Designated National Authorities – DNAs*) in charge of evaluating CDM projects.

In such a context, the legal assistance is performed by the Environmental Legal Team of the University of Siena, a dedicated group of lawyers and economists, while the technical assistance is mostly carried out by a team of technical experts acting in the Western Balkans.

Moreover, in order to guarantee the daily development of the bilateral cooperation the Task Force identified local representatives that maintain contacts with the national authorities and the Italian embassies in the countries involved in cooperation with the Italian Institute for Foreign Trade (ICE).

Finally, the Task Force is in contact with the most active international Institutions such as the World Bank, EBRD (*European Bank for reconstruction and Development*), EAR (*European Agency for Reconstruction*), UNDP (*United Nations Development Programme*), UNEP (*United Nations Environment Programme*), UNOPS (*United Nations Office of Project Services*), OSCE (*Organization for Security and Co-operation in Europe*), USAID (*United States Agency for International Development*) in order to enlarge the possibility to support and finance the identified projects.

At present, the Task Force for Central and Eastern Europe is a reference point for all the countries mentioned above.

## **Environmental Cooperation in the Republic of Albania**

The bilateral cooperation between the Italian Ministry for the Environment, Land and Sea and the Albanian Ministry for Environment, Forest and Water Administration started in May 2005 with the signature of a MoU aiming at the implementation of a specific technical assistance programme for the evaluation of GHG emission reduction through the establishment of the national institutional framework for the implementation of the UNFCCC and the Kyoto Protocol.

On the basis of the Annexes to the MoU, so far the Task Force provided a permanent support in the framework of international and EU environmental law, with particular regard to the achievement of the sustainable development goal.

In fact, the Task Force provided the Albanian Ministry for the Environment with the legal assistance for the identification of the most suitable model of DNA and for drafting the legislative acts necessary for its establishment.

Moreover, a set of rules of procedures for CDM projects evaluation by the DNA was identified and introduced in the Albanian legislative system with the legal assistance of the Task Force, who also actively supported, through its legal advisers, the identification of the sustainable development criteria to be met by CDM projects.

The legal activities described above were complemented by the technical assistance for the identification of the Country's potential in CDM projects development (the so called CDM *portfolio*).

The cooperation programme of the IMELS in Albania involves not only the MEFWA but also the Albanian Ministry for Energy, Trade and Economy (METE).

In this framework, one of the most relevant achievements of the Task Force is represented by the successful activities of legal support for the harmonization of the Albanian legislative framework in the energy field with the *acquis communautaire*.

To this respect, the Task Force assisted the METE in the following sectors:

- Gap analysis of the Albanian Power Sector Law and drafting of the necessary amendments in line with the EU applicable legislation
- Drafting of the Regulation on the procedures for granting the authorisation for new energy installations
- Drafting of the new Renewable energy Law

The assistance of the Task Force to the METE is integrated by the activities of wind energy potential resources assessment in the country, aiming at the development of a comprehensive database on this type of energy.

## **Environmental Cooperation in the Former Yugoslav Republic of Macedonia**

The bilateral cooperation between the Italian Ministry for the Environment, Land and Sea and the Macedonian Ministry for the Environment and Spatial Planning started in 2005 with the MoU '*Cooperation in environmental and sustainable development framework*' focusing on environmental protection, natural resources improvement, environmental pollution reduction, legal assistance for the harmonization with the *acquis communautaire* and promotion of sustainable development through programmes, initiatives and joint projects. The MoU is complemented by the Annexes signed every year by the Parties to continue the cooperation programme.

The technical Annexes provide the procedures for technical and financial support to CDM projects and define the legal and technical activities to be performed in the framework of the Kyoto Protocol.

More in detail, according to the work plan developed on the basis of the Annexes to the MoU, the Task Force in cooperation with the ELT-University of Siena provides legal assistance to the Macedonian Ministry for the Environment and Spatial Planning in the drafting of the environmental legislation implementing the *acquis communautaire* and supports for the creation of the legislative framework for CDM approval.

The first area, namely the legal assistance in the process of harmonization with the EU *acquis*, is of particular interest since Macedonia is currently holding the status of official candidate to EU membership.

The activities of the Task Force in this sector were identified coherently with the other objective of the cooperation programme that is providing a permanent support for the UNFCCC and Kyoto Protocol implementation. Therefore they particularly focus on the analysis of the EU legislation on IPPC and Emission Trading, with the view to provide Macedonia with the support for drafting the necessary amendments to its Environmental Law, a framework Law regulating all the relevant aspects and issues in the environmental sector.

On the other hand, the Task Force support to Macedonia for the implementation of the UNFCCC and the Kyoto Protocol mainly focused on providing legal assistance for the establishment of the DNA and on identifying the potential carbon credits generation of the country by means of the CDM projects *portfolio* developed with the technical support of IMELS experts.

## Environmental Cooperation in the Republic of Montenegro

The bilateral cooperation between the Italian Ministry for the Environment, Land and Sea and the Montenegrin Ministry for Tourism and Environment (now Ministry for Spatial Planning and Environmental Protection) started in 2004 with the MoU “*Cooperation on environmental protection*”. The role of the Italian party, as defined in the MoU Annex I “*Technical assistance for Kyoto Protocol ratification and implementation of Green Certificate system*”, aims at evaluating the opportunities for CDM projects developments in the framework of energy, waste and reforestation fields. It focuses on *small scale* CDM projects characterized by simpler procedures and lower cost than that of the *large scale* ones.

In addition to the environmental protection issue, the bilateral cooperation aims to support a National Strategy of Montenegrin Sustainable Development and the related identification of a National Action Plan for its implementation.

The objectives identified in the MoU and in its Annex required also an important set of activities of legal assistance for the establishment of the legislative and institutional framework for the promotion of sustainable development in the Republic of Montenegro. In this framework, the legal support focused on two levels: the first one aiming at creating the suitable legislative framework for hosting CDM projects in the country and the second one aiming at achieving the national legislation with the environmental *acquis communautaire*.

With reference to the first issue, taking into account that with the ratification of the Kyoto Protocol the Republic of Montenegro gained the status of Non Annex I Party capable to host CDM projects, the main aims of the MoU have been the support for the establishment of the DNA and the identification of the rules of procedures for CDM projects assessment. Moreover, the activities of legal assistance cited above were integrated by the technical assistance for the evaluation of the



potential carbon credits generation deriving from projects in the field of renewable sources, energy efficiency and reforestation projects.

With regard to the second issue, namely the harmonization with the EU *acquis*, the activities of the Task Force focused in particular on providing legal support in the following sectors:

- Analysis of the EU applicable legislation on Nature Protection with proposals for amendments of the Montenegrin legislative framework
- Drafting of the Law on Air Protection according to the EU relevant Directives

## Environmental Cooperation in the Republic of Serbia

The bilateral cooperation between the Italian Ministry for the Environment, Land and Sea and the Serbian Ministry for the Environment and Spatial Planning started in 2002 with the signature of a first MoU on “*Cooperation for environmental protection*”. The common will was to create an effective work plan for the development of a sustainable strategy for the Republic of Serbia not only at the economic level, but also at the social and environmental ones, through the exchange of the experiences achieved by ministerial and academic technicians and experts.

To this end, the first step was to provide legal and technical support for the creation of the legislative framework for the ratification of the Kyoto Protocol.

As the main objective of the Kyoto Protocol is to tackle climate change and to achieve the stabilization of the greenhouse gases at the level reached in 1990, an important activity was the implementation of a national inventory system to monitor the anthropogenic emissions. Actually, the collection of GHGs data is fundamental to set a baseline scenario to evaluate the concrete reduction potential of the country as well as to analyze the progress of the emission outputs.

Moreover, as required by the UNFCCC and the Kyoto Protocol, another step has been the development of a national programme for the drafting of the prescribed national communications on climate change, to be forwarded to the UNFCCC Secretariat.

These activities, coupled with the identification of the country's emissions reduction and carbon credits potential, were needed as a preliminary phase in order to make the Republic of Serbia a CDM projects host country.

Furthermore, a first scouting of possible CDM projects has been carried out in the energy field, with particular reference to small-hydro power plants, energy efficiency in industrial and civil field, and energy wind projects.

The overall successful achievement of the legal and technical activities described above was the development of the institutional and legislative framework necessary for the establishment of the DNA.

The cooperation between Italy and Serbia under the framework of the MoU cited above also aimed at providing the legal support for the legislative harmonization process of Serbian environmental legislation with the *acquis communautaire*.

Therefore, according to the work plan agreed by the Parties, the activities of legal assistance performed covered the following fields:

- Development of the Primary and Secondary legislation on air quality
- Development of the Primary legislation on environmental liability
- Analysis of the European and Italian legislation on energy efficiency with the aim of providing recommendations on how to improve and update the applicable Serbian legislation

Among the several activities of technical assistance provided to Serbia by the Task Force, the energy and environmental requalification programme in the industrial area of Pančevo (Pančevo Action Programme) represents one of the most important achievements. This programme provided an analysis on the state of pollution of the industrial area of Pančevo in order to perform the consequent activities of environmental risk monitoring, air quality protection, land and ground water reclamation, clean energy production, technologic requalification for control and prevention of risk in the industrial processes.

## Concluding Remarks

From the analysis of the IMELS Task Force for Central and Eastern Europe activities it clearly emerges that this working team of legal and technical experts has performed, and still does, an important role in supporting Albania, Macedonia, Montenegro and Serbia in the fulfilment of their commitments for the implementation of the UNFCCC and of the Kyoto Protocol.

The activities performed focus on two levels: the first one related to providing legal assistance for the establishment of the institutional framework to host CDM projects (setting up the DNAs) and for the drafting of the legislative framework to assess CDM projects; the second one related to the technical identification of the carbon potential for each of the four relevant countries with the view to promote CDM projects development.

Moreover, the activities cited above were integrated by the ones related to the legal assistance for the harmonization of the Albanian, Macedonian, Montenegrin and Serbian legislation with the *acquis communautaire*. These activities contributed not only to speeding up the process of EU membership ambitions of the four Western Balkan Countries, but also greatly improved their possibilities of prompt and effective implementation of the UNFCCC and Kyoto Protocol goals.

Finally, but not less importantly, the legal and technical activities of assistance of the Task Force, be them already performed or still in process, help the Western Balkan Parties of the MoUs in the achievement of sustainable development, which is one of the most important goals of the UNFCCC and of the Kyoto Protocol legislative framework.

# Acknowledgments

This book reports on the legal and technical activities of the bilateral cooperation performed by an interdisciplinary team of consultants operating under the umbrella of the Task Force for Central and Eastern Europe established by the Italian Ministry for Environment, Land and Sea (IMELS).

Therefore, I would like firstly to thank Mr Corrado Clini, Director General, Department for Environmental Research and Development at the IMELS, and Ms Martina Hauser, Director of the Task Force for Central and Eastern Europe.

Secondly, I would like to express my gratitude for contributing to the present publication to all the several authors of the various chapters, who are or have been all related to the Italian bilateral cooperation performed in the Western Balkans countries.

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Finally, I would like to thank Ms Charlotte Tragard who performed a linguistic check on the manuscript.

Massimiliano Montini  
Director, Environmental Legal Team  
University of Siena

# Contributors

## **Mariachiara Alberton**

Ph.D. in Law and Economics (Siena), Researcher and Lecturer in European Union Law at the Department of Economic Law, University of Siena; Former Member of the Environmental Legal Team of the University of Siena; Lawyer; Legal Adviser to the Italian Ministry for the Environment, Land and Sea

## **Alessandra Barreca**

LLM (London), Researcher at the Department of Economic Law, University of Siena; Programme Manager of the Environmental Legal Team of the University of Siena; Lawyer; Legal Adviser to the Italian Ministry for the Environment, Land and Sea

## **Julija Brsakoska Bazerkoska**

MA in International Law (Skopje), Ph.D. Candidate (Cologne); former Member of the Environmental Legal Team of the University of Siena; former Legal Adviser to the Italian Ministry for the Environment, Land and Sea

## **Slavko Bogdanovic**

LLB, LLM, LLD (Novi Sad), Professor of Water Law and Environmental Law at the Faculty of Law of Business Academy Novi Sad; Member of the Environmental Legal Team of the University of Siena; Legal Adviser to the Italian Ministry for the Environment, Land and Sea

## **Lara Kerkez Bubalo**

M.Sc. Mechanical Engineering (Belgrade), Clean Development Mechanism Expert and Technical Coordinator for Macedonia, Task Force for Central and Eastern Europe, Italian Ministry for the Environment, Land and Sea

## **Ermira Koçu Deçka**

DESS “Practice of Human Rights”, Lawyer; National Legal Officer at OSCE Presence in Albania; Member of the Environmental Legal Team of the University of Siena; Legal Adviser to the Italian Ministry for the Environment, Land and Sea

## **Tatjana Kosec**

M.Sc. Biology, Country Programme Technical Coordinator, Task Force for Central and Eastern Europe, Italian Ministry for the Environment, Land and Sea

**Olivera Kujundžić**

MES (Podgorica), Member of the Environmental Legal Team of the University of Siena; Legal Adviser to the Italian Ministry for the Environment, Land and Sea

**Massimiliano Montini**

LLM (London), Associate Professor of European Union Law and Director of the Department of Economic Law, University of Siena; Director of the Environmental Legal Team of the University of Siena; Lawyer; Legal Adviser to the Italian Ministry for the Environment, Land and Sea

**Svetlana Nojkovic**

LLB (Belgrade), Senior Adviser to the Ministry of Environment and Spatial Planning of the Republic of Serbia

**Emanuela Orlando**

Magister Iuris (Oxford), Ph.D. Candidate, European University Institute (Florence); Member of the Environmental Legal Team of the University of Siena; Lawyer; Legal Adviser to the Italian Ministry for the Environment, Land and Sea

**Ivana Radulovic**

MSc Mechanical Engineering, Country Programme Technical Coordinator, Task Force for Central and Eastern Europe, Italian Ministry for the Environment, Land and Sea

**Francesca Romanin Jacur**

PhD (Milan), Post-Doc Researcher in International Law, Department of International Law, University of Milan; Member of the Environmental Legal Team of the University of Siena; Legal Adviser to the Italian Ministry for the Environment, Land and Sea

**Andrea Rossi**

MSc Environmental Policy, Lecturer in Environmental and Health Policy, Department of Economic Policy, Finance and Development, University of Siena; former Member of the Environmental Legal Team of the University of Siena

**Branko Sikirica**

MSc Mechanical Engineer (Belgrade), Clean Development Mechanism Expert, Task Force for Central and Eastern Europe, Italian Ministry for the Environment, Land and Sea

**Vladimir Stefanovic**

BSc Geological Engineer (Belgrade), Clean Development Mechanism Expert, Task Force for Central and Eastern Europe, Italian Ministry for the Environment, Land and Sea

**Radmila Vlastelica Sutic**

MSc (Belgrade), Mechanical Engineer, Clean Development Mechanism Expert, Task Force for Central and Eastern Europe, Italian Ministry for the Environment, Land and Sea

# Acronyms and Abbreviations

AAUs	Assigned Amount Units
AGBM	Ad Hoc Group on the Berlin Mandate
AWG KP	Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol
AWG LCA	Ad Hoc Working Group on Long Term Cooperative Action under the Convention
CCS	Carbon Capture and Storage
CDM	Clean Development Mechanism
CEF	Carbon Emission Factor
CER	Certified Emission Reduction
CITL	Community Independent Transaction Log
CMP/COP-MOP	Conference of the Parties to the Kyoto Protocol
COP	Conference of the Parties to the UNFCCC
DCM	Decision of Council of Ministers
DNA	Designated National Authority
DOE	Designated Operational Entity
EB	Executive Board
EIA	Environmental Impact Assessment
ERU	Emission Reduction Unit
ETS	Emission Trading System
EU	European Union
GEF	Global Environment Facility
GHG	Green House Gas
IET	International Emission Trading
IMELS	Ministry for Environment, Land and Sea of the Republic of Italy
IPCC	Intergovernmental Panel on Climate Change
IRR	Internal Rate Return
ITL	International Transaction Log
JI	Joint Implementation
KP	Kyoto Protocol
LoA	Letter of Approval
LoE	Letter of Endorsement
LULUCF	Land Use Land Use Change and Forestry

MOP	Meeting of the Parties
MoU	Memorandum of Understanding
NR	National Registry
PDD	Project Design Document
PIN	Project Idea Note
PPA	Power Purchase Agreement
PPs	Project Participants
QELRC	Quantitative Emission Limitation Reduction Commitments
RES	Renewable Energy Source
SAA	Stabilisation and Association Agreement
SAP	Stabilisation and Association Policy
SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body for Scientific and Technical Advice
SD	Sustainable Development
SHPP	Small Hydro Power Plant
SOP	Share of Proceeds
UN	United Nations
UNCSD	United Nations Commission on Sustainable Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
WMO	World Meteorological Organization

# Introduction

**Massimiliano Montini and Alessandra Barreca**

This publication arises from the professional practical experience gained in the past few years by an interdisciplinary team of legal and technical experts acting in the framework of the bilateral cooperation performed by the Italian Ministry for the Environment, Land and Sea (IMELS) in the Western Balkans.

In fact, in the last few years, IMELS signed specific Memorandums of Understanding (MoUs) with the Ministries for the Environment of four Western Balkan Countries, namely the Republic of Albania, the Former Yugoslav Republic of Macedonia (hereinafter Republic of Macedonia),<sup>1</sup> the Republic of Montenegro and the Republic of Serbia, with the main purpose of providing them with legal and technical assistance, through a dedicated Task Force, named “Task Force for Central and Eastern Europe”, made of legal, economic and technical experts, engineers and economists, for the implementation of the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol (KP), as well as for paving the way for the development of the Clean Development Mechanism (CDM) projects in the abovementioned countries.

The Environmental Legal Team (ELT) of the University of Siena, a group of environmental lawyers and economists, is in charge of providing the legal assistance for the implementation of the MoUs objectives, by cooperating with the IMELS Task Force. It operates in the Balkan territory by means of dedicated project managers and a series of local experts.

Within such a framework, the ELT, building on its expertise in climate change law and policy, has the possibility to apply the International, European and Italian

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Massimiliano Montini

Director, Environmental Legal Team, University of Siena

Alessandra Barreca

Programme Manager, Environmental Legal Team, University of Siena

<sup>1</sup>The Former Yugoslav Republic of Macedonia (FYROM), is registered with this name at the United Nations, but claims the possibility to use the name “Republic of Macedonia”. Over the use of this name there is an unsettled dispute with the Republic of Greece. Therefore, in the present publication the name “Republic of Macedonia” will be used for mere reasons of shortness. This choice does not imply taking any position on the pending controversy over the use of the name which is to be settled under International Law.



legislative and regulatory experience to the selected Western Balkan countries and to address all the most relevant issues related to the implementation of the UNFCCC and the Kyoto Protocol, with the view to contribute to the establishment of the appropriate structure and the related rules of procedures for the development of CDM projects in the aforementioned countries.

On the basis of these premises, the ELT is now presenting in this publication the outcomes of the professional experience made in the Western Balkan territory by the above mentioned interdisciplinary group of experts and consultants. The book focuses on the main challenges experienced to the UNFCCC and KP implementation in the Western Balkans under the umbrella of the IMELS cooperation, with regard in particular to the establishment of a necessary institutional framework, based on the Designated National Authority (DNA), as well as the related rules of procedure for hosting CDM projects in the four Balkan Countries benefiting from the IMELS legal and technical assistance.

Hereinafter, a short presentation of the book content and its main purposes is provided.

The publication reports on the IMELS cooperation with the Western Balkan Countries involved, both from legal and technical–scientific perspective, with the view to provide a broad picture of all the relevant issues involved in the implementation of the MoUs and of the related climate change and environmental policies.

The book, which opens with a brief preface on the Task Force for Central and Eastern Europe mission and achievements by M. Hauser, Director of the Task Force, is divided into two parts. Part I focuses on the *Legal Issues on the Kyoto Protocol and its Implementation Experiences in the Western Balkans* and is composed of Section I on the *Legal Issues on the Kyoto Protocol, CDM and Carbon Market for CERs Transactions*, and Section II on the *Institutional Aspects of the Kyoto Protocol Implementation: the Establishment of the DNAs in the Western Balkans*. Part II deals with the *Technical Issues on the Kyoto Protocol and its Implementation Experiences in the Western Balkans*, and is divided into Section I on the *Technical Issues Related to CDM Implementation* and Section II on the *Technical Experience on CDM Implementation in the Western Balkans*.

Part I – Section I analyses the most relevant legal issues related to the Kyoto Protocol implementation, with a particular focus on the current and future regulatory perspectives of the climate change regime and of the CDM, as well as on the structure and purposes of the carbon market for emission credits transactions.

Chapter 1, by M. Montini, *The Kyoto Protocol in the International Environmental Law Context and the Post-2012 Scenario*, critically analyses the development of the international climate change law and policy regime, from its inception to the current legislative and regulatory framework, from the International, EU and Italian perspective, with a view on the possible post-2012 scenarios.

Chapter 2, by F. Romanin, *An Assessment of CDM: Lessons Learned and the Way Forward*, focuses the attention on the current CDM regulatory regime pros and cons, and highlights some interesting options on the future scenarios for the CDM regulation, with the aim to test the opportunities to enhance the potential role of this mechanism for the achievement of the overall objective of sustainable development.