



### Annex 3

## POLICY FRAMEWORK TO ADDRESS NON-COMPLIANCE BY DESIGNATED OPERATIONAL ENTITIES

(Version 01)

### I. Introduction

#### A. Background

1. The conference of the Parties serving as the meeting of the Parties for the Kyoto Protocol (CMP) at its fourth sessions requested the Executive Board of the Clean Development Mechanism (hereinafter referred to as the Board) to develop and apply as a priority, a system for continuous monitoring and improvement of the performance of the designated operational entities (DOEs) and to develop and apply measures to ensure that DOEs comply with the requirements and meet the standards established by the Board for DOEs.
2. The CMP also requested the Board to finalize, prior to CMP.5, its work on a policy framework to address non-compliance by DOEs in a systematic manner, including transparent criteria for the application of sanctions in cases of non-compliance.
3. The Board at its forty-sixth meeting considered the above mandates from the CMP.4 and requested the secretariat and the CDM Accreditation Panel (CDM-AP) to develop ways to monitor and improve DOEs performance including:
  - (a) Development of a policy framework to address non-compliance by DOEs in a systematic manner;
  - (b) Additional measures to ensure that DOEs comply with the requirements and meet the standards.
4. This document presents a proposed policy framework to address non-compliance of DOEs in a systematic manner. The document also recommends consequential actions in relation to aspects of non-compliance.

#### B. Areas of authority of the Board

5. The paragraph 5 of the CDM modalities and procedures (CDM M&P) (decision 3/CMP.1) stipulates that the Board shall supervise the CDM, under the authority of the CMP, and be fully accountable to the CMP. The same decision specifies that the Board shall be responsible for the accreditation of operational entities which meet the accreditation standards contained in appendix A to CDM M&P. This responsibility includes the operationalization of accreditation procedures and standards, decisions on re-accreditation, suspension and withdrawal of accreditation of DOEs.

#### C. Roles and responsibilities of DOEs

6. In accordance with the CDM M&P, DOEs are accountable to the CMP through the Board, and shall comply with the CDM M&P, relevant decisions of the COP/MOP and relevant decisions, clarifications and procedures of the Board.



7. A DOE is tasked to conduct validation and verification of CDM project activities. These tasks include inter alia other aspects as requesting deviations from methodologies and revisions of the monitoring plans.

8. The nature of validation and verification functions calls for independence of their operations, impartial decision-making and technical, legal and procedural aspects to be undertaken in a competent manner.

## II. Policy approach

### A. Definitions

9. The following definitions of terms are used in this document:

- (a) **DOE performance:** how successfully a DOE carries out its CDM functions, as defined in CDM M&P, decisions of the CMP and Board;
- (b) **Non-compliance:** Failure to meet a CDM requirement;

### B. Scope of the policy

10. The substantive scope of this policy framework includes monitoring, classification and rating of all individual non-compliances.

11. The policy framework is applicable from completion of the initial assessment process and accreditation of an entity by the Board until expiration of its accreditation. The policy is not applicable during full suspension of the entity.

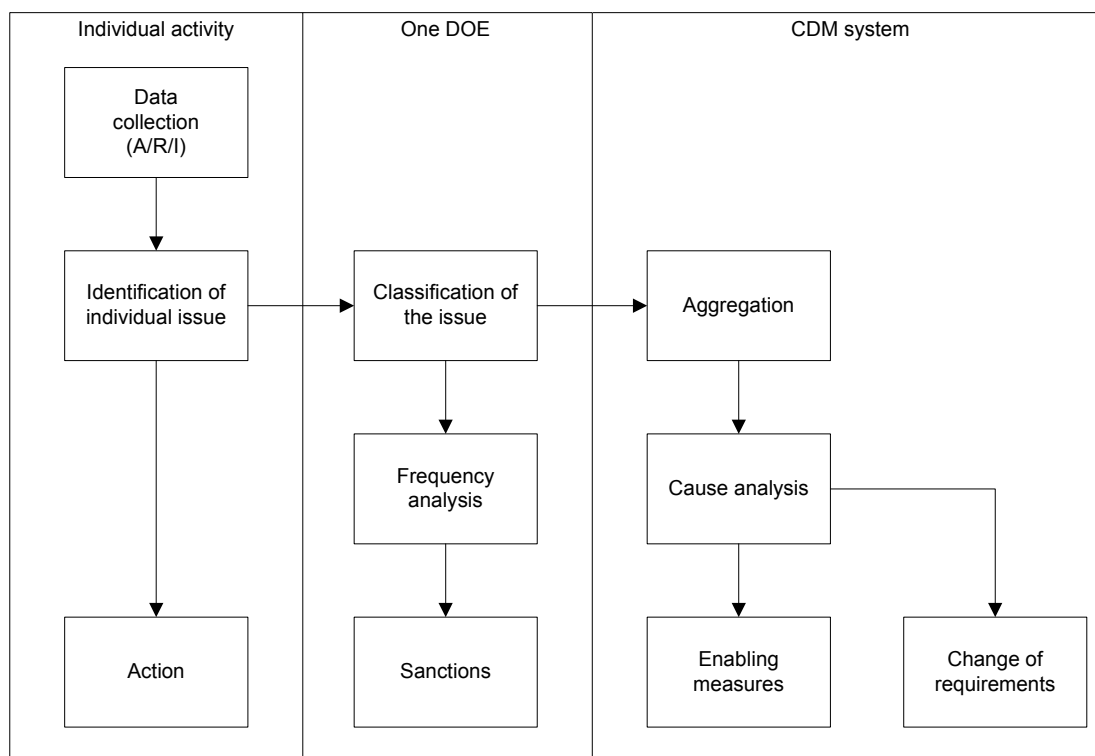
### C. Principles

12. The proposed policy framework is based on the following principles:

- (a) Any non-compliance of a DOE shall be addressed;
- (b) A non-compliance shall be addressed in line with the risks it posed to:
  - (i) Credibility of the CDM process, and/or
  - (ii) Confidence level of the Board in the DOE performance;
- (c) An individual non-compliance issue bears a combined risk and contributes towards overall non-compliance;
- (d) The overall non-compliance is graded in accordance with the combined risk that the individual non-compliance issues are posing to the process and the ongoing confidence of the Board in a particular DOE.
- (e) Consequences of non-compliance are determined according to the grade;
- (f) DOE performance can be measured by the level of its overall non-compliance.

13. The policy encompasses both the compliance of a DOE with the various CDM standards and any failure of a DOE to deliver the expected outcomes in terms of validation and verification of CDM project activities.

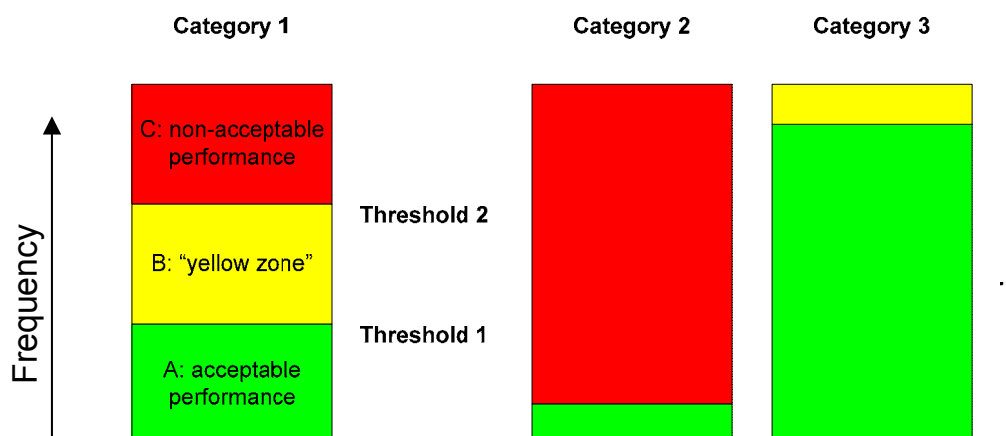
### D. Elements of the policy



14. The policy addresses the following elements:
- Collection of data through measurement of agreed indicators;
  - Identification of individual non-compliance issues;
  - Classification of identified non-compliance issues into pre-defined categories;
  - Frequency and threshold analysis of non-compliance issues within each category, and grading of overall non-compliance for each category;
  - Implementation of sanctions, including issuance of a warning, according to the grade of overall non-compliance.
15. The policy also recognizes the following closely linked activities, which are falling outside of its scope:
- Action on individual non-compliance issues;
  - Aggregation of non-compliance data across a number of DOEs and evaluation of trends;
  - Root-cause analysis for issues common to multiple DOEs;
  - Implementation of enabling measures, such as training sessions, workshops and outreach activities, aimed at a number of DOEs, and
  - Enhancement and clarification of the requirements.

### E. Grading of non-compliance

16. According to this policy framework, the following grades of non-compliance are used:
- (a) **Grade A:** isolated non-compliance issues that have low and limited impact on the results of validation or verification activity;
  - (b) **Grade B:** non-compliance issues raising doubts about the DOE's validation and verification system, having a major impact on the results of validation and verification activities of the DOEs, or having minor impact on the credibility of the CDM process.
  - (c) **Grade C:** non-compliance issues that threaten the credibility of the whole CDM process and seriously erode the confidence level of the Board in the DOE's performance.
17. A grade will be determined for each category of non-compliance based on frequency of identified individual non-compliance issues falling within that category.



### F. Classification of non-compliances

18. Identified non-compliance issues will be categorized into a set of agreed categories based on their nature and risks associated with an individual non-compliance.
19. The following non exclusive lists, are provided as examples of categories to be covered under this policy framework:
- (a) Minor report errors;
  - (b) Major report errors;
  - (c) Non-compliance with procedural timelines;
  - (d) Non-provision of information;
  - (e) Identified conflict of interests;
  - (f) Fraud and malfeasance.
20. For each category of non-compliances the following elements will be defined:



- (a) Frequency threshold 1 and 2, specifying point of grade escalation from grade A to grade B, and from grade B to grade C. For some categories escalation to grade B or C can occur with the first instance of individual non-compliance;
- (b) Sanctions imposed for non-compliance grade A, B and C.

### **G. Consequences of non-compliance**

21. The consequence and sanctions of non-compliance shall be based on the grade, defined through frequency and seriousness of individual non-compliance issues, and shall be determined in an objective manner.
22. Possible sanctions and consequences of non-compliance can include, for different categories and grades, the following actions:
- (a) Issuance of a warning to the DOE;
  - (b) Recommendation to AP for a additional performance assessment;
  - (c) Recovering costs related to requests for reviews;
  - (d) Recommendation to Board for a spot-check;
  - (e) Recommendation to Board for a full or partial suspension.
23. For an increased transparency, the grading of non-compliance per each category for each DOE can be made publicly available.

## **III. Proposal on implementation**

### **A. Required documentation**

24. The following definitions will be required as a part of the implementation of the policy framework:
- (a) Definitions on non-compliance categories;
  - (b) Definitions of frequency thresholds for grade escalation for each category of non-compliance;
  - (c) Definitions of applicable sanctions for each category and grade;

### **B. Implementation plan**

25. A detailed elaboration of individual indicators and data collection procedures will be required. An implementation plan should also include the following steps:
- (a) Adoption of the framework policy;
  - (b) Elaboration of required documentation and procedures to support the implementation;
  - (c) Phased implementation of the monitoring policy with regard to non-compliances and indicators from the following areas:
    - (i) Accreditation-related activities;



- (ii) Registration-related activities;
- (iii) Issuance-related activities.

26. Proposed phased implementation with regards to the area of non-compliance will provide for an optimal deployment of resources and will allow gradual elaboration of the required documentation.

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01	EB 49, Annex 3 11 September 2009	Initial adoption
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