

CMIA Response to EB46 Call for Input on 'Efficiency in the Operation of the CDM and Opportunities for Improvement'

The Board, at its forty-sixth meeting, approved the terms of reference for work on the strategic CDM improvements referred to in decision 2/CMP.4, in order to enable the Board to submit its recommendation to CMP5. In this regard, the Board agreed to launch a public call for inputs on efficiency in the operation of the CDM and opportunities for improvement.

The CMIA is pleased to respond to this call and provides comments and recommendations on behalf of its membership in the text below. We have structured our response according to the items included in the scope outlined in Section II of Annex 64 to EB46.

1. Ensuring that guidance provided by the Board is comprehensive and provides adequate clarity to DOEs and project participants implementing it.

The Board needs to think how guidance is actually implemented by DOEs to allow them to function confidently, noting that the VVM only partially achieves to provide the required unambiguous guidance.

DOEs increasingly operate as if they have neither mandate nor authority to exercise any judgment on implementation of the CDM. They fear repercussions related to any interpretation they may take. As a result they become overly cautious to the extent that the proper functioning of validation and verification is at risk.

It is questionable whether this is the intended result of overly detailed and comprehensive EB guidance. For example, the new VVM says that the DOE is entitled to make the most conservative assumption about incomplete data, but based on our experience with the major DOEs, they are now too risk-averse to make judgments about what is conservative and what is not.

Paragraph 109 (b) of EB 26 authorizes DOEs to make most conservative assumptions if activity levels or non-activity parameters have not been monitored in line with the registered monitoring plan. However, it has been seen that the CDM EB has not accepted such assumptions by DOEs during verification and has indeed discouraged DOEs in this regard by 'requesting reviews' of such cases.

The VVM requires DOEs to cross check technical data at validation and verification. However, project participants have frequently had the experience that DOEs are having to seek guidance and clarification on interpretation of the VVM and EB guidance which can lead to delays of up to six months.

Recommendations:

The relationship between EB and DOEs is suboptimal and requires urgent improvement. The following recommendations may help to increase trust and coherence within the EB decision making and the implementation of such decisions by DOEs and project participants:

1. The establishment of a body of case law based on precedents.

Use of previous precedent and established cases would help to ensure that guidance

provided by the EB is consistent, unambiguous, and clear. For example, a request for deviation approved for a particular project should be accepted for other projects with similar scenarios without need for deviation approval by CDM EB. Issues accepted by CDM EB following request for review/review on a project should form precedent for other projects. Rejections should not form precedent so that there remains room for improvement to the CDM. In summary any decisions made on project specific cases which are applicable in a wider context should be immediately translated into general guidance to be added to the relevant EB guidance text, best during the same EB meeting.

2. Hearing of project participants, grace periods, and no retroactive rulings.

Any changes to procedures and rules should be undertaken only after consultation with project participants. They should not be applied retroactively to projects using the existing rules already submitted for registration and should only be introduced after a 'grace' period for projects using the existing rules to submit for registration. The Project Developer Forum would provide a means to undertake this dialogue.

3. Enhanced transparency through improved information dissemination, dialogue, and consultations.

Greater use of interactive clarification forums between the EB and DOEs and project participants would allow all participants to better understand how the EB interprets its own guidance. This could take the form of interactive workshops and/or webinars to encourage wide participation. Guidance provided by the EB often creates uncertainty as DOEs and project participants have differing opinions on how the guidance should be interpreted and implemented. This results in a period of 'calibration' between DOEs and project participants and a large number of projects being sent for review and sometimes the EB issuing further clarification on the guidance itself.

The Board should note the variability in the interpretation of the guidance amongst project participants and should reflect on what could be done to align the Board's expectations and the project participants' expectations as quickly as possible when new guidance is released. For example, fast-tracking the 'calibration' process through structured dialogue with project participants and DOEs would increase the certainty and the expediency of the application of guidance issued by the EB. For instance, the procedures and guidance for Programme of Activities (PoA) were developed 22 months ago but there is still a lot of uncertainty as to how to interpret them. There was a call for inputs at EB41 – which has resulted in little additional clarity - and the Secretariat/EB are now working on revising the procedures; however, a PoA Working Group with the Secretariat, the EB, the DOEs and the project participants would allow for some experience and concern sharing. This would facilitate and most probably speed up the learning by doing process as well as the development of practical and comprehensive guidance.

The VVM alone often does not provide sufficient clarity for DOEs to be able to validate and verify projects on the ground. More opportunities for DOEs to seek guidance and clarification from the EB in an informal environment as well as through formal channels would give DOEs greater confidence in interpreting existing guidance. Including project participants in this dialogue would allow a direct and efficient means of communicating the Board's expectations.

Methodologies proposed by project participants can be modified by the Methodology Panel, SSC WG and the EB without a requirement to consider the practical implications of these modifications often making them impossible to apply on the ground without further guidance and/or clarification

Project developers submit proposed changes to existing methodologies and new methodologies (draft PDDs are required for new methodologies and revisions but not for clarifications). However, the decision on the final text of methodology changes is made by the UNFCCC CDM EB with input from the Secretariat, Methodology Panel or Small Scale Working Group. This can result in modifications being made without due consideration and appreciation of the practical impacts of these changes to projects on the ground, rendering the methodology unworkable without additional clarifications and revisions.

Recommendations:

1. The EB should consider methods to ensure that its members, members of the Methodology Panel and the Small Scale Working Group consider the practicality for project participants and DOEs of applying methodological changes to real world projects. For example, the EB should agree to take into account feedback from project participants and DOEs on the practicality of applying changes to methodologies.

The CMIA welcomes the clarity provided by the "Guidance on the Assessment of Investment Analysis" but urges the EB to provide greater clarity on the demonstration of financial additionality

Recommendations:

1. Improve capacities and technical decision-making.

- a. The EB is encouraged to seek out financial experts to assist them in its task of overseeing financial additionality to ensure that the CDM guidance is consistent with that of standard corporate finance theory and practice.
- b. We also urge the EB to consider further training for Secretariat staff as well as the DOEs to ensure assessment and interpretation of financial analyses are conducted in a uniform and predictable manner and to the EB's standards.

2. Enhanced transparency through information, dialogue, and consultations.

Similar to Point 3 above, greater use of interactive clarifications, would assist project participants and DOEs in applying guidance related to financial analyses and improve consistency and confidence in amongst DOEs and the Secretariat.

2. Ensuring that decision-making is carried out in an efficient, transparent, consistent and, where possible, accelerated manner

Transparency in the decision making processes of the EB and UNFCCC should become formally institutionalised.

Decisions from the EB and Secretariat do not predictably rely on precedent (see point 1 and 1st recommendation above). The absence of hearings, institutionalized reviews or the right to appeal EB decisions exacerbates this situation making it hard to reliably understand what the CDM regulatory system, the EB and its panels, actually require from market participants.

Whilst the EB makes claims to great transparency, it is now the norm for much of EB meetings to be held in closed session – over 50% of EB meetings are held in closed session. The decisions from these closed sessions are presented with little or no explanation as to their rationale. Likewise the Methodology Panel decision making is such that some decisions are made with a lack of justification. When an affected project participant asks about the reasons behind a particular decision, for example during consideration of a new methodology, no explanation is given via the Secretariat from the Methodology Panel. Instead the Secretariat recommends making a formal request for clarification *after* the approval of the methodology that would only delay the process further. Also, whereas the questions asked and answers provided during the request for review phase are publicly available and archived, the same is not true for questions raised and answers provided during the review phase. The absence of transparency surrounding alterations in regulations and associated processes have made the timelines for and outcome of CDM project registration unpredictable, potentially delaying the point at which a project can be credited and hence reducing the volume of CERs a project can issue. The price for such delays is usually paid by project developers that are dependent on the CER cash flow to implement the project.

This situation damages existing investments and undermines confidence in the CDM. The reasonable conclusion that future unspecified changes could be made, further undermines existing investments and additionally hampers the ability to carry out due diligence of proposed future investments.

Recommendations:

1. Establishment of case law, grace periods, and no retroactive rulings.

As recommended by CMP3, the EB should begin referencing past decisions. This does not imply that the EB or Secretariat will be tied to past decisions in perpetuity but rather when they deviate from precedent (see 1st recommendation within point 1 above) they would have to do so as part of a process that clearly justifies why such a deviation has been necessary and clearly outlines how this has affected the context that future decisions will be made in. Any change in a decision should not be applied retroactively and should allow a grace period for investments that have been made in good faith.

2. Establishment of clear communication channels.

The EB and the Secretariat shall establish clear responsibilities and binding timelines. It shall further add to any of its communications reasons that led to a particular decision and allow project participants to react on such decision within a given timeframe.

Key personnel involved in a project's progress through the EB and UNFCCC process should be identified and open to dialogue. Responsible Secretariat staff should be published in the same manner as names of panels and EB members currently are.

Another suggestion is to provide an organigram naming the section managers only. The refusal of the secretariat and the EB to communicate openly and establish clear responsibilities for the passage of each project through the pipeline is causing unnecessary delays undermining the stability of projects, causing damage to investor confidence in the CDM as a credible and attractive investment for the private capital it relies on. Whilst we understand that the Secretariat's resources are limited there are a number of options to facilitate better communication and a more efficient and more open process. For example, standard forms and procedures could be made available to project developers to allow them to enquire as to the status of a certain project. Enquiries should be answered within a specified time period. According to provisions already made, project developers and DOEs have been called upon to nominate a contact person for the review process including for a conference call in case the Executive Board wishes to address questions to him/her during the consideration of the review at its next meeting. However, this avenue is not currently being used enough by the UN and the greater use of this (only used in few cases) could avoid significant delays in the entire process.

The same is true for DOEs. Many requests for deviation, clarification or revision at issuance appear to be being delayed because DOEs do not seem to be very clear on the correct process to follow despite the guidance provided in EB 31 Annex 12. Whilst this is the responsibility of the DOEs, it is difficult for project participants to monitor DOEs progress towards progressing requests when the procedure is not fully open and transparent and where there is no dialogue between the Secretariat and project participants. Furthermore, in several examples, there have been questions posed to project participants by the Secretariat through the DOEs of the validity of the project at verification and issuance of CERs without justification based on any CDM rule or the specifications of the relevant methodologies. Such late stage decision-making qualifies as retroactive review of an approved project and it is contrary to establishing a predictable implementation framework for CDM projects.

3. Enhance transparency and participation.

Greater provision should be made for decisions and project progress to be posted online and made publicly available. For example, it would improve accessibility if progress on the completeness check of documents for 'requests for issuance' could also be web hosted (as has been recently introduced for 'requests for registration'). Similarly, information about requests for deviations or revisions to monitoring plans could be webhosted in the same way that requests for deviation and revisions or clarifications to methodologies are.

Further, the CDM website could provide information about when each request for deviation/clarification/revision was received by the Secretariat, when completeness check is satisfied and the progress towards a decision by the relevant authority (e.g. date of the meeting at which it will be considered).

Although action has been taken to reduce the time taken for completeness checks and to provide a simple tracking tool the time taken is still significant. As with requests for review, emissions reductions during this period cannot be credited. Therefore the average completeness check period must be reduced, constantly monitored and reported so that action can be taken if the delay starts to increase again.

4. Establishment of review and appeal.

The absence of a formal review and appeal process serves to undermine the confidence of investors in this market as well as major Parties to the UN climate process such as the

US. Certain recent decisions have appeared inconsistent and there are also fears that EB members may be conflicted with respect to particular projects or project categories. A review process should be established to enable project participants to appeal EB decisions. In order to award basic procedural rights to affected legal entities, we recommend the establishment of hearings and a formal appeal process. A review process would provide affected project participants with the ability to appeal decisions of the CDM Executive Board.

The decisions of the appeal process would have to be final. The appellate body would be supported in its activities by the UNFCCC Secretariat. Its proceedings as well as the considerations for any judgment would be publicly available.

5. Increased delegation of technical work.

The EB should guide project participants and DOEs and issue final decisions on projects. Spending its time on technical, detailed problems diverts its attention and decreases the efficiency of the system. The EB should reconsider the work delegated to the Secretariat in the process of request for registration and issuance with the aim of speeding up and ensuring consistent technical assessment and impartiality. For example, corrections to projects could be signed off by the Secretariat and not have to be endorsed by the Chair of the EB; recommendations on review outcomes could be made by the Secretariat and endorsed by EB members outside of EB meetings.

Decisions over the fate of individual projects where a review has been requested or undergoing full review are particularly slow.

A project which goes through the full request for review, review and corrections process can have registration delayed by up to 6 months. Even if the project is subsequently registered, any emissions reduction activities during this time are not credited, damaging the economics of the project. This can significantly affect the viability of a project.

We welcome the introduction of the VVM which will hopefully lead to better quality validation and verification reports (and PDDs and monitoring reports) thereby reducing the number of projects where a review is requested or where a full review is undertaken. However, further improvements could improve the efficiency of this process further and limit or remove the need for case by case project review and approval. This would increase efficacy, improve certainty and transparency and support the development of previous precedent.

Recommendations:

We suggest the following steps to increase the efficiency with which projects go through the approval process:

1. Increase coordination and consultation.

The Secretariat should be mandated to work pro-actively together with the DOE on closing out as many as possible issues/requests for clarification during the 10 day completeness check by means of on-the-record direct communication with DOE HQs.

2. Clarify the role of the DOE.

The EB should confirm that DOEs have the power to exercise judgment on minor issues, based on their experience and training where 'minor' is defined as any issue that does not

affect the environmental integrity and/ or additionality of a project in a decisive way and that will not materially affect CER volume.

To promote confidence in DOEs we further propose that information about which projects DOEs have rejected be made publicly available in a project rejection section of the website and that invalid projects are deleted from the validation archive.

3. Provision of reasoning.

For projects that do get called for review or are rejected, greater detail should be made available as to the reason why. Current explanations are often generic and do not facilitate a 'learning by doing' approach. For instance, comments such as: "*failure to substantiate the investment analysis*" may refer to a number of items. The EB should look into publishing, subject to addressing any relevant project confidentiality concerns, the response of project participants and DOEs to review questions; this already happens when a review is requested, but not when the review is underway. This would further improve transparency and facilitate a learning by doing approach.

It would further improve transparency if the RIT appraisal and Secretariat's summary note of the request for review could be made available to the project participants in the event of request for review at registration and/or issuance.

4. Proposals on how to improve the substance of the decision making.

The Board could undertake a number of strategic improvements, as outlined below:

- *Additionality should be defined by provenance and nature of emission reduction not on a case by case basis*

One of the main constraints around CDM projects comes from the way in which additionality has been defined. The system has to evolve from the current use of project additionality, to an emission reduction additionality approach.

For example, transparently established, reliable benchmarks, set below business as usual scenarios for specific sectors, could be tailored to meet the chosen level of environmental protection, ensuring that an optimal balance is struck between environmental integrity and ease of project approval.

The EB should encourage the development of dynamic baselines for specific methodologies, allowing baselines to be adjusted according to the ongoing level of technology penetration in a specific sector / country.

- *Changing the approach to monitoring from a methodology specific approach to one that defines the permissible levels of uncertainty and levels of accuracy required for parameters monitored.*

For example, for parameters to be monitored that have a significant impact upon emission reduction outcomes operators should be required to determine and report emissions according to a pre-determined level of uncertainty, taking account of technical feasibility, for each of the relevant parameters (e.g. activity data, emission

factors, oxidation factors), using well defined calculation protocols. An allowable accuracy level for operation of equipment should also be defined.

Such an approach would therefore remove a significant volume of work from the Meth Panel, the EB and the Secretariat and would rely instead on the work of the technicians involved in the implementation of the projects and on the DOEs specializing in metering, instrumentation, measurement and the management of uncertainty.

5. Create predictability in timeline

By changing the existing registration procedures it should be enabled fixing the starting date of the crediting period e.g. 6 month after start of the validation (or later if suggested within the PDD) irrespective of the time demand for the completeness check and any request for review. Such a step would ensure the proper realisation of an investment plan according to the original design as presented in a PDD.

3. Ensuring that all aspects of the Board's proceedings and decisions are fully documented in a manner that ensures they are accessible, transparent and up-to-date for the appropriate users

The sheer volume of guidance and decisions following 46 EB meetings and the many meetings of the other supporting panels and working groups means that it is difficult to find the relevant information on UNFCCC website and extremely difficult to be confident that the most up to date guidance or decision is being referenced.

For example, the registration section of the UNFCCC website does not tell a participant that a registration fee must be paid within a certain number of days – this information is only included in a footnote from a previous decision. Another example is the difficulty in knowing that all the relevant guidance is referenced when a methodology is under development. For example, the guidance by the EB on how to deal with end-users is in a separate part of the UNFCCC website than on guidance on new methodology submissions that may need this guidance.

Recommendations¹:

Compile and clarify EB rulings.

Past decisions of the EB and Secretariat should be centrally recorded and referenced.

The EB should look at the CDM Rulebook (www.cdmrulebook.org) as an example of how to make access to and reference of previous decisions and guidance clearer and easier to follow.

The CDM Catalogue of Decisions <http://cdm.unfccc.int/Reference/catalogue/search> should be made more user friendly and effective.

4. Ensuring that support provided to the Board enables the Board to conduct its work in a timely, efficient and consistent manner

Poor communication between the Secretariat and DOEs and a lack of transparency in the operations and decision making of the Secretariat has hindered the efficiency of this body.

For example, there are very few guidelines on how or when the Secretariat's decisions can be challenged. In addition, the Secretariat is always able to refer decisions to the EB. This further adds to the inefficiency of this body and creates a lack of transparency for project participants.

Further, feedback from DOEs has indicated that they often experience problems in communication with the Secretariat. For example, the Secretariat may imply that they will follow up with information about a specific query in a short time and then do not follow up the query.

While it is acknowledged that resourcing of the Secretariat is an issue, a properly functioning Secretariat is vital for the overall efficiency of the registration and issuance process and will effectively free-up the time of the EB to focus on over-arching, rather than project specific issues.

¹ Although not part of the EB's proceedings *per se*, it would be helpful to make available the minutes of the Accreditation Panel on the CDM website.

Recommendations:

Employ an external body to evaluate the processes and performance of the Secretariat and to suggest improvements on how to increase transparency and efficiency.