



CLIMATE FOCUS

Submission

To: CDM Executive Board
From: Climate Focus
Subject: **Response to the Call for Public Inputs on Efficiency in the Operation of the CDM and Opportunities for Improvement**
Date: 1 May 2009

Dear Members of the CDM Executive Board:

Climate Focus welcomes the opportunity to provide stakeholder comments on the possibilities of improvement in CDM operations, created by the CMP decision 2/ CMP.4 at Poznan. The efficiency of the CDM has been the topic of discussion in many places including the international negotiations. In our submission we therefore like to reiterate and emphasize those suggestions that are most crucial in our view. We distinguish our comments in those that relate to the organisational set-up of the regulatory body, the CDM EB and its panels (points 7-9), and those that can be implemented by the CDM EB itself within the existing structure (points 1-6).

Improvements in the Operation

1. No retroactive guidance

Rationale:

It is common practice in most legal systems to enact regulation that is not intended to apply retroactively. In vital areas of the CDM this principle is being violated and project proponents do not enjoy protection against changes in regulation. By some accounts DOES were forced to take into account guidance that was not yet available at the time of validation in over 20% of cases. This leads to unacceptable uncertainty and given the time of validation endless iterations in PDD updates and requests for revisions from DOES.

Suggestion:

- Projects should be validated solely against applicable methodologies and guidance that were available by the time the project was posted for the 30-day public commenting period
- Monitoring requirements should be based solely on the validated monitoring plan and applicable methodologies and guidance referred to in the registered PDD
- Retroactive rules should also not come through the backdoor by being labelled “clarification” or “guidance”, implying that they are merely clarifying an existing rule, when in fact they put additional requirements on project proponents
- PoA PDDs and CPAs PDDs should not have to be updated every time there is a change in the underlying methodology but be granted the certainty upon registration that the rules and modalities will prevail.



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2. Projects not to be held accountable for errors in validation

Rationale:

The time spent in EB discussion assessing individual projects is ever increasing and requests for review of projects are mushrooming. This type of micro-management has never been intended by the Marrakech Accords, which grant the right to project reviews in cases of suspected corruption or incompetence of the DOE. It is certainly not an efficient practice for the regulator to review individual cases on a large basis. If the rules are clear, DOEs should be in a better position to assess individual projects than desk reviewers or members of the regulatory body are. The challenge is to bring performance of the DOEs in line with regulatory requirements.

Suggestion:

- Phase out the Review and Issuance Team (RIT)
- If competence of DOEs is the concern: improve collaboration with DOEs and try to ameliorate their work performance but do not punish projects for supposedly faulty judgements

3. Incorporate hearings of project developers

Rationale:

Communication between EB and project developers only exists in the form of email communication through the DOEs whereby project developers receive a number of requests for clarification and later a decision with acceptance or rejection of the project. There are no opportunities for dialogue and often times project developers do not fully grasp the concerns nor the reasons for rejection. As the only means of communication, email correspondence is inefficient and can lead to misunderstandings.

Suggestions:

- Project developers should have a right to be heard before any final decisions on the project are taken. This could be by way of written or oral response.
- A well substantiated and clear explanation should be provided by the EB for any decisions taken.

4. Every issue must be addressed within a given timeframe

Rationale:

Postponing of decisions is a frequent practice and there is currently no ultimate deadline by which time an issue has to be resolved. Some issues are postponed to oblivion (Examples: consolidated biofuel methodology, revision of rules for programmatic CDM).

Suggestion:

- Limiting the time until an issue has to be resolved to a maximum of two consecutive sessions



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5. Increased transparency

Rationale:

Currently there are a number of areas in the CDM that could greatly benefit from increased transparency. EB meetings are held behind closed doors preventing an open and accountable culture. There is also a deficiency of communication channels between the main CDM regulatory bodies and project participants (see point 3 above). Although the CDM approval process provides for public participation at the project level, involving both local and international stakeholders, there is no direct communication between the EB or its panels and project participants. There is not even a guarantee that private entities will be informed about deliberations regarding their projects.

Suggestions:

- The EB meetings should be embedded in an open, transparent process that gives stakeholders a right to petition and engage in dialogue with decision-makers.
- There should be an establishment of a focal point within the UNFCCC secretariat who would handle complaints from project participants and DOEs. Such a focal point would not have decision-making responsibilities, but serve an entirely administrative function of ensuring efficient and consistent interaction with the EB, its panels, and the review mechanism

6. Incorporate DOEs in the decision making

Rationale:

At every meeting the EB reaches decisions that result in direct regulatory implications. The DOEs should be the first to know and understand these regulations, however, in practice they rarely are. The EB does not clearly state the rationale for decisions on registration and issuance and as a result the DOEs and project proponents are not able to effectively learn and apply these in the preparation of future projects. Consequently, over time the performance of DOEs does not greatly improve. In turn this prevents the EB from focusing on strategic decisions, and has instead resulted in a project-by-project assessment of requests for registration/issuance, a practice not foreseen by the Marrakesh Accords.

Suggestions:

- Organize consultative meetings with DOEs before adoption of major new guidance.
- Replace the project specific review with a stringent and efficient accreditation and continuous assessment process resulting in well-trained DOEs.
- The EB should review their punitive measures for poorly performing DOEs as this arguably leads to a further deterioration of a strained relationship and instead focus on improving the relationship and competency of DOEs.

Organisational reform

7. Create mechanism for appeal

Rationale:



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The EB's decisions have direct effect on private entity rights. While the EB is effectively a regulatory agency whose decisions have significant legal and financial consequences for private sector participants in the CDM, the EB is not subject to the usual political and legal controls common to domestic regulatory agencies. There is no independent review procedure within the CDM regulatory framework to which aggrieved entities may appeal for a review of an EB decision. This gives aggrieved entities, who may have suffered damage from EB decisions, no right of recourse and essentially little if any due process rights. It is a condition for a fair administrative procedure that those entities that are affected by the decisions of a regulatory body have access to a full and fair review of the decision.

Suggestion:

- COP/MOP should establish an appeal mechanism which gives standing to individuals that are granted rights and obligations under the CDM and guarantees a full review of EB decisions.
- A panel established by the COP/MOP and composed of a small number of individuals could be charged with the responsibility of passing a final judgment on the subject matter under dispute.
- Project proponents, DOES and anyone who is materially affected by the decisions of the EB should be able to register an appeal

8. Separate technical and political roles

Rationale:

The CDM EB is responsible for both political guidance (to the extent that issues can be dealt with at EB level and do not need to be referred back to CMP) and guidance on technical matters. Too often this mix of roles leads to a standstill in the decision-making. Purely technical questions remain unresolved because of their political sensitivity. An example is the four year long attempt by project developers to get a biofuel methodology accepted, which has been stalled for other than technical reasons. Similarly, overarching political guidance is only addressed in the framework of submitted methodologies, thereby meddled with technical issues, often times inconsistent across different methodologies and always reactive. An example is the question whether the producer or the consumer of a climate-friendly commodity or both should have the right to develop a CDM project, ruled differently for producers of climate friendly bricks or biofuel.

Suggestion:

- Separate committees for political and technical issues
- Technical issues should be overseen by technical experts (see also suggestion 9)
- A committee of political representatives (similar to the current structure of the EB) should be formed to provide political oversight, address questions of general concern and prepare issues for COP/MOP decision
- The terms of members should be limited to two terms in both committees without the possibility of an ongoing influential role in the committee discussions

9. Professionalise the Executive Board

Rationale:



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Throughout its existence the EB has carried a bag log of pending issues and non-assessed methodologies. Postponing issues to the next session is the rule rather than the exception. The structure of a committee with part-time representatives with bimonthly meetings does not fit the regulator of a billion dollar market. Staffing the EB instead with professional staff will also help avoid conflict of interests since individuals are no longer made to serve several agendas and interests in parallel, and could devote themselves full time to the EB.

Suggestion:

- Full time employment of members as opposed to part-time dedication
- Background of members should be in practical project experience
- This suggestion is tied to suggestion 8 above