

Subject: IETA response to the call for input on future work on PoAs

18 March 2011

CDM Executive Board

UNFCCC Secretariat
Martin Luther King Strasse 8
P.O. Box 260124
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Germany

Dear Mr. Hession,

I write to you in response to the call for input from EB 59 on next steps for future work on Programs of Activities (PoAs).

IETA has the following initial comments and looks forward to continuing to work with the Board on this issue as discussions continue.

(1) Possible alternative concepts for a PoA:

IETA recognizes challenges in the current conceptions of a PoA under the CDM but we are committed to working with the EB to revise existing guidelines and thereby better enable the development of PoAs as currently conceptualized. We do not perceive the creation of drastically alternative concepts as currently necessary.

We do, however, encourage the EB to integrate a strong consideration of PoAs into its work on standardized approaches for baselines and additionality determination. We believe that PoAs will be a key vehicle for the use of standardized baselines and additionality definitions in the future. In fact, the two concepts should be further developed in unison to ensure that standardized baselines and additionality definitions work well with a PoA approach.

In addition, we also note that PoAs under the CDM (or a similar concept under a different mechanism) may be integral to the development of NAMAs under a Post-2012 Framework, We suggest that the CDM EB and the CMP jointly consider how PoAs and the concept of NAMAs will interact in the future.

(2) Barriers in the current rules:

(a) Approval of methodology combinations:

According to the (EB 47, Annex 31, paragraph 2), when a PoA applies a combination of methodologies, the DOE shall submit a request for approval of the application of multiple methodologies prior to the submission of a request for registration.

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For some projects types, the combination of methodologies is critical. For the project participants, knowing that they need extra time— in addition to the already extensive validation and registration process— for using a methodology is discouraging.

IETA recommends either to expand the combinations of methodologies that can be used without approval or to limit the timeframe for the approval of the combination of methodologies to two weeks processing time, from the date a request is submitted until the official approval.

(b) *Revision of methodologies and its consequences to the PoA:*

According to the latest version of the "Procedures for the revision of an approved baseline and monitoring methodology by the Executive Board" (EB55, Annex 38, paragraph 18 and 19):

"If the approved methodology is put on hold or withdrawn, for any reason other than for the purpose of inclusion in a consolidated methodology, no new CPAs shall be included to the PoA. If the methodology, subsequent to being placed on hold or withdrawn, is revised or replaced by inclusion in a consolidated methodology, the PoA shall be revised accordingly. The changes shall be subsequently documented in a new version of PoA (e.g. Version 1.1), validated by a DOE and approved by the Board. The Board's approval defines a new version of the PoA and the PoA specific CDM-CPA-DD."

IETA finds this problematic due to the frequent methodology changes seen under the CDM. Project participants and their investors trust on the framework assuming that it is strong enough to survive during the complete crediting period. The fact that the PoA needs to go through validation and registration again if the methodology is replaced/revised is likely to become a barrier to investment. Such a barrier translates into increased costs to the project participant at a time when most PoAs already have only marginal earnings. These additional costs can easily make a PoA economically unviable.

IETA recommends that in case the methodology is revised after being placed on hold or withdrawn, the PoA should be revised accordingly and the DOE should be allowed to verify that the changes have been correctly included, without the need of EB approval. New CPAs should be made to comply to the latest version of the methodology. Already registered CPAs should be revised when renewing the crediting period.

(c) *Debundling under PoAs:*

The debundling rules for PoAs are more restrictive than for SSC CDM projects. Under the traditional CDM, two project activities are not considered as de-bundled components of a large-scale activity provided the first has been registered more than 2 years earlier. This exception does not apply to PoAs.

IETA recommends including the 2-year exemption clause in the guidelines for PoAs, as this is logical and will establish parity between PoA and SCC CDM.

(d) *PoA and CPA start dates*

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Current rules state that the CPA start date cannot be prior to the start of PoA validation. The pre-project implementation process for some project types, such as CFLs and cook stoves, can be a relatively quick and straightforward process, when compared to CDM registration and validation. IETA sees no reasons that a CPA should not be able to start before PoA validation, provided that it can be demonstrated that the CPA was implemented as a result of the PoA.

IETA recommends allowing CPAs to be included in a PoA if either the PoA's global stakeholder consultation has started or the Coordinating Entity has submitted notification of the PoA to the UNFCCC Secretariat and/or DNAs, similar to the "Notification for the prior consideration of the CDM" for regular project activities.

(3) Rules that do not exist or are lacking

(a) Lack of Clarity regarding DOE Liability for Erroneous Inclusion/ Definition of Eligibility Criteria for CPA Inclusion in PoA:

The current approach regarding the liability of the validating DOE for erroneous inclusion of CPAs in a PoA is not aligned with the idea of a simplified validation of CPAs, the intention of which was to reduce transaction costs. Indeed, the lack of clarity of how to move forward with DOE liability is limiting inclusion of further CPAs once a PoA is registered.

There are several separate elements of this issue that need attention:

- ***Lack of symmetry between simplified checking and liability:*** Lowering the relative transaction costs (per CER) is the primary goal of PoA (efficiency). However environmental integrity must be ensured. Hence, based on the current set-up, DOEs are expected to perform limited cross-checks prior to inclusion (efficiency), while at the same time the EB is trying to enforce environmental integrity by threatening the DOEs with full responsibility and liability. It is crystal clear that DOEs face contradicting claims.

IETA recommends that the EB clearly define in PoA guidelines the precise scope of scrutiny required by the DOEs when assessing adherence to eligibility criteria and should provide more guidance on the definition of eligibility criteria (see below for more on the latter point).

Unless it is proven that the DOE is guilty of negligence, malfeasance or fraud while doing such assessment, there should be no penalization for the DOE if a CPA is later found to be erroneously included.

To mitigate the risks and liabilities that would remain in terms of environmental integrity if this liability is removed from the DOE, an "***Insurance Carbon Pool***" should be created and managed by the UNFCCC Secretariat. The funding collection system could work in a similar fashion to the Share of Proceeds (SOP) collected for adaptation purposes: a share of the CERs to be issued for emission reductions generated by a PoA would be set aside to

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provide for compensation in cases where a ‘wrongful inclusion’ of a CPA under a PoA is discovered.

IETA believes that this approach would go a long way towards fostering investor and project developer confidence, thus promoting the deployment of start-up capital necessary to fund the design and implementation of PoAs. It would also ensure that environmental integrity and conservativeness are safeguarded, and that adequate guarantees exist to provide for a replacement of CERs issued to CPAs wrongfully included in the registered PoA.

- ***Lack of Clarity regarding definition of eligibility criteria for CPAs:*** IETA appreciates the attempts to deal with this issue, but maintains that linking the definition of erroneous inclusion to CPA eligibility criteria does not resolve two major concerns: (1) DOE liability is still dependent on checking eligibility criteria, which is still not clearly defined and (2) DOE liability is subject to subjective and changing assessments.

The definition of eligibility criteria for inclusion of a CPA under the PoA, includes “criteria for demonstration of additionality of the CPA, and the type and/or extent of information (e.g. criteria, indicators, variables, parameters or measurements) that shall be provided by each CPA in order to ensure its eligibility”. Despite continuous improvements of the rules and guidance for PoAs, IETA has noted that project participants are still using rather generic CPA eligibility criteria, due largely to a lack of guidance and examples for the form that those “criteria, indicators, variables, parameters or measurements” should take. Lack of clarity means that the DOEs have to check more extensively (again, which was not envisioned for PoAs), or else open themselves up to more liability.

Even if the DOEs go to the effort to check extensively, they still face the risk that there will be a re-interpretation of guidelines or meanings of e.g., the “criteria, indicators, variables, parameters or measurements” noted above. There is precedent for this within the CDM, where interpretations and requirements have changed drastically, e.g. with respect to wind and hydropower projects in China. With regular CDM projects, at least projects registered prior to application of such reference tariffs, are not re-assessed or disqualified retroactively. Based on current PoA rules, this is a real threat to CPAs under a PoA.

IETA recommends that the EB provide adequate guidelines for the establishment of eligibility criteria (EC) for CPA inclusion in a PoA. These should provide a clear explanation of how to ensure:

- objectivity of the EC,
- verifiability of the EC,
- set-up of the EC as “translation” of the CDM rules into PoA rules, and
- set-up of the EC as “standard” for additionality illustration.

Best practice examples should be heavily used in these guidelines. Indeed, for some project types with very homogeneous projects (cook stoves or CFLs, eg), compliance with eligibility criteria could be determined through a simple check-box approach. IETA

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encourages the EB to consider including in its guidance a list of project types for which such a check-box validation approach would be appropriate.

- **Unlimited liability for DOEs:** While IETA, once again, appreciates the efforts made to facilitate the implementation of PoAs this year, the revisions made with respect to the liability of DOEs for wrongful inclusion of CPAs in a PoA are entirely inadequate, as the liability is still not limited. In order to ensure that DOEs feel comfortable taking on PoAs and validating additional CPAs, ultimate liability (for mistakes made outside of the scope of negligence, malfeasance or fraud) must be limited in some way. Currently, the more PoAs a DOE validates, the more liability they hold. This fact dissuades DOEs from validating PoAs.

IETA recommends revising the “Procedures for erroneous inclusion of a CPA” to limit the liability of DOEs for the wrongful inclusion of CPAs by restricting the ability to review individual CPA inclusion to 2 years after initial inclusion. IETA believes that this is a balanced compromise, which leaves open the possibility to review inclusion for a good amount of time but does not open DOEs up to infinite levels of liability.

(b) PoA additionality criteria:

There are currently concerns and disagreement among EB members about the level at which additionality should be demonstrated. IETA thinks that this issue is actually more complicated than: large-scale=additionality at CPA-level and small-scale=additionality at PoA-level. The level of homogeneity between different CPAs is the more critical factor.

IETA recommends allowing project participants to choose the most appropriate level of additionality demonstration for their PoA.

The demonstration of PoA-level additionality would be undertaken along the lines of procedures provided in the methodology. For example, the PoA would describe the barrier(s) faced by CPAs and explain how they will be assessed at CPA-level. IETA believes that best practice, generic barriers tests would be useful in this context and encourages the CDM EB and methodologies panel to consider developing some examples.

The demonstration of CPA-level additionality would be undertaken by testing, for each CPA, the different elements of the eligibility criteria for inclusion of a CPA in the PoA.

(c) Restrictions on international PoAs:

The costs of PoA development are so high that flexibility to incorporate new CPAs and integrate more CPAs into a PoA should be afforded to PoA developers as much as possible, while maintaining environmental integrity. The development of international PoAs (especially amongst small countries) is important for this reason. Project participants need clarity as to how PoAs can be extended to additional countries after registration.

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IETA recommends that the inclusion of new countries should be possible any time during the duration of the PoA.

(d) Very Small-Scale (VSSC) additionality guidelines under PoAs:

IETA sees no logical reason to not allow the application of the “Guidelines for demonstrating additionality of renewable energy projects =<5 MW and energy efficiency projects with energy savings <=20 GWh per year”, a.k.a. VSSC additionality guidelines, to PoAs. The guidelines should apply if the combined emission reductions of the CPAs under the PoA amount to less than the thresholds included in the VSSC additionality guidelines. This application would be in-line with the intention of the CMP when they directed the EB to develop these guidelines.

IETA recommends that the EB issue a clarification that explicitly allows for the application of VSSC additionality guidelines under PoAs.

(e) Sampling guidance:

The use of sampling procedures during verification is critical if PoAs are to operate cost effectively. Without clear sampling guidelines, the development of PoAs is significantly hamstrung.

IETA recommends that the CDM EB immediately begin a process of developing its own guidelines on sampling. Until they are developed, however, we join the Project Developers Forum in suggesting that the EB allow project proponents to use, as a temporary replacement option, JI procedures (paragraph 49 to 52 of “Procedures For Programmes Of Activities Under The Verification Procedure Under The Joint Implementation Supervisory Committee” version 1) or Clause A.2.4.6.4, ISO 14064-3:2006.

Closing

IETA would like to reiterate that we strongly welcome the work of the EB to further improve the guidelines for PoAs in order to facilitate their increased development. We thank you for the opportunity to respond to this call for input.

Sincerely,



Henry Derwent
President and CEO, IETA