

Subject: IETA Response to the Call for Input on Future Work on Areas and Means for Direct Communication with the Board and the Secretariat

18 March 20011

CDM Executive Board

UNFCCC Secretariat
Martin Luther King Strasse 8
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Germany

Dear Mr. Hession,

I write to you in response to the call for input from EB 59 on areas and means for direct communication with the Board and the Secretariat.

For the CDM to be a credible and viable it has to have *efficiency, cost-effectiveness, transparency and environmental integrity*, which is why IETA has suggested that the EB implement more flexible and direct communication practices for several years now. In 2009 and again in 2010 the CMP partially answered our call and requested that the EB enhance communications with project participants and stakeholders, including through the establishment of modes of direct communication between the EB and project participants in relation to individual projects.

In 2010 the CMP broadened the guidance from direct communication with project proponents to include other stakeholders as well, which is a significant change and shows the interest of the Parties in ensuring transparency and effective participation.

IETA commends the fact that the EB and Secretariat have taken some steps to improve communication practices this and last year. IETA appreciates the CDM Roundtable meetings for stakeholders and the creation of the new Stakeholder Development Unit within the Secretariat, the establishment of which sent a positive signal to the project participant community.

IETA further commends that the CMP introduced the mandate for the EB to develop modalities and procedures to facilitate direct communication. IETA believes that this is an essential step to further strengthen the rule of law in the CDM by introducing modalities that reflect to some extent the general principal of the right to be heard in administrative proceedings. Where the mandate to the EB falls short of fully implementing these general principles, we invite the EB to further strengthen the legal and procedural integrity of the CDM by proposing transparent and fair procedural rules of participation.

Much remains to be done to enhance communication with stakeholders. The CDM is a complex system, and stakeholders need to be able to easily access information critical to their project and/or methodology development, and they need to have clear avenues open to them when questions and confusions arise with respect to their projects or methodologies.

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IETA Input on future work on Areas and Means for Direct Communication with the Board and the Secretariat

As a huge source of CDM experience, stakeholders also need to be able to communicate with the EB and Secretariat as new CDM rules and procedures are being developed. They are best able to advise the EB and Secretariat on what is and is not workable in the real world.

Communications with the UNFCCC

Improving communication with the CDM EB and its support structure must be seen as only one, albeit very important, aspect of the more general need to enhance stakeholder communication within the UNFCCC process. The SBI, in Cancun, asked for submission for “ways to enhance the engagement with Observer organizations” A number of organizations, such as the ICC and WBCSD have made extended submission on this topic. IETA, whose mandate is focused on markets and market mechanisms is focusing its interest on the communication with the UN body that regulates the most significant market mechanism, the CDM.

Characteristics of Good Communication

Communication between the projects proponents, and business in general should meet certain characteristics:

- **Increase efficiency** and ensure that the regulatory objectives are achieved at a lower benefit/cost ratio;
- **Be on the record.** A record of the interaction should be kept, such as notes of the communication.
- **Ensure transparency.** The record of the communication should be available as part of the project documentation, except commercially sensitive matters
- **Be an objective, integral part of the process.** Communication should not take place on an ad-hoc basis, such as an opportunistic meeting, but should be integrated in the regulatory process, with clear indication on who should participate, when communication can and should take place, the expected outcomes, etc. Communication should be a right and an obligation.

Type of Communication

Communication can take both of the following forms:

- **Direct:** Where the regulator and the stakeholder communicate directly with each other, whether in person, on the telephone, or through written means, and
- **Indirect:** When information is made available to stakeholders generally (and the public) but not communicated directly to a particular stakeholder.

Purpose

Communications with respect to the CDM generally aims to address one of these issue types:

- **Policy/general communication:** Aim to enhance and inform policy formation, such as, discussions on how to standardize methodologies, revise rules and regulations, develop standardized baselines, etc.
- **Case specific:** Aim to resolve issues related to specific cases, whether they requests for registration or issuance, new methodology submissions, requests for clarification, etc.

Objectives

IETA Input on future work on Areas and Means for Direct Communication with the Board and the Secretariat

Communications can be initiated for at least two types of objectives:

- To **identify/draw attention to** an issue: Such as raising issues with the EB on the functioning of the regulatory process.
- For **decision making purposes**: Such as, when information is needed to make a decision, such as in the case of the completeness check.

Trigger

Communications can be triggered in either of the following two ways:

- **Mandatory**: At a pre-designated point in the process, communication is required. In some circumstances, one or more parties could be able to waive the right to communicate.
- **Discretionary**: This is left at the discretion of either party to *initiate* an interaction/communication

Indirect Communication

There are multiple, important ways in which the CDM EB and Secretariat communicate with project participants and other stakeholders that do not constitute *direct* communication. IETA thinks that the following forms of indirect communication are particularly important:

- **Well Organized, Informative CDM Website**: An easily navigable website, with critical information from all aspects of the project cycle and the decision-making procedures of the CDM governing bodies is critical to reducing the need to access further, more cumbersome forms of communication. It is particularly important that the website contains information on the status of current and past requests for registration and issuance (all steps of the process); submission of methodologies; and requests for revision, clarification, and deviation, among others.
- **Clear explanation of decision-making procedures**: Knowing the precise criteria upon which decisions on projects, methodologies, etc. are being made will help reduce the questions asked after a decision has been handed down.
- **Clear, comprehensive written decisions**: Providing clear, comprehensive written decisions on critical policy issues and project and methodology-specific requests will go a long way to reducing the request for additional information and explanation from project participants.

Direct Communication on General Policy Issues and Guidance

Policy/Guidance Interaction should take the form of:

1. **Unsolicited Communications**:
 - a. Unsolicited Communication should be used to draw attention to matters of importance that stakeholder feels are not currently being adequately addressed by the EB, Secretariat, Panels and Working Groups.
 - b. Stakeholders should have the opportunity to direct their correspondence to the EB, Secretariat, Panels or Working Groups, as they deem appropriate.
 - c. The EB, Secretariat, Panels or Working Groups should reply and, when appropriate, demonstrate an outcome to the correspondence within 30 days.

IETA Input on future work on Areas and Means for Direct Communication
with the Board and the Secretariat

- d. Past and current unsolicited correspondence to the EB and the EB's responses to them should be published on the website in searchable form.
2. Calls for (Written) Input:
- a. The EB is already increasing the number of calls for input, which is welcome.
 - b. IETA believes that it would be useful if stakeholders were consulted on policy issues early in the policy development process. IETA finds it more difficult to engage successfully if the issue under discussion has already been thoroughly considered and key decisions made before stakeholder input is requested. At times, a second consultation may be needed as well, once the guideline, methodology, etc. has been more thoroughly developed.
 - c. IETA suggests that the EB provide longer periods to develop and submit input and/or stagger the closing dates for the calls for input in cases where there are multiple calls for input per meeting. This will enable stakeholders—especially stakeholder organizations like IETA that must coordinate input from members— the time to carefully comment on all of the issues open for comment.
 - d. IETA strongly suggests that the Secretariat publicly provide a summary of the comments it receives on the calls for inputs opened.
 - e. IETA suggests that the EB issue a clearly stated outcome with regard to all of the EB's calls for input. We suggest that this outcome include a reference to how comments were incorporated and/or taken into account and provides clear timelines for next steps. Today there is insufficient reporting on the inputs received and their consideration by the EB, which causes stakeholders to wonder if their comments— which take significant time to compile— are thoroughly and thoughtfully considered.
3. Direct interaction:
- a. IETA believes that direct interaction on general policy or guidance issues should come in the form of workshops and meetings with project participants, DOEs, and other stakeholders, which is already taking place to some degree and should be enhanced.
 - b. As with written input, it would be useful if stakeholders were consulted on policy issues early in the policy development process. See 2b above.
 - c. Invitation to these workshops and meetings should be based on a pre-selection process that consults with the major stakeholder representative organizations.
 - d. Stakeholders should receive adequate notice of workshops and meetings, including advanced notification for travel planning purposes and a clear description of the subject matter, so stakeholders can be sure to send the appropriate representatives.
 - e. As with the written calls for input, workshops and meetings should also conclude with a clear outcome, including explanation for any decisions taken, and a timeline for next steps.
4. Notice, comment, and implementation periods:
- a. IETA believes that new rules will be more effective and just if they will be subject to a notice and comment period.
 - b. Although stakeholder consultation regarding specific topics, such as new procedural or substantive rules, are welcome and implemented to date, they do not reflect the level of transparency that is required in order to allow CDM stakeholders to comply effectively with new rules.

IETA Input on future work on Areas and Means for Direct Communication
with the Board and the Secretariat

- c. Therefore, any final draft version new rules as prepared by the EB should still be subject to a notice and comment period before coming into effect.
- d. The EB should provide background material describing the rationale of particular rules and records of the debates related to these rules, if applicable.
- e. In addition, any rule should only come into effect on a particular date and such date should be clearly stated in the new regulation.
- f. The regulation should take into consideration what effect the start date has on pending proceedings at the time of the start date.
- g. During the notice period, stakeholders should have an opportunity to comment and the starting date shall be determined as such that it would be possible to make amendments in the event that comments disclose mistakes or substantial concerns about the new rules.

Case-Specific, Direct Communication

This has been a controversial matter that was been hotly debated by the CMP. At this stage the political decision was clearly made that provides the regulator the additional tool to initiate direct communication with the project participant and the DOE.

There is an expectation that should this tool not be used, there will be the need for some justification why this was not the case. The decision to make this tool available must be seen— but not limited to it— in conjunction with the decision to avoid rejection in completeness check for minor issues not material to environmental integrity.

Direct communication that is project related should

- Not add additional steps to the CDM project cycle, but make the existing ones more efficient
- Be available especially at points of assessment in the project cycle

The trigger for direct communication should be under:

1. Limited exercise of discretion

The EB, Secretariat, CDM Panels and Working Groups should follow the rule that **if there is an issue to be solved at some stage of the project or methodology assessment cycle, direct communication should be initiated within a clear time limitation**. Such a requirement should reflect the principle of the right to be heard in administrative proceedings and should reflect the rule of law under the CDM.

IETA would prefer that a brief time for direct communication be programmed into the project and methodology assessment cycles (with the possibility of being waived when deemed unnecessary). This time could be used to establish that there are no additional issues that could benefit from verbal clarification, for example. If the Secretariat chooses not to contact the project participant at the pre-allocated time, clear justification should be made available explaining why, i.e. all issues were resolved.

If the EB chooses not to program-in direct communication as suggested above, IETA suggests that the decision about whether to initiate direct communication should be guided by an assessment of what is *reasonable* in the particular situation. The decision as to whether or not something is *reasonable* should

IETA Input on future work on Areas and Means for Direct Communication
with the Board and the Secretariat

take into consideration the time that such action may take, the time that can be saved, delays that may be avoided, the ease of reaching out vs. the consequences that a lack of communication may have.

The appropriate point of contact for this communication should be the entity that can most readily provide the information or clarity needed to resolve the issue, as determined by the Secretariat. The project participant and the DOE should always be notified of the communication, however.

All the characteristics of the suggestions outlined – **on the record, transparent**, etc – are understood to be part of communication with project participants on case-specific matters. It is envisaged that the presence of legal counsel may be needed for direct communication. It must be emphasized that this approach is not new but is currently part of many regulatory processes such as EIA, rate setting, permitting, etc. If needed, additional information and expertise can be summoned, and flexibility should be used in determining what information is used.

2. Discretionary: Any situation where the EB, Secretariat, CDM Panels or Working Groups believes that direct interaction could be useful in resolving an issue.

The following modes of communication should all be available to the Secretariat when initiating direct communication:

- a. Email: to make contact and outline the problem
- b. Letter: to make contact and outline the problem
- c. Phone call: *This option should always be available and be waived at the discretion of the project proponent*
- d. Video Conference.
- e. In person meeting: This will be able to solve problems that require in depth, very substantive discussions but require more time to schedule. There will be additional costs involved for attendee. *This option should always be available and be waived at the discretion of the project proponent.*

To be clear, direct communication should be available at all steps of the project cycle to provide a simple, low-cost solution to a communication problem. During this process, there should be flexibility on new material to be introduced. Once submitted, there should be a record of the communication entered into the project record.

18 March 2011

IETA Input on future work on Areas and Means for Direct Communication
with the Board and the Secretariat

Closing:

IETA would like to reiterate that we strongly welcome the work of the EB, Secretariat, Panels and Working Groups to enhance engagement with stakeholders, and we thank you for the opportunity to respond to this call for input.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Derwent", with a long, sweeping flourish extending to the right.

Henry Derwent
President and CEO, IETA