



# PROJECT DEVELOPER FORUM

Credible Climate Action.

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**Date** 10 September 2020  
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**Subject** **Operational Continuation of the CDM beyond 2020 / Request for review of renewal of crediting period**

Honourable Members of the CDM Executive Board,

The Project Developer Forum (PD Forum) is a collaborative association and collective voice of companies and practitioners that are developing and financing greenhouse gas emission reduction projects worldwide. Our members work on a global scale and evaluate opportunities to deploy climate financing and carbon market instruments to accelerate investments for greenhouse gas mitigation and sustainable development.

Some Members of the Executive Board have recently requested a review of dozens of project activities requesting a crediting period renewal, on the basis of minor technical issues relating to the administration of the Clean Development Mechanism itself, as opposed to any issues with those projects. Halting valuable development projects for missing UNFCCC political decisions runs counter to the set-up of the CDM as a learning-by-doing mechanism. There has been no decision by the CMP to support such reviews. On the contrary, bringing the vital functions of the CDM mechanism to a halt goes against the political will expressed by Parties in the UNFCCC. The Article 6 negotiations texts adopted by the CMA in Madrid foresee a continuation of all vital functions of the CDM until 2023 to enable a seamless transition of eligible CDM activities to the Article 6.4 mechanism. Even though the Board is not directly guided by the CMA, ignoring the high-level emerging consensus on the grounds of minor technical details could undermine the work of the negotiators.

The minor technical issues raised by these Members can be easily solved. As there are no new GWP published by the IPCC and no other decision has been made by the CMP, the current use of GWP must be continued. Regarding the Compliance Period identifier in the CER serial number, for any credits issued relating to emission reductions after 2020, it is possible to simply continue with “3” or – if a third commitment period is not considered to start automatically after the second one – a different number or letter without any association like “T” for “transition” may be used.

Absent an express direction from the CMP, the CDM should continue to operate for the following reasons:

- Referring to the Vienna convention (Law of treaties) a treaty will continue if it has not been explicitly cancelled. So, lacking a new CMP decision we can conclude that there is an automatism for a continuation according to the “Vienna Convention on the Law of Treaties, in its paragraph 42 (validity and continuance in force or treaties), item 2: “The termination of a treaty, its denunciation or the withdrawal of a party may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.” Therefore, to the best of our understanding, there is no provision for partial suspension of operation of the CDM and, therefore, it shall be continued as defined in the present CMP decisions.
- The Reviews argue that the COP decisions and Doha Amendment “prevent” issuances after 2020. This is legally and factually incorrect. There is no end date to the CDM, only an end date of the second commitment period. However, the Kyoto Protocol has created the CDM unconditionally (Article 12.1 Kyoto Protocol: “.... is



hereby defined.”). Furthermore, Article 12.3 Kyoto Protocol establishes a hierarchy of purpose. It stipulates that the developing parties “*will* benefit from the project activities resulting in certified emissions reductions”, while industrialized parties “*may* use the certified emission reductions accruing from such project activities to contribute to compliance...”. The particular language suggests that the emission reduction benefit is a necessary (mandatory) requirement, while the compliance effect is optional. Only the compliance effect is put into question by the lack of a third commitment period while the dominant purpose prevails. The end of a commitment period does not end the eligibility of countries to engage in the mechanism.<sup>1</sup>

- CMP has elected the current Executive Board and approved the current multi-year budget, as well as ensured the budget stretches many years into the future, and therefore has made a clear statement that the CDM continues (until it decides that it ends). In accordance with the Modalities and Procedures for the CDM “the Executive Board shall [continue] to supervise the CDM, under the authority and guidance of the CMP, and be fully accountable to the CMP [until such point the CMP decides to end the mechanism]”.
- The Reviews raised are clearly outside both the mandate of the EB and the scope of a review as there are no requirements in the PS or VVS that have been violated.

We would also like to point out the inconsistency of the Reviews, for example: (1) The inclusion of new CPAs for a period after 31.12.2020 have been approved by the EB, and therefore the reasons for the reviews are baseless. The minor technical issues raised must be resolved by the EB. (2) The new standardized baseline has been approved for emission reductions from residential buildings for South Korea with a view to the next trading period of the K-ETS. Hence, it is a contradiction if the renewal of a crediting period would be rejected. There are other decisions that are not in line with the current reviews creating an atmosphere of uncertainty and unequal treatment of different projects. It has to be emphasized that the rejection of a renewal of the crediting period would unequally discriminate projects if the CMP later makes a different decision because the denial of the renewal would mean the irreversible exclusion of the project from the CDM and potentially from a transition to future mechanisms.

A bedrock principle of the CDM has been to promote regulatory stability. Continuity of the CDM allows Parties to chart the future of the CDM and Article 6 at its first opportunity, given the unfortunate delays related to the COVID19 pandemic. Sovereign purchasing initiatives continue to invest in CDM projects, and private entities use CDM credits for both compliance and voluntary offsetting. These support for the CDM is good for the climate – and for the development of host communities. To disrupt this stability for minor technicalities runs at odds with the CDM’s mission.

We welcome the fact that the CDM Executive Board will consider the implications of postponement of the CMP at its upcoming meeting (EB 107). We urge the CDM Executive Board to provide clarity on this issue and to take the necessary interim measures to ensure that, at a minimum, CDM projects and PoAs can continue to operate and issue CERs accordingly until a future CMP decision is taken.

Therefore, the PD Forum trusts that the EB will take the following three decisions at its next meeting:

- First, that it acknowledges that is the CMP decision – not that of the EB – whether to continue or end the mechanism, and that it will continue to act therefore on the basis that there is no end date of the CDM, applying the precautionary principle;
- Second, that it rejects (and nullifies) each of these reviews as they are outside its mandate or scope; and
- Third, that it develops solutions for the operation of the CDM post 2020, and acts upon it by commissioning the relevant technical work.

The PD Forum and its members look forward to the next EB meeting and remain at the disposal of the CDM EB to provide any required assistance in this and other matters.

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<sup>1</sup> See: Von Unger et. al (2019): The CDM Legal Context Post-2020: Discussion Paper, available here: [https://www.carbon-mechanisms.de/en/publications/details?tx\\_igpublications\\_publication%5Baction%5D=show&tx\\_igpublications\\_publication%5Bcontroller%5D=Publications&tx\\_igpublications\\_publication%5Bpublications%5D=374&cHash=e296746ed6bdd6b50de82517693f8c7a](https://www.carbon-mechanisms.de/en/publications/details?tx_igpublications_publication%5Baction%5D=show&tx_igpublications_publication%5Bcontroller%5D=Publications&tx_igpublications_publication%5Bpublications%5D=374&cHash=e296746ed6bdd6b50de82517693f8c7a)





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Yours sincerely,

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Chairman, Project Developer Forum  
On behalf of the membership

P.S. This letter is not confidential and may be published on the UNFCCC homepage

