



To the Chair, Vice Chair and Members of the CDM Executive Board
UNFCCC Secretariat
Martin-Luther-King-Strasse 8
D 53153 Bonn
Germany

Brasília, 30 November 2020

The future of the CDM and the CDM Executive Board

Dear Mr. Diagne, Mr. Kassi and Distinguished Members of the CDM Executive Board,

The Brazilian government has followed with great concern the last discussions of the CDM Executive Board on the future of the CDM after 2020, including the activities of the Board and its ability to continue registering activities and issuing CERs, in light of the the extremely unfortunate and disappointing outcomes of COP 25, which took place in Madrid, in 2019, and the postponement of COP 26/CMP 16 to 2021.

As you are aware, Parties failed to reach an understanding in Madrid on the steps to ensure a transition between the CDM and its successor under Article 6.4 of the Paris Agreement, much to the dismay of the Brazilian and other developing countries' delegations, which so constructively engaged on that occasion. This outcome was accompanied by an additional disagreement regarding the future of the operations of the CDM after 2020, further aggravated by the postponement of COP 26/CMP 16. It is in this regard that the Brazilian government wishes to stress, once again, its concerns with regard to possibility that the EB may take steps that could further harm the operations of a mechanism that has proven its worth over the past years.

Brazil is of the view that the matter of the future of the CDM should not be subject exclusively to the legal interpretation of Parties, which can be easily influenced by essentially political consideration and thus lack the necessary objectivity that such a complex and global matter requires. That is not to imply that legal reasoning and its implications are not relevant to decisions

to be taken by the Board, but that such considerations should be taken into account in tandem with the concrete social and economic dimensions of the issue under assessment. The government of Brazil therefore brings to your attention some elements that it would like to encourage this Body to consider in the upcoming discussions in December.

While some Parties may understand that there is no legal mandate in the Kyoto Protocol and the Doha Amendment for the CDM to operate beyond the second commitment period, it is equally true that there is no legal mandate for the discontinuation of the Mechanism. The Vienna Convention on the Law of Treaties recognises, among others, in its Article 42.2¹, that the termination of a treaty, its denunciation or the withdrawal of a Party, may take place as a result of the application of the provisions of the treaty. Brazil recalls in this regard that the Kyoto Protocol is silent on the matter of its expiration, and that its only time-bound clause is Article 3, which establishes a commitment period for some Parties, listed in its Annex I. The CDM, however, has an open-ended mandate for the benefit of developing countries in achieving emissions reductions and for assisting them in promoting sustainable development. The modalities and procedures of the Mechanism² further corroborate this view, since they do not foresee an end date for its operations.

Brazil understands nonetheless that the CERs to be issued were initially linked to the commitment periods of the Kyoto Protocol and its Doha Amendment - to entry into force on 31 December 2020 - and that there is no provision, at this moment, for a third commitment period. This, however, should not prevent the CDM and the CDM EB from operating. In the past, the Board has also adopted decisions on matters unforeseen in the original text of the Kyoto Protocol, which were later confirmed by the CMP.

Moreover, one can also argue that, with the entry into force of the Doha Amendment, the CDM is allowed to continue to work at least for a few more years or the end of the foreseen true-up period. Decision 27/CMP.1 indicates that for the purpose of fulfilling commitments under Article 3, paragraph 1, of the Protocol, a Party may, until the hundredth day after the date set by the Conference of the Parties serving as the meeting of the Parties to the Protocol for the completion of the expert review process under Article 8 of the Protocol for the last year of the commitment period, continue to acquire, and other Parties may transfer to such Party, emission reduction units, certified emission reductions, assigned amount units and removal units under Articles 6, 12 and 17 of the Protocol. This opens the door for the CDM and the CDM EB to operate normally at least throughout this period.

These views are complemented by concerns that some of the issues related to the operations of the CDM and the CDM EB after 2020 are directly related to the ongoing negotiations of Article 6 of the Paris Agreement. It would not be wise, in Brazil's view, to prejudge these discussions. If anything,

¹ Vienna Convention on the Law of Treaties. Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

² The Marrakesh Accords. Available at: https://unfccc.int/cop7/documents/accords_draft.pdf


the continuity of the CDM is not incompatible with the Paris Agreement, but complements its purpose. Disruptions at this point in time would entail an unnecessary institutional gap that could jeopardise the credibility of the system and of several domestic emissions trading schemes that have the CDM not only as their role model, but also as an important supply of units for the compliance of national commitments and targets.

Mr. Diagne, Mr. Kassi and Distinguished Members of the Executive Board,

As the CDM evolved and reinvented itself, it gained new roles that go beyond the Kyoto Protocol itself. It became a benchmark for several voluntary offsetting and domestic emissions trading schemes, as well as a channel for results-based payments. It has allowed real, verified and additional emissions reductions of more than 2,09 GtCO₂ in almost twenty years and provided investments of more than USD 300 billion through more than 7,800 projects over 140 countries³. In spite of the challenges posed throughout the last decade, the Mechanism was able to survive and help give the private sector a central role in climate action.

Brazil hopes the Board will remember the important role the CDM played in promoting sustainable development and how much it can still contribute to this end. Brazil understands that the CDM EB is a competent body to decide on operational matters of the mechanism, subject to a later decision of the CMP, and therefore strongly encourages the Board to ensure the CDM remains operative at least until the next COP/CMP.

Kind regards,



Leonardo Cleaver de Athayde
Head of Delegation for Brazil
Director of the Department of Environment
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³ Achievements of the Clean Development Mechanism. Available at: https://unfccc.int/sites/default/files/resource/UNFCCC_CDM_report_2018.pdf