

# Recommendations for the review of the modalities and procedures for the Clean Development Mechanism

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Carbon Market Watch welcomes the opportunity to provide input to the discussions on the review of the modalities and procedures for the Clean Development Mechanism (CDM) – SBI agenda item 7a.

While the Clean Development Mechanism plays no role in the Paris Agreement as such, the ongoing negotiations to review the modalities and procedures for the CDM remain important for a number of reasons:

The Paris Agreement established a new ‘mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development’<sup>1</sup>- in short SDM. Anchored in Article 6 of the Agreement, the mechanism has a similar function to flexible mechanisms in the Kyoto Protocol and will likely draw from the experience as well as the modalities and procedures of the CDM.

Albeit limited, there is still a role for the CDM for the period up to 2020 and more generally, as a potential instrument to provide results based finance, provided the projects financed have a high level of environmental and social integrity and that double counting is avoided.

The need for safeguards and accountability processes to ensure that climate finance meets the needs of present and future generations and does not threaten human rights is widely recognized in international financial institutions (IFIs). Many multilateral development banks and institutions have in place policies and safeguards to prevent social and environmental harms in their investment. The GCF for example has requirements for new, additional, adequate and predictable financial resources to developing countries. This should not only address the type of finance but also extend to the type of projects and credits.

The parameters of financing institutions, such as the GCF, for results based finance (RBF) are much more encompassing and go beyond quantification of solely emission reductions, as is the case in the CDM.

In its current form, the CDM falls short of essential requirements for example, the CDM’s technology neutrality allows coal power plants to apply for CDM funding. Contrary to all other major climate finance mechanisms, the CDM does not have an accountability mechanism. In transitioning from the CDM to future mechanisms under the Paris Agreement **it is an imperative to fundamentally reform the instrument, including technology eligibility assessments, do no harm safeguards, sustainable development indicators and the establishment of a grievance mechanism.**

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<sup>1</sup> Paris Agreement, Art. 6(4)

## Carbon Market Watch recommendations for the CDM Review

- **Establish a CDM grievance mechanism**
- **Strengthen civil society participation**
- **Improve the CDM's contribution to sustainable development**
- **Create net atmospheric benefits**
- **Improve additionality testing**
- **Improve the membership and composition of the CDM Executive Board**
- **Shorten the length of the crediting periods**
- **Include and update national (E+/E-) policies in additionality testing**
- **Introduce liability rules for Designated Operational Entities**

### Establish a CDM grievance mechanism

There is currently no means for civil society to raise concerns once a project is registered. As more than 8.000 CDM project activities and PoAs are currently registered and will be operational for many years to come, it is necessary to introduce a robust public participation process including additional case specific commenting opportunities after the project registration. In addition, a grievance mechanism to ensure that adverse impacts that occur during project implementation are addressed is needed. A grievance mechanism is an essential opportunity to address community-based grievances before disputes escalate or create conflict between stakeholders and project participants.

Under the Subsidiary Body for Implementation (SBI) Parties have been considering an appeals procedure for decisions of the CDM Executive Board since its 34<sup>th</sup> session in June 2011. An appeals procedure in the CDM project approval process presents a crucial opportunity for the CDM Board to secure human rights and to promote enhanced accountability, legitimacy and public trust in and acceptance of the CDM as a valid tool for reaching its goals under the Kyoto Protocol – namely, mitigating global climate change while promoting sustainable development. However, for the past five years, this development has been stalled by disagreement over the scope of the potential appeal and the legal standing, e.g. whether an appeal could be launched against both positive as well as negative decisions of the CDM Board, and whether only project proponents or also affected stakeholders shall be eligible to launch an appeal.

While developments on the CDM appeals have been slow, it is important to note that the current scope of the appeals procedure would only assess compliance with the CDM modalities and procedures. However, even if adopted, this narrow scope does not address the social and environmental impacts of CDM project activities and PoAs that occur in compliance with CDM procedural rules but in violation of national or other international norms.

It needs to be highlighted that amended rules, such as the improvements made under the local stakeholder consultation process, disregard the need for a compliance mechanism, or an investigation panel in cases where national or international obligations are not respected. To ensure that the set out rules are implemented and complied with, an effective compliance mechanism is of outmost significance.

The introduction of best practice guidance for an effective grievance mechanism as well as respective reporting requirements are crucial elements for the forthcoming CDM reform. The establishment of a CDM grievance mechanism is thereby also essential for the operationalisation of the 2010 Cancun agreement that calls for all parties to fully respect human rights in all climate change related actions.<sup>2</sup>

The need to address human rights issues in the CDM was also recognized in the UNFCCC secretariat's concept note on improving stakeholder consultation processes.<sup>3</sup> It analyses and compares existing safeguards and performance standards applied by multilateral development banks and recommends that the Board considers establishing means to focus on the prevention of human rights violations, in the context of CDM project activities, along similar lines to the safeguards applied by the Green Climate Fund and other multilateral institutions.

At EB 87 (2015) the Board requested the secretariat to ensure that, *"in the case that any stakeholder comments are received by the Board, which the stakeholders perceive to pertain to human rights issues, that these comments be forwarded to the relevant bodies within the United Nations system and within the host government."*<sup>4</sup>

Improving the CDM's quality standards and safeguards would thereby be an essential step to make the CDM suitable for a transition so that it can play a continued important role in the future.

In addition, the Paris agreement recognized that respect for human rights is integral to addressing climate change. The preamble clearly calls on its parties to respect and promote human rights obligations when taking action to address climate change. The Agreement also highlights human rights issues that are particularly affected by climate change, including the right to health and the rights of indigenous peoples, migrants, children and persons with disabilities, as well as gender equality and intergenerational equity.

- **Establishment of an institutional safeguard system**

Despite the existing mandate, there is very little guidance for Parties on how to operationalize the Cancun Agreement and how human rights should be taken into consideration in the design and implementation of climate actions. A closer look at the instruments established under the UNFCCC to address climate change reveals that, the Cancun mandate has so far been weakly operationalised and enforced. In addition, the lack of harmonised rules has resulted in fragmentation of criteria and standards, with current mechanisms applying very heterogeneous and inconsistent approaches to the consultation of local communities and access to redress mechanisms.

Experience with climate finance projects to date has shown a policy gap in protecting human rights in all climate actions, this is also evident looking at projects implemented under the CDM. UNFCCC instruments need to catch up with leading financing institutions and build on their experience in order to strengthen the integrity of their actions. To ensure that climate actions implemented under the UNFCCC do not impact the environment or conflict

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<sup>2</sup> UNFCCC Decision 1/CP.16, para. 8.

<sup>3</sup> CDM-EB86-A15, [http://carbonmarketwatch.org/wp-content/uploads/2015/10/Concept-note\\_improving-stakeholder-consultation.pdf](http://carbonmarketwatch.org/wp-content/uploads/2015/10/Concept-note_improving-stakeholder-consultation.pdf)

<sup>4</sup> CDM-EB87 meeting report, para. 52

with human rights, it will be vital to establish an institutional safeguard system under the UNFCCC, including a safeguard system as well as a robust grievance mechanism and monitoring system.

- **Establish environmental and social safeguards** similar to those in the REDD+ framework, which are to be applied when financing and undertaking CDM project activities and PoAs;
- Introduce a **procedure for the CDM Executive Board to forward concerns about social and environmental impacts of specific CDM project activities to the relevant DNAs** for investigation and assessment;
- Introduce best **practice guidance for national effective grievance mechanisms**;
- Introduce **reporting requirements for national level grievance processes to international bodies**;
- Ensure that the **appeals procedure under SBI is swiftly implemented** and provides for broad legal standing

For detailed recommendations and examples of existing grievance mechanisms, see our submission on Views on suggested changes to the Modalities and Procedures (M&Ps) for the Clean Development Mechanism (CDM)<sup>5</sup>.

## Strengthen Civil Society Participation

Although stakeholder consultation is a key requirement in the CDM registration process, project developers and Designated Operational Entities (DOEs) lack clear criteria and guidance on how to conduct and validate stakeholder consultations. In many cases, peoples and communities that are directly affected are not adequately informed about CDM project activities or programme of activities (PoA) and their potential on-the-ground impacts.

There are dozens of instances where projects were registered despite insufficient stakeholder participation, strong local opposition and clear evidence that the projects cause harm to the local populations and/or the local ecosystem.

As a step towards addressing this shortcoming, Parties to the Kyoto Protocol adopted in Warsaw decision 3/CMP.9 para 20 which requests *“the CDM Executive Board, with the support of the secretariat, to collaborate with the Designated National Authorities Forum on collecting and making available, on the UNFCCC clean development mechanism website, information on practices conducted for local stakeholder consultations, and to provide technical assistance to designated national authorities, upon their request, for the development of guidelines for local stakeholder consultation in their countries.”*<sup>6</sup>

To date, only Brazil has uploaded its local stakeholder consultation (LSC) guidelines. However, a lot more needs to be done, for example a closer collaboration with processes that carry out similar exercises, such as the UN

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<sup>5</sup><http://carbonmarketwatch.org/views-on-suggested-changes-to-the-modalities-and-procedures-mps-for-the-clean-development-mechanism-cdm/>

<sup>6</sup> <http://unfccc.int/resource/docs/2013/cmp9/eng/09a01.pdf>

Special Rapporteur for the environment and human rights who's mandate includes identifying best practices relating to the use of human rights obligations to strengthen environmental policy making.

Based on the inputs received from the calls and interaction with stakeholders at CDM roundtables, the CDM Board, at its eighty-first Board meeting in November 2014 decided on a new validation and verification standard and CDM project cycle procedure, which entered into force on 1 April 2015. Therein, the CDM Board addressed shortcomings in the rules of the local stakeholder consultation process. The new rules determine that LSC are to be conducted "*in accordance with applicable national regulations, if any.*"<sup>7</sup> In the light of different and often poor national rules in place, central power will still lay in the hands of the host country to determine what is necessary.

Moreover, at its eighty-sixth meeting, the CDM Board discussed further improvements of stakeholder consultation processes.<sup>8</sup> The discussion was based on a comprehensive concept note by the UNFCCC secretariat that was drawn up in response to several mandates and makes recommendations on the basis of an analysis of how 46 randomly selected projects have applied the CDM rules in practice as well as an analysis of more than 600 project comments received between 2010 and 2015. The concept note contained detailed recommendations on how to strengthen local and global stakeholder consultation as well as proposals on how to address human rights issues of registered CDM projects, clearly underlining that:

- CDM rules do not exist to monitor the status of commitments made prior to registration, e.g. related to job creation, compensation for land etc. and that there is little guidance how to address comments received during the local stakeholder consultation;
- Project documents are not available in the languages of the host countries and comments to the global stakeholder consultation are only accepted in English;
- There is no procedure for comments post-registration;
- There is no provision to address comments on matter concerning human rights and negative environmental impacts;
- The CDM has fallen significantly behind the standards applied by other multilateral financing institutions.

As for the local stakeholder consultation rules, proposed amendments include:

- Define the scope of the consultation to include the potential impact the project may have – both positive and negative – on the environment and local communities;
- Require that CDM projects provide a summary that consultations were carried out in accordance with host country rules as well as CDM rules and that management plans to address adverse impacts are available;
- The concept note implies that projects should repeat the local stakeholder consultation if they are not able to provide this information;

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<sup>7</sup>CDM-EB81-A04, CDM validation and verification standard, 146d

<sup>8</sup>CDM-EB86-A15, [http://carbonmarketwatch.org/wp-content/uploads/2015/10/Concept-note\\_improving-stakeholder-consultation.pdf](http://carbonmarketwatch.org/wp-content/uploads/2015/10/Concept-note_improving-stakeholder-consultation.pdf)

- Define the minimum group of stakeholders to be invited, means for inviting stakeholder's participation, information to be made publicly available (including non-technical project summaries in the appropriate language), information on the consultation process, as well as how the consultations shall be conducted.

The concept note received overwhelming support from more than 98 civil society organisations, individuals and Members of the European Parliament, urging the CDM Board in an open letter to adopt the recommendations presented to them.<sup>9</sup> Moreover, John Knox, United Nations Special Rapporteur on the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment addressed the Board in a letter, supporting the proposals made by the UNFCCC secretariat.<sup>10</sup>

At EB87, the Board agreed on a new concept note including definitions on the scope of the local stakeholder consultation, minimum group of stakeholders to be involved, means for inviting stakeholder's participation and summary of the comments received.<sup>11</sup>

The revised CDM M&Ps should therefore recognize the need for improved guidance and incorporate best practice guidelines for local stakeholder consultation developed by the CDM Board as part of this process in the revised M&Ps.

### Improved communications channel

In addition to shortcomings in the notice and comment processes, there is no means for stakeholders to raise concerns once a project is registered even if adverse impacts occur during project implementation, as outlined in the UNFCCC secretariat's concept note on improving stakeholder consultation processes.<sup>12</sup> The current rules do not provide a formal opportunity to provide comments after the global stakeholder consultation. This means that it is currently impossible to submit comments about a specific project, e.g. if comments submitted during the local or global stakeholder consultation process were not adequately addressed or if concerns appear after the global stakeholder consultation. This is not only relevant for projects during the validation stage but also for projects during their entire implementation. A formal communications channel for project specific matters would allow reviewing and addressing concerns efficiently and by doing so avoiding escalation of issues. Allowing comments at an early stage in the process, when they can still be taken into account for decisions related to registration or issuance of credits could help avoid potential future appeals.

We welcome the proposed change of the technical report section F 2(d) (i), that the CDM modalities and procedures shall introduce a provision allowing the Board and the secretariat to receive information on

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<sup>9</sup> Open letter to implement UN obligations to respect human rights, <http://carbonmarketwatch.org/open-letter-to-implement-un-obligations-to-respect-human-rights/>

<sup>10</sup> Open letter from John Knox to the CDM Board, <http://carbonmarketwatch.org/wp-content/uploads/2015/10/J.-Knox-Letter-to-CDM-Board-12-Oct-2015.pdf>

<sup>11</sup> CDM-EB87-A12

<sup>12</sup> CDM-EB86-A15, [http://carbonmarketwatch.org/wp-content/uploads/2015/10/Concept-note\\_improving-stakeholder-consultation.pdf](http://carbonmarketwatch.org/wp-content/uploads/2015/10/Concept-note_improving-stakeholder-consultation.pdf)

complaints regarding issues that are not related to the emission reductions or removal enhancements of a registered CDM project activity or PoA.

At its eighty-second meeting, the CDM Board established a process- based communication channel to handle case-specific submissions<sup>13</sup> after project registration. In addition, a global stakeholder consultation process at the verification stage after the registration period as proposed in the technical paper section F 2(d) (ii)) would be a positive additional improvement as it would allow comments from stakeholders to follow up on earlier comments made through the local and global stakeholder consultations, it would also provide a crucial opportunity for DNAs to receive additional information about the implementation of CDM project or PoA. However, both improvements are necessary because a global stakeholder consultation during the verification period is only a punctual opportunity which does not replace a more flexible communications channel for case specific matters.

It is also worth mentioning that under the current public participation rules for the CDM, no formal channels for communication between local stakeholders and the Designated National Authorities (DNAs) exist. Prior to registration, comments from the local stakeholder consultation are received by the project proponent, and comments through the global stakeholder consultation are received by the Designated Operational Entity (DOE). Given that it is up to the DNA to maintain the approval of CDM projects and PoAs, and the confirmation that they contribute to sustainable development, comments received through the project specific communication channel should be forwarded to the relevant DNA.

- The requirements for stakeholder involvement should be strengthened, including the **incorporation of a best practice guideline for local stakeholder consultation**;
- A **local stakeholder communications channel for case specific matters** should be established, both before and after the registration of CDM project activities and PoAs;
- A **global stakeholder consultation at the verification stage** of the CDM project activities and PoAs should be introduced

For recommendations on how to operationalise these changes, see our submission on Views on suggested changes to the Modalities and Procedures (M&Ps) for the Clean Development Mechanism (CDM)<sup>14</sup>.

## Make sure the CDM contributes to sustainable development

The CDM has two main objectives –cost-effective emission reductions and contributing to sustainable development in project host countries. It is up to the Designated National Authority (DNA) in each host country to define the sustainable development criteria and to approve that a given CDM project activity or PoA contributes to sustainable development. This stipulates an important role for the DNAs in the sustainable development

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<sup>13</sup> CDM-EB82-A09

<sup>14</sup> <http://carbonmarketwatch.org/views-on-suggested-changes-to-the-modalities-and-procedures-mps-for-the-clean-development-mechanism-cdm/>

contribution of CDM projects and provides a crucial opportunity to build on this role to improve the current contribution to sustainable development.

- **Clarifying the roles of Designated National Authorities**

A lack of clarity on the role of the DNA has posed challenges to the CDM process. A new section in the CDM modalities and procedures should set out the exact role of DNAs in the CDM and the principles that apply.

- **Increasing transparency of Designated National Authorities**

Transparency and consistency are lacking in national requirements, particularly with regard to criteria for sustainable development. For example, some countries apply processes that involve members of civil society for the approval decision of CDM project activities, other countries already require CDM project proponents to implement sustainable development action plans. Further, national requirements for Environmental Impact Assessments (EIAs) are very different, e.g. some countries do not require EIAs for renewable energy technologies even though particularly large scale projects inevitably have environmental impacts. This lack of transparency causes poses a further challenge in understanding applicable requirements for CDM projects.

Modalities and procedures should therefore include a clear requirement for DNAs to make criteria publicly available at national and international level and to maintain up-to-date information on the following issues:

- Process and criteria for approval/authorization of project activities and PoAs and for participation of civil society in this process;
- Criteria used by the DNA to assess the contribution of a project activity or PoA to sustainable development;
- The relevant laws, regulations and guidelines that apply to the national approval processes, including elements such as the applicable rules relating to environmental impact assessment and local stakeholder consultation;
- Reports about the sustainable development action plans of CDM projects as required by national legislation;
- The national Grievance Resolution Mechanisms available for people affected by CDM projects;
- The communication channels available between local stakeholders and the DNA.

- **Elaborating the key principles for withdrawing letters of approval**

To provide transparency and clarity about the procedure for withdrawing letters of approval, the revised M&Ps should include key principles for the withdrawal or suspension of letters of approvals for CDM project activities and PoAs, including a high level of transparency about those principles. These principles should include the event that CDM projects do not meet sustainable development indicators at any stage during the project cycle, or violate applicable environmental, health, labour and human rights standards, laws and policies;



- **Monitoring the contribution of sustainable development benefits**

The need for monitoring, reporting, and verification of compliance with CDM rules and procedures, in particular, as they relate to the contribution of CDM projects to sustainable development have been highlighted many times. Experience has shown that the lack of monitoring, reporting, and verification of claimed sustainability benefits has led to the registration of CDM projects that have no contribution to sustainable development and sometimes even negative impacts.

Monitoring, reporting, and verification of the environmental, social, and economic impacts of CDM activities at the international level is essential to protect the rights and interests of project-affected peoples and communities, as well as to uphold the CDM's stated purpose of sustainable development.

In 2012, the CDM Executive Board adopted a voluntary reporting tool (SD Tool) to highlight the sustainable development benefits of CDM projects. We welcome this tool as a step in the right direction. However, the absence of monitoring and verification, as well as its voluntary nature and access to only project participants and coordinating/managing entities (CMEs), limit its ability to fully serve this essential function.

Furthermore, the tool does not require a sufficient level of detail to enable effective evaluation of whether a project participant or CME complied with "do no harm" safeguard principles or whether stakeholders had opportunities for meaningful engagement in the consultation process.

Stakeholder comments are a key source of information to know about potential negative impacts of CDM projects as reflected in the draft voluntary tool for highlighting the co-benefits of CDM projects at EB68, Annex 22. To strengthen civil society participation in the CDM process, local stakeholders should have a formal communication channel to DNAs. DNAs may request project proponents to update the SDC report at any time during project implementation, should the SD benefits or negative impacts have changed since registration of the project.

- Require that Designated National Authorities make their **sustainable development benefit indicators publicly available at national and international levels**;
- Define **minimum global standards for sustainability and "no harm" requirements** that each CDM project has to meet;
- **Improve the existing SD Tool** by including
  - Mandatory requirements for monitoring, reporting, and verification
  - Do-not harm principles
  - Robust processes for civil society participation and input
- **Exclude project types** that support technologies or practices with high GHG emissions and that are associated with other high environmental and social costs (e.g. projects that support the extraction and use of coal or other fossil fuels)

## Achieve net atmospheric benefits

The CDM is a pure offsetting mechanism and therefore zero-sum and does not lead to absolute emissions reductions. This means that non-additional credits lead to a de-facto increase in global emissions. Estimates for

the number of CDM offsets that do not lead to an emissions reduction range between 0.7 to over 3 Gt by 2020.<sup>15</sup> Both decisions on the Framework for Various Approaches (FVA) and the New Market Mechanism (NMM) from COP18 include language that calls for “ensuring a net decrease and/or avoidance of global greenhouse gas emissions.” In order for the CDM to be a useful tool for climate mitigation and for it to continue to play a role in the future transition to flexible mechanisms under the Paris Agreement, it must go beyond pure offsetting and provide net atmospheric benefits.

- The CDM M&Ps should **define net atmospheric benefit as achieving a net global decrease in emissions** as well as elaborate on the specifics of **how such net benefits are be monitored and verified**.
- The provisions should apply not just on binding 2020 commitments but **also on voluntary 2020 pledges and post-2020 contributions**.
- It is important to note that **double counting and double claiming** need to be addressed as a pre-requisite to achieve net atmospheric benefits. Atmospheric benefits can be achieved by, *inter alia* **cancelling or discounting of units<sup>16</sup>**.

## Improve additionality testing

The current rules for the demonstration of additionality, the proof that projects are only viable because they receive CDM support, have long been criticised as ineffective. A large number of current CDM projects are likely not additional – they would be implemented even without the incentives from the CDM, especially at current CER prices. Carbon credits from such free-rider projects do not represent real emissions reductions and tragically lead to an overall increase in global greenhouse gas emissions.

- **Technology type**

The kinds of technology eligible for use under the CDM should be limited. Research<sup>17</sup> released under the CDM Policy Dialogue in 2012 confirms that large-scale power supply and methane projects are unlikely to be additional. If such projects remain eligible in the CDM, they would increase cumulative global GHG emissions by up to 3.6 Giga tonnes CO<sub>2</sub>e through 2020. Non-additional credits also undermine the economic effectiveness of the CDM by artificially increasing the supply of credits that do not represent actual emission reductions. This is especially relevant, since projections show a significant oversupply of CERs through 2020 and beyond. Reducing the large number of non-additional projects therefore not only strengthens the CDM’s environmental integrity, it is also a vital step in ensuring the transition of the mechanism. A shift away from large-scale power supply CDM projects and other project types with low probability of additionality would address the over-supply CDM credits, enable projects that truly depend on the CDM, and improve the overall integrity and mitigation impact of the CDM.

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<sup>15</sup> See CDM Watch Policy Brief, 2011, available at <http://www.cdm-watch.org/?p=2969>

<sup>16</sup> SEI Working Paper “[Potential for International Offsets to Provide a Net Decrease of GHG Emissions](#)”, September 2013

<sup>17</sup> Assessing the Impact of the CDM. Report Commissioned By The High-Level Panel On The CDM Policy Dialogue. July 2012. [http://www.cdmpolicydialogue.org/research/1030\\_impact.pdf](http://www.cdmpolicydialogue.org/research/1030_impact.pdf)

- **Including additionality assessment at the renewal of crediting period**

Currently, only the baseline is revalidated at the time of a request for renewal of a crediting period. Additionality is not reassessed. Only reassessing the baseline is not sufficient to ensure the continued environmental integrity of a project. After 7 or 14 years, economic, political and/or technological circumstances will inevitably have changed and may therefore render some projects no longer additional.

- **A negative list** should be established to exclude technology types with low likelihood of additionality, high risks of perverse incentives and project types where baselines and additionality are intrinsically difficult to determine (e.g. because of signal-to noise ratio issues). Project types that should be excluded include:
- Industrial gas projects (hydrofluorocarbon-23 (HFC-23);
  - Nitrous oxide reduction from adipic acid production; and
  - Large power projects, including coal and hydro.
- Additionality should also be **reassessed for crediting period renewals**.

## Improve the membership and composition of the CDM Executive Board

The process of how CDM Board Members are nominated is opaque. While targeted information to governments may help to allow otherwise under-represented regions to nominate potential members, a reassessment of the election process is needed. In order to prevent potential conflicts of interest, nominations of representatives with vested interest in the CDM should not be allowed.

Moreover, due to complex economic data to be analyzed and the technical character of CDM projects, the selection criteria for EB members should focus both, on technical expertise as well as national representation<sup>18</sup>. Technical expertise is essential to ensure real emission reductions.

Due to the large number of individual case decisions and their highly technical character, a technical committee for methodologies and a Registration and Issuance Team were established to provide long-term support to EB members. We acknowledge the important work of these two bodies. Yet, serious concerns persist on the decisions taken on the basis of the recommendations provided by these bodies to the EB. Although a code of conduct has been adopted, the code does not provide for the independence needed because it leaves it up to individual Board members to declare whether they have a conflict of interest or not.

- **A strengthened code of conduct for CDM Executive Board members**. This code of conduct should clarify what constitutes a conflict of interest and ensure that Board members do not participate in discussion and decisions where they may have a conflict of interest.
- **Eligibility criteria for CDM Executive Board members** that do not allow individuals from a Designated National Authority (DNA), a Designated Operational Entity (DOE) or for a public or private institution that develops CDM projects or purchases or trades CERs. In support of this, a study<sup>19</sup> has shown that

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<sup>18</sup> See also Streck (2007: 98); von Ungerer et al. (2009)

<sup>19</sup> Florens Flues, Axel Michaelowa, Katja Michaelowa (2008). UN approval of greenhouse gas emission reduction projects in developing countries: The political economy of the CDM Executive Board.

membership of the countries having a representative on the Board raises the chances for projects from that country being approved.

→ If **participation of civil society or the private sector at Board level is considered**, it must be ensured that sufficient funds are available for civil society representatives to meaningfully participate and prepare for CDM Executive Board meetings. Without sufficient funds available, an unfair advantage would be given to private sector representation.

## Shorten the length of the crediting periods

The current crediting periods (10 years or three times 7 years) are often not appropriate because:

- Lifetimes of many technologies are shorter than these crediting periods
- In many cases the CDM only advances an investment which would be carried out at a later stage in any case. Such CDM projects should only receive credits for the number of years the projects implementation has been advanced.

The Technical Paper makes the argument that shortening the crediting period may reduce the overall mitigation delivered as it may lead to the termination of projects that rely on continued CER revenue. However, because offsetting is at best a zero-sum game, the discontinuation of truly additional projects would be unfortunate but it would not lead to an increase in global emissions. Furthermore, because of changes in technology, economy and policy, it is likely that circumstance will change and originally additional projects are rendered non-additional.

→ The **length of the crediting period should be shortened** so to avoid issuance of credits from projects that can no longer be considered additional.

→ The length of the **crediting period should be defined individually per project type in the respective methodology** and take into account, inter alia, the rate of innovation and change in the relevant sectors as well as relevant market and socio-economic developments.

## Consider national (E+/E-) policies need in additionality testing

How to consider national policies in baseline and additionality determination has been a controversial issue since the early days of the CDM.

**E- policies:** If a country's new policies that support climate friendly technologies – so called “E-“ policies – were included in the baseline and additionality assessment of CDM projects, then this would reduce the potential for generating Certified Emissions Reductions (CERs). It was thought that this would create a perverse incentive for countries to not implement such policies. This is why the Board decided that such policies can be excluded from the baseline and additionality determination. In 2012 the Board decided at EB70 that, for the purposes of investment analysis for additionality assessment, the benefits of an E- policy (for example, a new feed-in tariff) could only be excluded for the first seven years after implementation of the policy. The EB has not decided how to apply this new E- policy to baseline determination.

Yet there is a strong case for considering all E- policies in both baselines and additionality and not allowing a 7 year hiatus. Research and experience show that the risk of perverse incentives is considerably lower than it was previously, while the risk of over-crediting is substantial. In addition, with nationally determined contributions under the Paris Agreement, the introduction of new carbon market mechanisms and international support for NAMAs and NDC implementation, the potential for double counting mitigation efforts is greater, particularly if the CDM rules exclude consideration of these new policies.

**E+ policies:** If a host country introduced policies to provide support to emissions intensive technologies, this would increase baseline emissions and CERs, providing an incentive for host countries to support technologies that would actually increase their greenhouse gas emissions.

Current CDM rules state that E+ policies implemented before 11 December 1997 can be taken into account when developing the baseline scenario. Because a new E+ policy (e.g. tax breaks for oil and gas exploration) would increase baseline emissions, excluding this policy not only reduces perverse incentives but also reduces the risk of over-crediting. Excluding them from baseline and additionality assessment would improve environmental integrity.

→ **Both E- and E+ policies should be included in the determination of additionality and baselines** for all CDM projects, including those that are already registered and need to renew their crediting period.

## Introduce liability rules for Designated Operational Entities

Designated Operational Entities (DOEs) are currently chosen and paid by the project's developer. This can put pressure on auditors to approve projects and work quickly in order to preserve their business relationships with project developers. This compromises the auditors' independence and neutrality. According to Decision 3/CMP.1 (Marrakech Accords – Modalities and Procedures for a CDM) a DOE shall acquire and transfer CERs for cancellation if a review reveals that "significant" deficiencies in validation, verification and certification reports issued by that DOE resulted in excess CERs, thus endangering the integrity of the CDM. Although a draft procedure (annex 28 to report EB-69) was submitted for adoption at CMP8, CMP8 deferred the issue to be dealt with as part of the CDM M&P review.

To avoid conflicts of interest of auditors and project developers, and to preserve the integrity of the CDM by ensuring that excess CERs due to deficiencies are compensated, the revised CDM M&P should:

- **Establish rules and procedures under which DOEs are assigned and paid** by a UNFCCC body and where CDM project developers pay validation and verification fees to that body
- Establish rules to address **significant deficiencies in validation, verification and certification reports**
- **Establish a grievance mechanism** for cases where there is probable cause that a Designated Operational Entity (DOE) may not have performed its duties in accordance with the rules or requirements of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol and/or the Executive Board.

## Provision against double counting for crediting under ICAO's market based measure

In October 2016 Parties to ICAO agreed an offsetting scheme, the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) with the aim to offset annual increases in CO2 emissions from civil aviation above 2020 levels. In the Assembly Resolution text establishing the CORSIA a clear reference is made to the eligibility of UNFCCC credits provided they meet the offset criteria to be established in an ICAO technical working group:

*“Decides that emissions units generated from mechanisms established under the UNFCCC and the Paris Agreement are eligible for use in CORSIA, provided that they align with decisions by the Council, with the technical contribution of CAEP, including on avoiding double counting and on eligible vintage and timeframe;”*

Vintage and quality criteria of credits allowed into the CORSIA have not yet been established, but there is a high likelihood that CDM project crediting into the post-2020 period will be allowed for use in the CORSIA. Provisions must be in place to prevent CDM units from being double claimed both in the CORSIA and under host countries' nationally determined contributions.

→ For CDM projects with credit periods extending beyond 2020, **provisions must be established to avoid double counting between ICAO targets and nationally determined contributions.**

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