

## Reforms are needed in the Clean Development Mechanism

(30.11.2007)

In accordance with Article 12 of the Kyoto Protocol to the UNFCCC, the CDM shall be to assist countries not included in Annex I (mainly developing countries and countries with economies in transition) in achieving sustainable development, and to assist countries included in Annex I (mainly industrialized countries) in achieving compliance with their quantified emission limitation and reduction commitments in a more cost-effective way, than if they were reducing emissions only domestically.

Ecological integrity and subsequent political acceptance of the CDM is provided for only if CDM projects are additional. By applying the Additionality criteria it is ensured that only such projects will become eligible CDM Projects, which would otherwise not have been developed. The main advantage of the acceptance as a CDM Project is that the emissions reductions generated from such projects are issued into Certified Emissions Reductions (CERs) by a credible international body, and that these credits can be sold producing additional revenue streams for the project operation.

To protect the integrity of the CDM, many decisions taken by the Conference of Parties with regard to the Kyoto Protocol and their implementation through the CDM Executive Board were aiming at safeguarding the compliance with the concept of Additionality of CDM project activities.

However, looking at the implementation of CDM projects so far, it shows that the goal of strict application of the Additionality criteria has only been partially achieved. It was estimated by some that 30-50% of CDM projects are actually not additional<sup>12</sup>. If correct, such a high percentage of not additional projects would not be acceptable. Therefore, there is an urgent need for reforms of the CDM in this respect. In addition, the international institutions responsible for the CDM need to be strengthened in order to meet the objectives of the CDM in a sustainable manner.

Therefore, the bvek wishes to see reforms in the following three areas:

1. The Additionality of CDM projects must be ensured by setting stringent and strict rules and regulations.
2. The objectivity and efficiency of the Additionality tests, employed by the Designated Operational Entities accredited by the CDM-EB (Project Validators) need to be improved considerably.

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<sup>1</sup> Axel Michaelowa, Pallav Purohit (2007): Additionality determination of Indian CDM projects. Can Indian CDM project developers outwit the CDM Executive Board? Discussion Paper CDM-1, Climate Strategies, London

<sup>2</sup> Lambert Schneider, Is the CDM fulfilling its environmental and sustainable development objectives? An evaluation of the CDM and Options for improvements, Report prepared by Öko-Institut e.V. for WWF, 5 November 2007

3. Three goals should guide the creation and application of CDM procedures and regulations: objectivity, transparency and sustainability. These goals should be achieved in the most effective and economically sound manner possible. It is therefore necessary to strengthen the existent institutions governing the CDM and to ensure legal certainty for all actors involved.

**The bvek therefore proposes:**

- 1.1 The general guidelines for the demonstration and assessment of Additionality<sup>3</sup> must be made binding for all methodologies. Approved methodologies that only partly fulfill these criteria must be amended accordingly. However, such amendments should not be required for projects that are registered already.
- 1.2 The single steps of the general guidelines must be more stringently structured:
  - a) The step Investment Analysis for each CDM project should be required; however, it could be possible to lower the requirements of such an Investment Analysis, if Additionality can be established in a successful Barrier Analysis. The parameters used in the Investment Analysis must be objective and regionally applicable. Real alternatives must be taken into consideration when comparing projects as part of the Analysis. Any transfer payments between connected companies must be ignored, alternatively the Investment Analysis needs to be performed on a company group level.<sup>4</sup>
  - b) The Barrier Analysis is applicable, if it is not possible to establish Additionality solely based on the step Investment Analysis passed on before. Besides the existence of a barrier, it must be determined that such a barrier is indeed the cause of non-realization of the project despite sufficient efficiency and that this barrier can be overcome through the additional income generated by CERs.
  - c) A Common Practice Analysis should be undertaken only once the Barrier Analysis has been completed successfully. In the course of the Common Practice Analysis it must be established that comparable project types are not being implemented at the same time in the host country, save from projects that are being subsidized using public grants. For this purpose, the broadest definition of comparable technologies or project types should be applied.
- 2.1 The success of the CDM depends on the credibility of the validators and the validation process and the validation results. Within the CDM framework, the validators bear the responsibility to perform the validation in accordance with the CDM regulations. The validators must take responsibility for the validation results and the rules must be applied assuring objectivity and a high quality of the project validation, eliminating malpractice.

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<sup>3</sup> Tool for the demonstration and assessment of Additionality (Version 03) und Combined tool to identify the baseline scenario and demonstrate Additionality (Version 02)

<sup>4</sup> As an example we refer to our proposed economic analysis of JI Projects in Germany; (attachment to a draft of a law by bvek for the change of the German law implementing the Kyoto project mechanisms in Germany, 2.2.2007 – only available in German -)

2.2 If the CDM-EB discloses that a validator lacks technical expertise, and/or the validator is not carrying out the validation using the adequate diligence, the EB should be able to sanction the validator using a catalogue of measures.

2.3 The catalogue of measure should contain the following sanctions:

- monetary fines
- temporary cancellation of the accreditation
- withdrawal of the accreditation

The use of such measures must be proportional and must take into account the level of non-compliance exercised by the validator. The accreditation should be withdrawn, if the validator intentionally or willfully used false information as a basis for the validation. In the case of a false validation, the validators should bear the costs of the review.

2.4 Should sanctions prove not practicable or still not lead to a significant improvement of the quality of validation processes in the year 2008, it should be considered to abandon the freedom of choice of the validating body through the project developer, and the validators should be assigned to the projects through the EB after random selection. In that case the EB should elaborate a scale of charges and fees that will be valid for all DOEs.

3.1 The members of the CDM-EB should be afforded legal immunity, to safeguard their decision-making process from potential pressure of project developers or validators.

3.2 Legitimacy of and trust in the decisions of the CDM-EB can be supported by providing procedural rules ensuring an equitable regulatory system. Such rules of procedure foster confidence in the institutions and contribute to the establishment of a transparent, efficient and sustainable mechanism. The bvek therefore proposes the introduction of appeal procedures granting the opportunity to review decisions made by the EB. An appeal decision should consider the known and investigated facts and apply the rules and regulations relevant to the project. The proceedings should be open to any person, entity, or body directly affected by a decision of the CDM-EB. The CDM-EB has to implement the decision of the appeal body immediately. Otherwise, as a quasi-statutory body it is liable for resulting damages.

3.3 In order to accomplish the challenges of the ever increasing workload, the CDM-EB should be further professionalized. This includes that at least a portion of the members of the EB should be made full time representatives, remunerated accordingly. In addition, the administrative structures within the CDM need to be strengthened by employing the necessary amount of supporting staff.