



EcoSecurities Group plc

German Emissions Trading Association

Clean Development Mechanism – Reforms are needed

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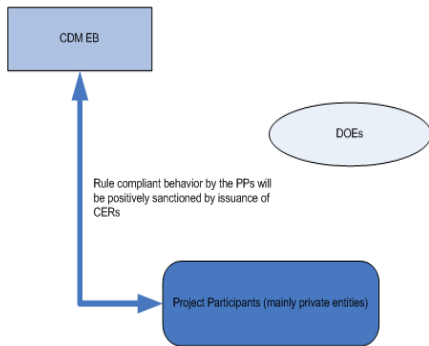
Alexander Sarac



Clean Development Mechanism – Reforms are needed

1. Regulatory Framework
2. The CDM – why reforms?
 - a) Creating an effective and legitimate framework
 - b) Institutional Reforms
 - c) Procedural Reforms
 - d) Material Reforms
3. Challenges

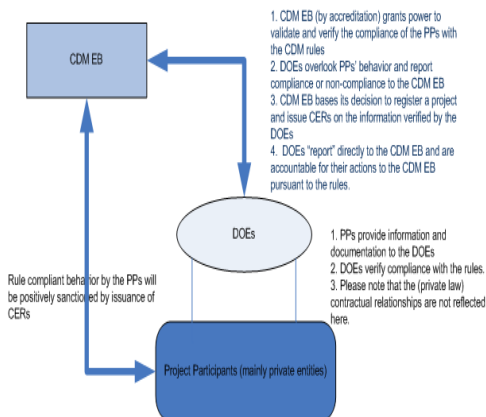
Regulatory framework (1) – Sanctioning compliance



The CDM EB

1. reviews the behavior of the PPs; and
2. sanctions the PPs compliance with the rules.
3. Compliance will lead to the issuance of CERs and non-compliance will result in non-issuance

Regulatory framework (2) – the role of the DOEs



1. CDM EB (by accreditation) grants power to validate and verify the compliance of the PPs with the CDM rules
2. DOEs overlook PPs' behavior and report compliance or non-compliance to the CDM EB
3. CDM EB bases its decision to register a project and issue CERs on the information verified by the DOEs
4. DOEs "report" directly to the CDM EB and are accountable for their actions to the CDM EB pursuant to the rules.

1. PPs provide information and documentation to the DOEs
2. DOEs verify compliance with the rules.
3. Please note that the (private law) contractual relationships are not reflected here.

- The DOEs undertake monitoring of the behavior of the PPs

- Although the DOEs have a contractual relationship with the PPs they report their results to the CDM EB

- The sanctions of the CDM EB are based on the reporting of the DOEs

Regulatory Framework (3) - Regulating the behavior of (private) project participants

- In order to participate in the CDM and to receive CERs the PPs have to comply with the rules
- The CDM institutions and the EB have the power to permit the voluntary participation in the CDM and to sanction compliance throughout the duration of the project activity
- The CDM EB allocates some of its powers to the DOEs which report the result of the evaluation and monitoring of the PPs' behavior to the CDM EB
- However, the ultimate decision whether the PPs behavior is compliant with the rules is vested with the CDM EB

Why Reforms – Creating an effective and legitimate framework (1)

Pursuant to Article 12 of the KP the purpose of the CDM system is i.a.

- To achieve GHG reductions through the generation of real, measurable, and accountable emission reductions in Non-Annex I countries, and
- achieve sustainable development.



Why Reforms – Creating an effective and legitimate framework (2)

In order to achieve this purpose the regulatory framework must be

- legitimate,
- effective, and
- guided by the principles of good governance and the rule of law



Institutional Reforms (1) – distinction between various functions of the EB and other institutions

The EB currently undertakes a wide array of responsibilities in the regulatory system

- Policy maker - steering the direction of the system
- Legislator/rule-maker – creating broad rules that apply in many cases
- (Purely) Executive body – decision-maker in individual cases (case-by-case decision)
- Review body – the EB is reviewing its own decisions

Institutional Reforms (2) – distinction between various functions of the EB and other institutions

Should the EB do it all and why it matters...

- Allocating responsibilities to the “right” institutions,
- Defining the roles,
- Allocating review powers,
- Allocating resources and expertise

will lead to more

efficiency and legitimacy.

Procedural Reforms (1) – fair, just, effective, transparent, and credible

Expanding the application of good governance principles and the rule of law – some bullets

- Increase the rights to information of the stakeholders concerned by decisions
- Increase participation in the decision making process
- Provide for (independent) review of decisions
- Provide for the reasoning of controversial decisions
- Allow discretionary powers only where necessary and improve the rules and guidelines for the exercise of such powers
- Distinct between purely administrative powers, rule-setting and review procedures and allocate these powers
- Create rules of accountability for decisions taken



Material Reforms (1) – examples

- The creation of codes, laws, etc. (VVM, Additionality tools, etc.)
 - Creating efficiency and legitimacy through good, clear rule-making.



Material Reforms (2) – examples

- Liability within the CDM system – creating accountability in a unprecedented system
 - lessons learned from national systems and the liability of governments for decisions taken by its (federal/state) officers



Material Reforms (3) – examples

- Accreditation of DOEs – Understanding their role and ensuring their contribution to the system
 - Clear quality requirements and the possibility to sanction non-compliant behavior



Material Reforms (4) – examples

- Participation of private stakeholders and enhancement of communication
 - The Project Developers Forum

Material Reforms (5) – examples

- The principle of implied powers – a way forward for the CDM
 - The powers and discretions of the CDM EB

Challenges

- The regulatory system was enacted through international treaties and there is no precedent on what rules (of good governance) should apply in such instance
- The interests of the stakeholder, i.e. member states, non-member states, “public” CDM institutions, private stakeholders, NGOs, etc. are not always aligned
- The novelty of the system led to a blending of legislative, administrative, and quasi-judiciary functions and the allocation of those functions to various stakeholders
- The CDM stakeholders might not be fully committed yet to aim at creation of a regulatory system that maximizes legitimacy and effectiveness



Thank you for your attention

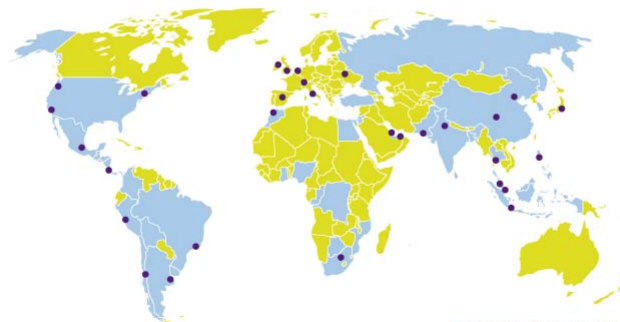
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