

## **Decision 12/CP.10**

### **Guidance relating to the clean development mechanism**

*The Conference of the Parties,*

*Recalling* its decisions 15/CP.7, 17/CP.7 and its annex, 19/CP.7 and its annex, 21/CP.8 and its annexes, 18/CP.9 and its annexes, 19/CP.9 and its annex, and 14/CP.10 and its annex,

*Emphasizing* that clean development mechanism project activities should lead to the transfer of environmentally safe and sound technologies and know-how in addition to that required under Article 4, paragraph 5, of the Convention and Article 10 of the Kyoto Protocol,

*Affirming* that it is the host Party's prerogative to confirm whether a clean development mechanism project activity assists it in achieving sustainable development,

*Recalling* that, in accordance with paragraph 4 (b) of the modalities and procedures for a clean development mechanism, contained in the annex to decision 17/CP.7, it shall review the regional and subregional distribution of designated operational entities and take appropriate decisions to promote accreditation of such entities from developing country Parties,

*Recognizing* measures taken by the Executive Board of the clean development mechanism to facilitate the application for accreditation of operational entities from developing country Parties and recent increases in the number of such applications,

*Welcoming* the fact that designated national authorities have been established by 69 Parties, among them 55 developing country Parties, information on which is available on the UNFCCC CDM web site,

*Recognizing* the need for the Executive Board to work further on the implementation of the provisions contained in decision 17/CP.7 and its annex on modalities and procedures for a clean development mechanism, including those in its appendix C, and to further facilitate the development of baseline and monitoring methodologies on the basis of experience gained,

*Expressing* its deep appreciation to Parties which have generously contributed to funding administrative expenses for work on the clean development mechanism since the ninth session of the Conference of the Parties,

*Recognizing* that the work on the clean development mechanism can be accomplished only if sufficient financial and human resources are available,

*Recalling* provisions relating to additionality as described in Article 12, paragraph 5, of the Kyoto Protocol and in paragraphs 43 and 44 of the annex to decision 17/CP.7,

*Being aware* of the concern expressed by some Parties with regard to the "Tool for the demonstration and assessment of additionality" and of the satisfaction expressed by other Parties,

*Noting* conclusions by the Subsidiary Body for Implementation at its twentieth session relating to effective participation in the Convention process,<sup>1</sup>

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<sup>1</sup> FCCC/SBI/2004/10, paragraph 97.

1. *Takes note*, with appreciation, of the third annual report (2003–2004) of the Executive Board of the clean development mechanism to the Conference of the Parties, and its addendum;<sup>2</sup>
2. *Commends* the Executive Board for the successful operationalization of the prompt start of the clean development mechanism – in particular relating to the registration of clean development mechanism project activities, the accreditation of operational entities, the approval of baseline and monitoring methodologies, including consolidated methodologies with broader applicability, the development of a “Tool for the demonstration and assessment of additionality”, and the development of version 1 of the clean development mechanism registry – and for its efforts relating to the implementation of rules 26 and 27 of the rules of procedure, in particular by providing for dialogue with constituencies and the exchange of information with the public;
3. *Takes note*, with appreciation, of information on the operational requirements of the clean development mechanism, as agreed to by the Executive Board, and on the status of work undertaken by the Executive Board, as reflected on the UNFCCC CDM web site maintained by the secretariat;
4. *Encourages* the Executive Board to continue to assess existing and new ways to ensure transparency, i.e. regular written reports by the Executive Board and its panels, communication with constituencies and exchange of information with the public;
5. *Designates* as operational entities the four entities named below which have been accredited, and provisionally designated, as operational entities by the Executive Board to carry out sector-specific validation functions:
  - Japan Quality Assurance Organization (JQA)
  - Det Norske Veritas Certification Ltd (DNV Certification)
  - TÜV Industrie Service GmbH TÜV SÜD Group
  - Société Générale de Surveillance UK Ltd. (SGS UK Ltd.);
6. *Adopts* the procedures for review referred to in paragraph 65 of the modalities and procedures for a clean development mechanism, as contained in annex I to this decision;
7. *Adopts* the amendments to the rules of procedure of the Executive Board, as contained in annex II to this decision;
8. *Encourages* the Executive Board to keep its rules of procedure under review and, if necessary, make recommendations, in accordance with paragraph 5 (b) of the annex to decision 17/CP.7, on any amendments or additions aimed at safeguarding its efficient, cost-effective and transparent functioning;
9. *Recalls* that, as indicated by the Executive Board, the use of the “Tool for the demonstration and assessment of additionality” is not mandatory for project participants;
10. *Encourages* the Executive Board to keep under review the “Tool for the demonstration and assessment of additionality”, taking into consideration inputs from Parties, and to include its conclusions in its report to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at its first session;

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<sup>2</sup> FCCC/CP/2004/2 and Add.1.

11. *Reminds* Parties wishing to participate in clean development mechanism project activities of the need to identify a designated national authority and of the possibility of making pertinent information on this authority publicly available through the UNFCCC CDM web site;

12. *Reiterates* the request, contained in paragraph 14 of decision 17/CP.7, to Parties included in Annex I to the Convention to continue with measures to assist Parties not included in Annex I to the Convention, in particular the least developed countries and small island developing States among them, to build capacity in order to facilitate their participation in the clean development mechanism, taking into account relevant decisions by the Conference of the Parties on capacity-building and on the financial mechanism of the Convention;

13. *Further reiterates* the request to the Parties, within the framework of decision 2/CP.7, to promote capacity-building with a specific view to obtaining more applications for accreditation as designated operational entities from entities located in developing country Parties and invite intergovernmental organizations and non-governmental organizations to contribute to this effort;

14. *Requests* the Subsidiary Body for Scientific and Technological Advice, in collaboration with the Executive Board, to develop a recommendation to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at its first session relating to implications of the implementation of clean development mechanism project activities for the achievement of objectives of other environmental conventions and protocols, in particular the Montreal Protocol, and which imply the establishment of new hydrochlorofluorocarbon 22 facilities which seek to obtain certified emissions reductions for the destruction of hydrofluorocarbon 23, taking into account the principles established in Article 3, paragraph 1, and the definitions in Article 1, paragraph 5, of the Convention;

15. *Encourages* project participants to make proposals for new baseline and monitoring methodologies for types of project activities in sectors not yet covered by approved methodologies, such as transportation, energy efficiency and district heating, and the Executive Board to consider such proposals with priority and to continue its work on elaborating consolidated methodologies for new sectors;

16. *Requests* the Executive Board to start the development of a database of approved methodologies organized by project category and condition of applicability;

17. *Welcomes* work in progress by the Executive Board to operationalize the procedure for amendment of approved methodologies, on the basis of experience gained, bearing in mind paragraph 39 of the modalities and procedures for a clean development mechanism;

18. *Requests* the Executive Board, subject to the availability of sufficient resources, to intensify its work to ensure the proper functioning of the clean development mechanism, inter alia, by developing a management plan as soon as possible, strengthening institutional capacity, and facilitating efficient, transparent and substantiated decisions by the Executive Board and its panels and working groups;

19. *Expresses* its deep concern about the shortfall in resources for work on the clean development mechanism in the biennium 2004–2005, which is currently estimated to be USD 4.2 million,<sup>3</sup> vis-à-vis requirements referred to in decision 16/CP.9 and additional human and financial resource needs arising from increased activity levels;

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<sup>3</sup> This figure is based on salary costs as estimated in 2003 for the 2004–2005 biennium. It may be revised to reflect the effect of currency fluctuations. Resource requirements relating to decision 14/CP.10 and its annex are not included here.

20. *Urges* Parties to make contributions, in an expeditious manner, to the UNFCCC Trust Fund for Supplementary Activities, in accordance with decision 17/CP.7, paragraph 17, for funding administrative expenses for operating the clean development mechanism in the biennium 2004–2005, keeping in mind that only part of these expenses will be covered by the Kyoto Protocol Interim Allocation in accordance with decision 16/CP.9, and thus ensure that the Executive Board and the secretariat can cope with the increased workload and carry out all mandates in a sustainable and timely manner;

21. *Recommends* that the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, at its first session, adopt the draft decision below.

*6<sup>th</sup> plenary meeting  
17–18 December 2004*

### **Draft decision -/CMP.1**

Guidance relating to the clean development mechanism

*The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol,*

*Aware* of its decisions -/CMP.1 (*Mechanisms*) and -/CMP.1 (*Article 12*) and its annex,

*Cognizant* of decisions 15/CP.7, 17/CP.7 and its annex, 19 CP.7 and its annex, 21/CP.8 and its annexes, 18/CP.9 and its annexes, 19/CP.9 and its annex, and 14/CP.10 and its annex, and 12/CP.10 and its annexes,

*Decides* to confirm and give full effect to any actions taken pursuant to decision 12/CP.10 and its annexes.

## ANNEX I

**Procedures for review referred to in paragraph 65 of the modalities and procedures for a clean development mechanism****I. Background**

1. In accordance with paragraph 5 (o) of the modalities and procedures for a clean development mechanism (CDM modalities and procedures), the Executive Board shall elaborate and recommend to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, or to the Conference of the Parties (pending entry into force of the Kyoto Protocol), procedures for conducting the reviews referred to in paragraphs 41 and 65 of the CDM modalities and procedures, including procedures to facilitate consideration of information from Parties, stakeholders and UNFCCC accredited observers.
2. Paragraph 65 of the CDM modalities and procedures stipulates that the issuance of certified emission reductions (CERs) by the Executive Board shall be considered final 15 days after the date of receipt by the Executive Board of the request for issuance, unless a Party involved in the project activity or at least three members of the Executive Board request a review of the proposed issuance of CERs. Such a review shall be limited to issues of fraud, malfeasance or incompetence of the designated operational entities and be conducted as follows:
  - (a) Upon receipt of a request for such a review, the Executive Board, at its next meeting, shall decide on its course of action. If it decides that the request has merit, it shall perform a review and decide whether the proposed issuance of CERs should be approved
  - (b) The Executive Board shall complete its review within 30 days following its decision to perform the review
  - (c) The Executive Board shall inform the project participants of the outcome of the review, and make public its decision regarding the approval of the proposed issuance of CERs and the reasons for it.
3. The procedures for review below aim at elaborating on the provisions in paragraph 65, in particular by specifying detailed provisions for requesting a review, the scope of review, modalities for communicating with project participants and the designated operational entity (DOE) in question, possible outcomes of a review, and the coverage of costs relating to the review.

**II. Request for review**

4. A request for review by a Party involved in the CDM project activity concerned shall be sent by the relevant designated national authority to the Executive Board, through the secretariat, using official means of communication. The secretariat shall acknowledge the receipt of a request for review and promptly forward the request to the Executive Board via the list server.
5. A request for review by a member of the Executive Board shall be sent to the Executive Board through the secretariat. The secretariat shall acknowledge the receipt of a request for review and promptly forward the request to the Executive Board via the list server.
6. In accordance with paragraph 65 of the CDM modalities and procedures, a review shall be limited to issues of fraud, malfeasance or incompetence of the DOEs and a request for review shall, therefore, be specific in this regard.

7. A request for review shall provide reasons for the request for review and any supporting documentation.
8. A request for review shall be considered received by the Executive Board on the date it has been received by the secretariat. The Executive Board will not consider a request for review if it is received after 1700 GMT on the last day of the 15-day period after the receipt of the request for issuance of CERs.
9. As soon as a review of a proposed issuance of CERs is requested by a Party involved in the CDM project activity concerned or by three Executive Board members, the following action shall be taken:
  - (a) The consideration of a review of the proposed issuance of CERs shall be included in the proposed agenda of the next Executive Board meeting
  - (b) The Executive Board shall notify the project participants and the DOE that verified the monitored reductions and certified the reductions achieved by the CDM project activity that a review has been requested. The project participants and the DOE shall be informed about the date and venue of the Executive Board meeting at which the request for review will be considered. Stakeholders interested in the review process shall also be given an opportunity to attend the Executive Board meeting
  - (c) The project participants and the DOE shall each provide a contact person for the review process, including for a conference call, in case the Executive Board wishes to address questions to them during the consideration of a review at its meeting
  - (d) The proposed issuance of CERs shall be marked as being “under review” on the UNFCCC CDM web site and a notification shall be sent through the UNFCCC CDM News facility.

### **III. Scope and modalities of review**

10. The Executive Board shall consider, at its next meeting, a request for review, and shall decide either to perform a review of the proposed issuance of CERs, if there is sufficient evidence indicating a case of fraud, malfeasance or incompetence of the DOE, or to approve the issuance.
11. If the Executive Board agrees to perform a review of a proposed issuance of CERs, it shall, at the same meeting, decide on:
  - (a) The scope of the review relating to issues of fraud, malfeasance or incompetence of the DOE, based on the consideration in the request for a review;
  - (b) The composition of the review team. The review team shall consist of two Board members, who will be responsible for supervising the review and, as appropriate, outside experts.
12. The review team, under the guidance of the Board members responsible for supervising the review, shall provide inputs, prepare requests for clarification and further information to the DOE and project participants, and analyse information received during the review.

### **IV. Review process**

13. The decision by the Board, including on the scope of a review and the composition of a review team, shall be made publicly available as part of the report of its meeting.

14. A notification of the decision by the Executive Board shall be sent to the project participants and the DOE that verified the monitored reductions and certified the reductions achieved by the CDM project activity.

15. Requests for clarification and further information may be sent to the DOE and the project participants. Answers shall be submitted to the review team, through the secretariat, within five working days after the receipt of the request for clarification. The secretariat shall acknowledge the receipt of the answers and forward them to the review team.

16. The two Board members supervising the review shall be responsible for compiling inputs and comments and preparing the recommendation to be forwarded to the Executive Board via list server.

## **V. Review decision**

17. In accordance with paragraph 65 of the CDM modalities and procedures, the Board shall complete its review within 30 days following its decision to perform the review.

18. Taking into consideration recommendations by the two Board members responsible for the review, the Board shall decide on whether:

- (a) To approve the proposed issuance of CERs;
- (b) To request the DOE to make corrections based on the findings from the review before approving the issuance of CERs;
- (c) To decline to approve the proposed issuance of CERs.

19. In accordance with paragraph 65 of the CDM modalities and procedures, the Board shall inform the project participants of the outcome of the review, and make public its decision regarding the approval of the proposed issuance of CERs and the reasons for it.

20. If the review indicates any issues relating to the performance of the DOE, the Board shall consider whether or not to trigger a spot-check of the DOE, in accordance with the procedures for accrediting operational entities.

## **VI. Coverage of costs of the request for review**

21. If the Executive Board decides not to approve a proposed issuance of CERs and if a DOE is found to be in the situation of fraud, malfeasance or incompetence, the DOE shall reimburse the costs incurred as a result of the review. This provision is subject to review as experience accrues.

## ANNEX II

**Amendments to the rules of procedure of the Executive Board of the clean development mechanism****I. Section V. (Voting), Rule 30**

1. Paragraph 4 is revised as follows: “Any decision made using the procedure specified in paragraphs 1 to 3 of this rule shall be included in the report of the Board at its next meeting and shall be deemed to have been taken at the seat of the UNFCCC secretariat in Bonn, Germany.”

**II. Section IX. (Conduct of business), Rule 38**

2. The following rule 38 bis is added and contains the following three paragraphs:
  - (a) “The Executive Board, and the UNFCCC secretariat, in its mandated role of support to the Executive Board, may use electronic means for transmission and storage of documentation.
  - (b) “The documentation submitted using electronic means is subject to the transparency and confidentiality provisions of the CDM modalities and procedures. In submitting any application, registration or other documentation through electronic means (e.g. the UNFCCC CDM web site), the submitter shall acknowledge that he or she has read the relevant procedures and agrees to be bound by the terms and conditions of submission of documentation, including with respect to the submitter’s sole responsibility for the content of his or her submission and the waiver of all claims associated with use of electronic means of submitting and transmitting documentation.
  - (c) “The Executive Board, its panels, committees and working groups, and respective members and alternate members, shall not be made responsible for any claim or loss arising from the transmission, storage or use of documentation obtained through electronic means. Neither the confidentiality nor the integrity of the documentation submitted can be guaranteed following electronic transmission and storage.”

**III. Section IV. (Meetings), Rule 27**

3. The following paragraph is inserted after paragraph 1:
  - (a) “In the context of paragraph 1 above, the Executive Board may decide, in the interest of economy and efficiency, to limit attendance at its meetings to members, alternate members and secretariat support staff. In such instances, the Executive Board shall take all practicable steps to accommodate in other ways the interests of Parties, non-Parties to the Kyoto Protocol that are Parties to the Convention as well as accredited UNFCCC observers and stakeholders to observe its proceedings, except when the Executive Board decides to close all or a portion of a meeting.”