



United Nations

FCCC/SBI/2013/INF.1



Framework Convention on
Climate Change

Distr.: General
22 April 2013

English only

Subsidiary Body for Implementation

Thirty-eighth session

Bonn, 3–14 June 2013

Item 7(a) of the provisional agenda

Matters relating to the mechanisms under the Kyoto Protocol

Review of the modalities and procedures of the clean development mechanism

Recommendations of the Executive Board of the clean development mechanism on possible changes to the modalities and procedures of the clean development mechanism

Summary

This document presents the recommendations of the Executive Board of the clean development mechanism (CDM) on possible changes to the modalities and procedures of the CDM for consideration by the Subsidiary Body for Implementation at its thirty-eighth session. It was prepared in accordance with the request from the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at its eighth session.

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I. Introduction

A. Mandate

1. At its eighth session, the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) reiterated that, pursuant to decision 3/CMP.1, the first review of the modalities and procedures for the clean development mechanism (CDM), as set out in the annex to decision 3/CMP.1, shall be carried out by the CMP at its ninth session. In this context, it requested the Subsidiary Body for Implementation (SBI) to prepare, at its thirty-ninth session, recommendations on possible changes to the CDM modalities and procedures for the consideration of the CMP at its ninth session, with a view to the CMP adopting a decision on this matter at that session.¹

2. At the same session, the CMP requested the CDM Executive Board (the Board) to submit recommendations on possible changes to the CDM modalities and procedures, drawing upon the experience gained by the Board, the secretariat and stakeholders in the implementation of the CDM, for consideration by the SBI at its thirty-eighth session.²

B. Scope of the note

3. This note contains the recommendations of the Board on possible changes to the CDM modalities and procedures in response to the request of the CMP, drawing upon the experience gained by the Board, the secretariat and stakeholders in the implementation of the CDM.

C. Possible action by the Subsidiary Body for Implementation

4. The SBI may wish to consider the Board's recommendations when making recommendations to the CMP on possible changes to the CDM modalities and procedures.

II. Background

A. Process carried out by the Board in preparing recommendations

5. The Board, immediately after the eighth session of the CMP, launched a call for public inputs on possible changes to the CDM modalities and procedures based on the experience of stakeholders in implementing the CDM. This call for inputs was open from 17 December 2012 until 23 January 2013 and received 11 responses.³ A summary compilation of the inputs was subsequently prepared to facilitate their consideration by the Board.⁴

¹ Decision 5/CMP.8, paragraph 14.

² Decision 5/CMP.8, paragraph 12.

³ See <http://cdm.unfccc.int/public_inputs/2012/eb70_07/index.html>.

⁴ See annex 2 to the annotated agenda of the seventy-second meeting of the Board (CDM-EB72-AA-A02) at <<http://cdm.unfccc.int/Meetings/MeetingInfo/DB/AZNPUB6GSW20R7/view>>.

6. The secretariat reviewed its experience with the implementation of the CDM and provided the Board with a report containing key aspects of its relevant experience and recommendations on possible changes to the CDM modalities and procedures.⁵

7. The Board focused its seventy-first meeting (January 2013) on strategic matters and used this opportunity to develop initial ideas for its recommendations. It was able at that meeting to consider the responses received from stakeholders to the call for public inputs. After the meeting, the Board members and alternate members reviewed all the recommendations from stakeholders and the secretariat, and the Board's own initial ideas. The Board continued its consideration of possible changes at its seventy-second meeting (March 2013), including by considering the summary compilation of stakeholder inputs and the recommendations of the secretariat.

8. All inputs – including those from Board members and alternate members, the secretariat and stakeholders – are contained in an annex to the report of the Board's seventy-second meeting.⁶ These inputs cover a broad range of issues.

9. The recommendations contained in the present document relate to changes that the Board considers important to the future development of the CDM and its use by Parties and stakeholders of the CDM. The recommendations do not address all of the inputs initially gathered during the preparation of this document, for the following reasons:

(a) In some instances, the Board considers that the existing CDM modalities and procedures are adequate and do not require further changes or additions;

(b) In some instances, the Board supports the ideas in the inputs but considers that these may be adequately addressed by the Board and its support structure without necessitating changes to the CDM modalities and procedures;

(c) In some instances, the Board was not able to agree on specific changes to the CDM modalities and procedures.

B. Context of review of clean development mechanism modalities and procedures

10. In addition to the above-mentioned modalities and procedures, as set out in decision 3/CMP.1, there are four other sets of modalities and procedures for the CDM (see below). The relationship between any changes to the CDM modalities and procedures as set out in decision 3/CMP.1 and these other modalities and procedures is an important issue. Moreover, these other modalities and procedures also contain their own review provisions that should be noted in the context of the revision of the CDM modalities and procedures.

11. The full set of the CDM modalities and procedures comprises:

(a) **Modalities and procedures for the CDM**, as set out in the annex to decision 3/CMP.1. These comprise the main modalities and procedures for the mechanism. The first review of these CDM modalities and procedures is to be carried out no later than one year after the end of the commitment period;⁷

(b) **Simplified modalities and procedures for small-scale CDM project activities**, as set out in decision 4/CMP.1, annex II. Certain paragraphs in this decision

⁵ See annex 1 to the annotated agenda of the seventy-second meeting of the Board (CDM-EB72-AA-A01) at <<http://cdm.unfccc.int/Meetings/MeetingInfo/DB/AZNPUB6GSW20R7/view>>.

⁶ See CDM-EB72-A01-INFO at <<http://cdm.unfccc.int/Reference/Notes/index.html#gov>>.

⁷ Decision 3/CMP.1, paragraph 4.

replace specific paragraphs in the main CDM modalities and procedures, with the remaining provisions of the CDM modalities and procedures (including for the review)⁸ still applying to small-scale projects;

(c) **Modalities and procedures for afforestation and reforestation project activities under the CDM in the first commitment period**, as set out in the annex to decision 5/CMP.1. Although the review of these modalities and procedures was to be carried out no later than one year before the end of the first commitment period (para. 4 of the decision), this review has not yet taken place. It should be noted that, in accordance with decision 2/CMP.7, annex, paragraph 18, the modalities and procedures for afforestation and reforestation apply mutatis mutandis to the second commitment period, and the definitions remain unchanged;

(d) **Simplified modalities and procedures for small-scale afforestation and reforestation project activities under the CDM in the first commitment period**, as set out in the annex to decision 6/CMP.1. By the same decision (para. 3), the Board was invited to review these modalities and procedures and make recommendations to the CMP. Here, too, it should be noted that, in accordance with decision 2/CMP.7, annex, paragraph 18, small-scale afforestation and reforestation modalities and procedures apply mutatis mutandis to the second commitment period;

(e) **Modalities and procedures for carbon dioxide capture and storage (CCS) in geological formations as CDM project activities**, as set out in the annex to decision 10/CMP.7. As the first review of these modalities and procedures is to be carried out by no later than five years after the adoption of the decision, the review is not yet due.

12. The Board notes that the CDM modalities and procedures referred to in paragraph 11(a–d) above should now be amended to reflect the amendment to the Kyoto Protocol pursuant to decision 1/CMP.8, including with regard to the global warming potential for the second commitment period and the inclusion of nitrogen trifluoride for the second commitment period onwards.

13. Given the interrelated nature of the different modalities and procedures and their related review provisions, as outlined above, the Board considers that it will be important for the SBI to consider that:

(a) Changes made in the main CDM modalities and procedures contained in decision 3/CMP.1 will have implications for and interactions with the other modalities and procedures;

(b) With the exception of the CCS modalities and procedures, for which the first review is to commence later, equivalent reviews of the other modalities and procedures are also now due.

III. Recommendations of the Board

A. General

1. Documentation

14. **Background:** four sets of CDM modalities and procedures are due for review, as referred to in paragraph 11(a–d) above. Subsequent guidance from the CMP has also caused some parts of these rules to be repealed or amended. The multiple sets of rules cause

⁸ Decision 4/CMP.1, annex II, paragraph 11.

confusion for stakeholders. Consolidation would be a complex exercise; but the Board considers that it would increase transparency and user-friendliness.

15. **Recommendation:** the Board recommends that the CMP consolidate these four sets of CDM modalities and procedures for the different project types, and, to the extent possible, all the CDM-related CMP decisions that created rules, into one document.

2. Reflection of current practice

16. **Background:** the implementation of the CDM over the years has, in some cases, developed beyond the CDM modalities and procedures as a result of subsequent requests from the CMP. Further, there are some parts of the CDM modalities and procedures that have not been implemented because the provisions relate to situations that have not arisen. For example:

(a) The specific time frames for review and approval of new methodologies by the Board mentioned in paragraph 38 of the annex to decision 3/CMP.1 do not allow the Board sufficient flexibility or time;

(b) The current practice of dealing with post-registration changes is not covered in the CDM modalities and procedures and should be inserted;

(c) Decision 3/CMP.1, appendix D, paragraph 10, requires the CDM Registry Administrator to make certain information publicly available, the disclosure of which creates a security risk for the CDM registry;

(d) Decision 3/CMP.1, annex, paragraph 17, requires all decisions to be made available in all six United Nations languages but this has never been implemented owing to cost reasons.

17. **Recommendation:** the Board recommends that the CDM modalities and procedures be revised to reflect current practice.

B. Governance

1. Role of the host Party

18. **Background:** sometimes, stakeholders seek resolution by the Board of issues that only the host Party can resolve. This is because the role of the host Party and its designated national authority in overseeing the project activity in the country during the CDM period of the project activity is not as fully elaborated in decision 3/CMP.1 as compared with the role of the Board. Notwithstanding that the host Party regulates the project through its own national laws and regulations, the CDM system would benefit from more clarity as to the role of the host Party in respect of the CDM aspects of the project activity during the CDM project cycle.

19. **Recommendation:** the Board recommends that section F of the annex to decision 3/CMP.1 be expanded, or a new section of the CDM modalities and procedures be created, in order to clearly express and elaborate the host Party's responsibility to oversee the CDM aspects of the project activities and programmes of activities (PoAs) they host in accordance with the CDM modalities and procedures. This should cover the whole project/programme life cycle.

2. Membership of the Board

20. **Background:** stakeholders have raised issues relating to the nomination, membership, term and decision-making of the Board. The Board considers that these

aspects of governance are closely interlinked. Any amendment to one aspect would inevitably affect all the others.

21. **Recommendation:** the Board recommends that, if the SBI considers possible changes to the CDM modalities and procedures relating to the nomination, membership, term and decision-making of the Board, the implications for other matters, such as quorum, voting and triggering requests for review, be considered as a package.

C. Accreditation

1. Elaboration of rules

22. **Background:** the accreditation rules, which apply to designated operational entities (DOEs) under the CDM and the standards that the DOEs must meet, are set out in decision 3/CMP.1, annex, section D and appendix A. Experience has shown that these rules are overly prescriptive in parts, leaving little flexibility to accommodate evolving needs of the accreditation process, and may be preventing the CDM system from aligning with best practice that may be identified from other international accreditation systems.

23. **Recommendation:** the Board recommends that the rules on accreditation in decision 3/CMP.1 be simplified by deleting appendix A and expanding section D to include the principles that the Board must apply to elaborate and enforce standards for DOEs. These principles should include: consistency; impartiality; transparency and confidentiality; rigour; competence; and openness and accessibility.

2. Significant deficiencies

24. **Background:** paragraphs 22 and 24 of the annex to decision 3/CMP.1 relate to, inter alia, the liability of DOEs where certified emission reductions (CERs) have been issued as a result of significant deficiencies in validation or verification by the DOE. Despite considerable work by the Board over a number of years, and consideration of the issue by the CMP on two occasions,⁹ paragraphs 22 and 24 remain unimplemented. Revision of the CDM modalities and procedures now provides Parties with an opportunity to return to first principles with this very difficult matter.

25. **Recommendation:** the Board considers that the principles of DOE liability for significant deficiencies need to be elaborated differently from the principles inherent in paragraphs 22 and 24 of the annex to decision 3/CMP.1 and recommends that the SBI elaborate a different set of key principles to recommend to the CMP.

D. Project cycle

1. Host Party

26. **Background:** the CDM modalities and procedures do not foresee that single project activities may have more than one host Party. There are examples of potential single project activities, such as a hydroelectric project on a river that forms a national border, that are genuinely cross-border but may be prevented from being registered under the CDM.¹⁰

27. **Recommendation:** the Board considers that it would be worthwhile to determine the feasibility of allowing single project activities to be hosted in more than one Party. The assessment of such a change to the CDM (and the CDM modalities and procedures) would

⁹ Decision 3/CMP.6, paragraphs 25 and 26, and decision 8/CMP.7, paragraphs 12 to 14.

¹⁰ By contrast, PoAs may have more than one host Party because a PoA may have component project activities located in different host Parties.

need to include at least the following: allocation of responsibility (under the Kyoto Protocol regime) for project participants; allocation of emission reductions/CERs as between host Parties and the international transaction log; and CDM registry implications.

2. Letters of approval

28. **Background:** letters of approval are a prerequisite for registration, and the Board considers that they should continue to be a requirement (including from Parties included in Annex I to the Convention). However, they are mentioned only indirectly in the CDM modalities and procedures (see paras. 33 and 40(a) of the annex to decision 3/CMP.1). In addition, it remains unclear what the effect of a Party withdrawing a letter of approval would/should be, despite efforts of the Board last year to respond to the mandate from the CMP at its seventh session to consider the issue.¹¹

29. **Recommendation:** the Board recommends that the following be included in section F of the annex to decision 3/CMP.1 (or in a new section of the CDM modalities and procedures):

- (a) A provision defining host Party approval;
- (b) A provision outlining the required minimum content of the letter of approval;
- (c) A provision elaborating the requirements and process for a Party's withdrawal of a letter of approval; this should include a requirement of prior notification to project participants of the criteria and conditions of any withdrawal.

3. Stakeholder consultation

30. **Background:** paragraph 37 (chapeau and (b)) of the annex to decision 3/CMP.1 requires the DOE to review the project design document and supporting documentation and is limited to confirming that: (a) comments by local stakeholders have been invited; and (b) the project participants have provided the DOE with a summary of the comments received and a report on how due account of those comments was taken.

31. **Recommendation:** the Board recommends that the requirement in paragraph 37 (chapeau and (b)) of the annex to decision 3/CMP.1 be strengthened to require the DOE to validate that the local stakeholder consultation was carried out in accordance with host Party laws and regulations, and to evaluate how the content of the comments was duly taken into account.

4. Crediting period

32. **Background:** crediting period length is currently set out in paragraph 49 of the annex to decision 3/CMP.1. Project participants currently choose from either (a) a maximum of seven years, renewable twice, or (b) a maximum of 10 years with no renewal. Although these are expressed as "maximum" values, project participants do not select lower values in practice. The current crediting period options may not provide sufficient flexibility to reflect the range of project activity and PoA size and types that are now being received.

33. **Recommendation:** the Board recommends that the crediting period provisions be reviewed, taking into account, inter alia, the certainty of investment and the additionality of emission reductions.

¹¹ Decision 8/CMP.7, paragraph 29.

5. Afforestation and reforestation project activities

34. **Background:** since the adoption of decision 5/CMP.1, the experience in implementing afforestation and reforestation CDM project activities indicates that more cost-effective approaches may be needed for the estimation of baseline stocks and removals and that remote sensing for monitoring could provide such an approach.

35. **Recommendation:** the Board recommends that the implications of allowing more cost-effective approaches than those set out in paragraphs 25 and 26 of the annex to decision 5/CMP.1 be considered.

36. **Background:** paragraph 32 of the annex to decision 5/CMP.1 requires verification every five years during the crediting period. More flexibility in the timing of verifications would be beneficial because this provision has been found to be restrictive. However, there may be implications for long-term CER accounting if the verification periods are amended.

37. **Recommendation:** the Board recommends that paragraph 32 of the annex to decision 5/CMP.1 be reviewed to consider whether the timing of the verification of projects over the crediting period could be more flexible.

6. Programmes of activities

38. **Background:** a PoA is a type of CDM activity for which the definition, standards and procedures have been based on mandates from the CMP,¹² developed by the Board, after the adoption of the CDM modalities and procedures. As a result, PoAs are not specifically referenced in the CDM modalities and procedures. The Board takes the view that PoAs provide considerable potential for utilization of the CDM in the future and notes that PoAs are becoming increasingly popular, in particular in least developed countries.

39. **Recommendation:** the Board recommends that general and specific principles, but not detailed rules, be set out for PoAs in the CDM modalities and procedures.

7. Registration and issuance – direct communication with the Board

40. **Background:** the principle of direct communication between stakeholders and the Board and its support structure is an important part of the CDM regulatory framework. Currently, direct communication is governed by a procedure adopted by the Board.¹³

41. **Recommendation:** the Board recommends that the principle of direct communication between stakeholders and the Board and its support structure be introduced into the CDM modalities and procedures.

8. Registration and issuance – need for project design document when submitting a new methodology

42. **Background:** paragraph 38 of the annex to decision 3/CMP.1 sets out that when proposing a new baseline and monitoring methodology, the DOE is also required to submit a description of a project activity or PoA that would apply the proposed new methodology and identify the project participants. This requirement may unduly delay or hinder the development of new methodologies and is impractical for DOEs when contracting for services.

¹² See decision 1/CMP.2, paragraph 16, and decision 2/CMP.3, paragraph 3.

¹³ “Modalities and procedures for direct communication with stakeholders” at <<http://cdm.unfccc.int/Reference/Procedures/index.html#gov>>, adopted pursuant to a request from the CMP in decision 3/CMP.6, paragraph 22.

43. **Recommendation:** the Board recommends that the parts of paragraph 38 of the annex to decision 3/CMP.1 that contain the requirement to submit a description of a proposed project activity or PoA and identify project participants be removed.

E. Methodologies

1. Methodology development

44. **Background:** paragraph 38 of the annex to decision 3/CMP.1 requires the submission of a new methodology through a DOE. This no longer reflects practice as the Board has been mandated by the CMP to develop new methodologies, clarifications and revisions to existing methodologies “top-down” (i.e. on its own initiative)¹⁴ and the Board allows various stakeholders to submit new methodologies or seek clarifications/revision of a methodology without submitting through a DOE.

45. **Recommendations:** the Board recommends that paragraph 38 of the annex to decision 3/CMP.1 be amended (or a para. 38 bis be added) to insert the Board’s own-initiative role in developing, revising and clarifying methodologies and to allow direct submission of new methodologies and revisions to approved methodologies by any stakeholder. The requirement to submit through a DOE should be deleted. If clarifications are added to the CDM modalities and procedures (see the recommendation on clarifications of methodologies below), the CDM modalities and procedures should also allow direct submission of clarification requests by any stakeholder.

2. Methodology development – revising appendix C

46. **Background:** the principles for the methodologies are set out in paragraphs 43 to 52 of the annex to decision 3/CMP.1 and the rules by which the Board establishes guidelines on baseline and monitoring methodologies are contained in appendix C. The tools and procedures adopted by the Board in relation to methodologies are now far more developed than the basic rules provided in appendix C, which have become largely redundant.

47. **Recommendation:** the Board recommends that appendix C be streamlined to leave key principles only and then those principles be included in the main body of the CDM modalities and procedures with other methodology-related principles (in section G or by creating a methodology section).

3. Methodology development – clarifications of approved methodologies

48. **Background:** paragraph 39 of the annex to decision 3/CMP.1 contains provisions for the revision of approved methodologies, which (and the principle is reinforced in later CMP decisions) do not allow a revision of a methodology to be applied to a project activity within its crediting period. This provides predictability for the CDM. The Board’s clarifications of methodologies have immediate effect. There are no specific CMP rules on clarifications of methodologies. The absence of any reference to them in the CDM modalities and procedures means that there is a risk that some clarifications may undermine the provisions set out in paragraph 39 of the annex to decision 3/CMP.1.

49. **Recommendation:** the Board recommends that the concept of clarifications of approved methodologies be included in the CDM modalities and procedures.

¹⁴ See decision 8/CMP.7, paragraph 22.

4. Additionality

50. **Background:** section G of the annex to decision 3/CMP.1 currently requires that all project activities go through the same validation process. Certain types of project activities could be exempted from some of the steps of the validation process because they can be deemed automatically additional.

51. **Recommendation:** the Board recommends that a provision be added to section G of the annex to decision 3/CMP.1 to include the current practice of the Board of establishing a list of project activity types/scale deemed automatically additional and that it be specified in the CDM modalities and procedures that such projects may be subject to a simplified validation in respect of the additionality of the project activity.

5. Materiality

52. **Background:** at its seventh session, the CMP adopted a materiality standard,¹⁵ which has a direct link with the CDM modalities and procedures.

53. **Recommendation:** the Board recommends that the provisions of decision 9/CMP.7 be incorporated into the CDM modalities and procedures.

6. Baseline setting

54. **Background:** experience shows that the threshold in paragraph 48(c) of the annex to decision 3/CMP.1 is not strictly followed in methodologies. A broader range of approaches has been used in approved methodologies.

55. **Recommendation:** the Board recommends that paragraph 48 of the annex to decision 3/CMP.1 be revised to make the list of approaches to baseline methodologies set out in (a) to (c) of that paragraph into a non-exhaustive list.

7. Standardized baselines

56. **Background:** the CDM modalities and procedures do not include the principle relating to standardized baselines, as such baselines have been developed since the adoption of the CDM modalities and procedures pursuant to CMP requests. Project activities using standardized baselines have common features that are different from project activities not using these baselines. Inclusion of the key principles on standardized baselines in the CDM modalities and procedures would improve transparency and support project proponents seeking to use standardized baselines.

57. **Recommendation:** the Board recommends that paragraphs 44 to 52 of decision 3/CMP.6 be inserted into the CDM modalities and procedures in order to address the special features of projects using standardized baselines in accordance with paragraph 25 of decision 2/CMP.5 and paragraphs 44 to 52 of decision 3/CMP.6.

¹⁵ Decision 9/CMP.7.