Annex 16

INFORMATION NOTE ON APPROACH FOR ADDRESSING SIGNIFICANT DEFICIENCIES IN PAST VALIDATION, VERIFICATION OR CERTIFICATION REPORTS

I. Introduction

1. This information note provides background information and a brief overview of the process for development of the information note on the approach for addressing significant deficiencies in past validation, verification or certification reports (hereinafter referred to as "significant deficiencies").

II. Background and development process

2. This information note was developed based on the clean development mechanism (CDM) Executive Board's (hereinafter referred to as the Board) request at its fifty-first meeting[1] and its consideration on the subject at the fifty-sixth and fifty-seventh meetings, which led to the request by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) at its sixth session to the Board to adopt, taking into consideration the views of stakeholders, and subsequently apply a procedure to address significant deficiencies in validation or verification reports.

3. In developing such procedure, the CMP, at its sixth session, also provided the Board with the mandate to review and amend the current provisions in paragraphs 22-24 of the annex to decision 3/CMP.1 ("CDM modalities and procedures") regarding:

(a) The suspension of designated operational entities prior to the application of such a procedure;

(b) The appointment of a second designated operational entity to conduct the review or correct the deficiency;

(c) The 30-day time limit for the cancellation of units; and

(d) The liability of designated operational entities.

4. The Board, through its CDM management plan 2011, decided to develop a consolidated validation and verification procedure, including a procedure to identify and correct significant deficiencies in validation and verification reports.

5. A draft procedure to address the identification and correction of significant deficiencies was presented at a workshop held in Bonn on 24-26 August 2011 to gather stakeholder feedback and suggestions. The workshop was attended by more than 70 various stakeholders of the CDM, including designated national authorities (DNAs), designated operational entities (DOEs), project developers and project participants, NGOs, associations, Nairobi Framework partners, and Board members.

III. Scope of procedure

6. Sections IV-VIII below provides an outline of the key components required for a procedure for addressing significant deficiencies, including the definition of "significant deficiencies", the principles of liability for excess issuance of certified emission reductions (CERs), process for identification and review

[1] Paragraph 18 of EB51 Meeting Report.

of alleged significant deficiencies and the consequences for the finding and correction of significant deficiencies.

IV. Definitions

7. Paragraph 22 of the CDM modalities and procedures concerns the means of addressing significant deficiencies that are identified in previous validation, verification or certification reports through review and correction of those reports and for dealing with excess issuance of CERs that may have occurred as a result of those deficiencies.

8. The wording of paragraph 22 of the CDM modalities and procedures could be interpreted that such a process was not intended to be applied to the correction of any and all deficiencies in previous validation, verification or certification reports but only those that are considered to be "significant".

9. In order to operationalise a procedure for addressing significant deficiencies that are identified in previous validation, verification or certification reports, the Board may wish to consider and provide guidance on what and under which circumstances are deficiencies in previous validation, verification or certification reports to be considered significant and therefore warrant review and correction under such a procedure.

V. Principles of liability for excess issuance of certified emission reductions

10. Paragraph 22 of the CDM modalities and procedures also assigns liability for any excess issuance of CERs that the review reveals, to the DOE responsible for the relevant validation, verification or certification report. In addition, paragraph 24 of the CDM modalities and procedures assigns the liability for the costs for carrying out such a review to that DOE. However, the CMP at its sixth session allowed the Board to review and amend these liability provisions.

11. The cause of significant deficiencies in a previous validation, verification or certification report may not be a result of the conduct for the DOE but could also (i) be attributed to a lack of clarity in the rules and requirements of the CDM or (ii) be a result of the conduct of a project participant.

12. Therefore, the Board may wish to consider and provide guidance on what circumstances and to what extent liability for excess issuance should be attributed to and costs of review borne by one or several CDM stakeholders.

13. In particular, the Board may wish to consider whether liability may be imposed on entities other than the DOE such as project participants, noting that paragraphs 22 to 24 of the CDM modalities and procedures and paragraphs 25 and 26 of Decision 3/CMP.6 do not refer explicitly to project participants.

VI. Process of identification and initiation of review

14. Paragraph 22 of the CDM modalities and procedures does not specify how significant deficiencies are to be identified in previous validation, verification or certification reports. Any procedure for the review of significant deficiencies will need to have a clear mechanism for the identification of possible significant deficiencies.

15. While the most obvious source of identification may be through the assessment and review procedures for requests for registration of project activities or programme of activities, and requests for issuance of CERs, it may also occur that significant deficiencies are discovered in other ways. These could include the outcome of performance assessments or as part of the regular surveillance undertaken under the CDM accreditation process. The issue could also be raised by other DOEs during their

verification activities or the DOEs that performed the validations, verification or certifications in question voluntarily bringing significant deficiencies to the Board's attention. Third parties might also discover significant deficiencies that they wish to bring to the Board's attention.

16. Given the range of possible sources of information regarding possible significant deficiencies and the resource implications for the Board and the secretariat, the Board may wish to consider and provide guidance on who should be entitled to bring possible significant deficiencies to the Board's attention.

17. Following identification of possible significant deficiencies and in order to avoid initiating unwarranted reviews, the Board may wish to consider including a provision in the procedure for the initial analysis to be conducted with a recommendation to proceed or not with a review provided to the Board.

18. Further, the Board may wish to consider and provide guidance on the appropriate decision modalities and criteria for the initiation of a review of significant deficiencies. For example, whether it is a decision of the Board at its meeting or by means of a shorter process.

19. For the specific circumstances where the DOE voluntarily identifies significant deficiencies in its own past validation, verification or certification activities or where a DOE acknowledges significant deficiencies when brought to its attention and voluntarily agrees to undertake corrections, the Board may wish to consider and provide guidance on whether such significant deficiencies should undergo a full review process or a shorter corrections process.

VII. Review of alleged significant deficiencies

20. Paragraph 22 of the CDM modalities and procedures requires the review of the significant deficiencies to be undertaken by a second DOE. However, following the Board's discussion at it fifty-sixth and fifty-seventh meetings and feedback from stakeholders, this approach was seen as undesirable on both availability and conflict of interest grounds. Therefore, CMP at its sixth session allowed the Board to review and amend this requirement[2].

21. The Board already has a number of examples of models for conducting a review in both the accreditation and request for registration and issuance processes from which it could draw upon. The Board may therefore wish to consider and provide guidance on the appropriate person or body, including the possible establishment of new bodies, responsible for undertaking and resolving reviews of significant deficiencies and the appropriate procedural steps that should be followed in the conduct of such a review taking into account the requirements of procedural fairness.

22. In the determination of the outcome of the review, the Board may wish to consider and provide guidance on the appropriate decision making procedure. For example, the differing roles for decision making by the body conducting the review and the Board.

VIII. Consequences for the finding of significant deficiencies in previous validation, verification or certification reports

23. Paragraphs 22 and 24 of the CDM modalities and procedures already contain fairly clear consequences for the findings of significant deficiencies: the reports shall be corrected, to the extent that correction is possible and appropriate; and that any excess issuance of CERs will be addressed by the transfer of an equivalent amount of emission reduction units (ERUs), CERs, assigned amount units

[2] Decision 3/CMP.6 paragraph 26.

(AAUs) and/or removal units (RMUs) equal to the excess CERs issued into the cancellation account in the CDM registry.

24. However, depending upon the Board's consideration and guidance regarding the principles of liability, the Board may wish to consider and provide guidance on what, if any, additional consequences may be imposed on the CDM stakeholder(s) who have been found responsible of the significant deficiencies.

25. In undertaking this consideration, the Board may wish to note that many stakeholders originally raised concerns regarding the 30-day time limit for the cancellation of units and that in response the CMP at its sixth session allowed the Board to review and amend this requirement.

IX. Expected outcome from the Board's consideration

26. The Board may wish to consider and provide further input and guidance on the development of a procedure for addressing significant deficiencies in previous validation, verification or certification reports inter alia in the areas listed in sections IV-VIII. above.

27. Specifically, the Board may wish to consider and provide guidance on:

(a) What and under which circumstances are deficiencies in previous validation, verification or certification reports to be considered significant and therefore warrant review and correction;

(b) What circumstances and to what extent liability for excess issuance should be attributed to and costs of review borne by one or several CDM stakeholders;

(c) Who should be entitled to bring possible significant deficiencies to the Board's attention, scope of any initial analysis to be conducted, the decision maker for initiation of a review;

(d) The appropriate person or body, including the possible establishment of new bodies, responsible for undertaking and resolving reviews of significant deficiencies and the appropriate procedural steps that should be followed, including decision makers;

(e) The consequences for the DOE and/or the affected or responsible project participants for the finding of significant deficiencies.

28. The Board may wish to request the secretariat to draft a procedure for addressing significant deficiencies in previous validation, verification or certification reports based on the outcome of the Board's discussions. The Board may also wish to request the secretariat to further interact with the relevant stakeholders on the draft a procedure for addressing significant deficiencies...

29. The Board may wish to request the secretariat to draft proposed amendments to the CDM modalities and procedures that may be required as a result of such a procedure for consideration by the CMP.

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