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**To** cdm-info@unfccc.int  
**From** martin.enderlin@pd-forum.net  
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**Subject** **Unsolicited communication regarding annotated agenda to EB56**


CHAIRMAN

Your contact:  
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Honourable Members of the CDM Executive Board,  
Dear Mr. Mahlung,

The Project Developer Forum (PD Forum) would like to provide input on a number of subjects listed on the annotated agenda to EB 56 and on two issues that are of general concern to PD Forum members. Since the annotated agenda was only released on 30 August, we were unable to submit the letter within the official deadline for formal submissions to EB56. Nonetheless, we believe that our comments might be of value and therefore hope that they can be taken into account by the EB during the discussions at the coming meeting.

Kind regards,



Martin Enderlin  
Chair of the PD Forum

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**Para 12 (Annex 1) - ► Action: The Board may wish to consider a draft procedure on the matter of liability of DOE with a view to making a recommendation to the CMP at its sixth session, as contained in annex 1 to these annotations.**

Upon brief review of Annex 1 the Project Developer Forum wishes to note several concerns related to the proposed guidance. We highly recommend the EB consider a brief “Call for Input” so stakeholders may provide their expanded input on this important issue, prior to making a recommendation to CMP6.

As per the Marrakech Accords, the justification for a review of a DOE’s recommendation is fraud, malfeasance or incompetence. The EB should carefully consider the charge of incompetence in a learning-by-doing environment.

We agree all suspicions of fraud or malfeasance should be investigated. However, as related to incompetence, one must keep in mind the CDM process was always portrayed as a “learning by doing” process. Under this procedure, the CDM-AT may re-open and re validate decisions that were made by all parties, PPs, DOEs, UNFCCC, in the spirit of learning by doing. It is not our intent to defend projects which should not have been registered or to justify CERs which should not have been issued. It is our aim to point out going back over old decisions is very difficult to do in an objective manner, especially when guidance was much more limited than it is today and when both PPs and DOEs were making good faith efforts to meet guidance available at the time. There is significant risk that outcomes will be biased by what is known now when compared to what was known during the learning by doing stage. We already have experienced that in today’s checks and reviews where new requirements are being applied even before they formally become effective.

The draft procedure defines deficiencies and refers to standards that were applicable at the time. We would like to emphasise that it is not only the standard but also the interpretation of the standard at the time which is vital to understand decisions. PD-Forum is concerned that the CDM EB and the Secretariat may lack the institutional memory of such interpretation and whilst decisions made in the past may not be made today, it can be very difficult to go back and re-assess whether or not those decisions were correct at the time.

PD-Forum would also note several practical concerns:

- Whilst documentation is to be retained, staff changes over periods of several years may make it difficult to re-trace decision making processes;
- Additional documentation which may be provided with a PDD or monitoring report today was not necessarily collected at the time of the validation / verification and, since these may be third party documentation, they may no longer be available or accessible;
- The CDM is already conservative in many of its applications;
- Increasing the workload of the DOEs and Secretariat is likely to have an adverse effect on the projects which are now entering the registration pipeline;
- Suspensions coupled with such investigations will inevitably by long drawn out affairs, which will have a significant impact upon the project pipeline;
- The procedure does not appear to be proportional and also it is difficult to see how it will improve DOE work. Further, it is inherently wrong as DOE performance will be judged only on objective criteria and not on subjective criteria (i.e., fault and intention). For example, if you had been given false facts or if the facts did not exist at the time of validation you might still be liable for the excess CERs even if there is nothing you could have done about this;

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- How would a situation be treated whereby CERs are issued but later it is determined the project should have never been validated positively? Who is responsible for the over issuance, the validating DOE? The verifying DOE? Both? Does the Secretariat not also bear some of the liability as they review and critique DOE work? How would this be balanced?

Such procedures may have significant consequences:

- In many cases, investors have invested on the basis of CDM registration. To place this registration under question in a retrospective manner may have the effect of undermining any remaining confidence in the CDM process.
- DOEs may feel themselves to be caught in an impossible situation whereby they bear all of the responsibility but have no authority. If the DOEs decide that the risks are not worth the rewards, many may withdraw from the CDM and then the interface between the CDM EB / Secretariat and PPs will be removed and the process may cease to function. It should be noted that the relatively simple issue of DOE liability within the PoA framework has effectively paralyzed the development of this tool.
- As structured, investigations would pit DOE vs. DOE. This is unparalleled in a commercial/competitive market and has the potential to be very destructive. Any review of the DOEs questionable work should be performed by the accrediting authority, with the help of non-DOE industry experts.

Steps that may be considered:

- A statute of limitations on re-opening decisions;
- A clearer definition of incompetence, with guidance as to how and when this charge may be levied;
- Establish a clear and objective system might fine the DOE for underperformance. The procedure as it is written will lead to DOEs taking even more time and not taking decisions anymore:
  - If they could not have avoided the mistake: no fine;
  - If the mistake was minor and had minor effects: monetary fine;
  - If the mistake is due to their fault and has a larger effect: monetary fine and/pr suspension or loss of accreditation, depending on the individual case, taking a proportionality driven approach;
  - If the mistake is due to their fault, has a large effect, and the DOE was aware or should have been aware (gross negligence, intention): replacement of excess CERs.

Other steps that may be considered which go beyond the scope of this procedure:

- Reassigning the task of project validation/verification under the Secretariat who may, inter alia, sub-contract work to industry experts. This might make the process more efficient and easier to manage.
- A review of the procedures around the renewal of crediting periods so that those projects which are of concern may be subjected to more up-to-date scrutiny.

**Para 13 (Annex 2) - Draft “Standard on the use of the concept of materiality and level of assurance in the “clean development mechanism””**

The Project Developer Forum welcomes the efforts by the Board and the Secretariat to develop a standard on the use of the concept of materiality and level of assurance in the CDM, which is in line with the mandate assigned by the CMP to the Executive Board (decision 2/CMP.5,

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Paragraph 22).

The Project Developer Forum believes that progress on the application of materiality will greatly facilitate the validation and verification process.

We are sympathetic to the distinction between prescriptive and non-prescriptive requirements however we note that there are elements of methodologies which are prescriptive but have no material impact upon a CDM project. Consequently, the key to successful application of this concept will lie in the accurate categorization of requirements as either prescriptive or non-prescriptive. This in turn would suggest that both methodologies and the VMM would need to be revised.

Finally, the Project Developer Forum would like to stress once again that a standard on the use of the concept of materiality is of key importance for the future development of CDM. In this sense, we reaffirm that the efforts undertaken by the Executive Board are highly appreciated. The proposed standard as per Annex 2 of the annotated agenda represents a good starting point, on which the Project Developer Forum will provide more elaborate comments and constructive suggestions following EB 56.

**Para 23 - Definition to be applied in the context of the methodology AM0034**

The PDF seeks clarification from the Board on the scope and effect of para 27 of the Methodology Panel, 45 meeting Report. Para 27 includes a recommendation from the MP to the Boards with regards to the definition of 'Abnormal Campaign' in the context of the methodology AM0034.

As the latest version of AM0034 does not define the circumstances under which a campaign should be deemed as 'abnormal' the methodology would need to be revised for this definition to take effect. Methodological revision aimed at including such definition within AM0034 should follow the applicable version of the 'Procedure for the submission and consideration of requests for revision of AMs and tools for large scale CDM project activities'.

In light of the CDM Modalities and Procedures, the PDF understand that the para 27 of the MP report can only be seen as a recommendation to the Board mandate the MP to submit a request for revision of AM0034 for the Board's consideration. As such, the PDF understand that para 27 has no direct implication for the current version of AM0034, and that any revision to such methodology will be done in accordance with the Procedure mentioned above, and will subsequently only apply to projects submitted for registration using the revised version of the methodology.

The PDF would be grateful if the Board could confirm that this interpretation is correct, so as to eliminate any undesirable ambiguity in the interpretation and application of AM0034.

In addition to the above procedural concerns, the PDF notes that the wording used by the meth panel in their definition is ambiguous. As such, it is not clear whether a historic campaign with a conversion efficiency less than 90% for more than 10% of the campaign would be deemed abnormal, or if the conversion efficiency must be less than 90% for at least 90% of the campaign if it is to be deemed abnormal or if the conversion efficiency must be 90% (not greater or less) for 90% of the campaign to be considered normal. The PD Forum notes that it

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is not easy to define normal or abnormal campaigns in such a simplistic way as there is a large variety of operating conditions between nitric acid plants and some plants may routinely operate with conversion efficiencies lower than 90%. **Similarly, if a plant experiences a sudden drop in conversion efficiency, it is unlikely that it would be left to operate at a poor level for 90% of the campaign.** Additionally, the data available for historical campaigns may only allow an average campaign conversion efficiency to be calculated as a detailed monitoring system may not be in place prior to the implementation of the project activity. Last, but not least, in March the UNFCCC secretariat kindly requested N.serve to provide a definition of abnormal campaigns (letter from N.serve dated April 27, 2010) which listed a) gauze damages, b) gauze trial runs and c) equipment failure (e.g. compressor turbine) as the main practical reasons for premature stopping of a campaign. We propose to include such factual criteria in a possible methodology revision.

#### **Para 51 (Annex 3) – Draft “Guidelines for determining the eligibility criteria related to the inclusion of CPAs in registered programmes of activities”**

We welcome the publication of additional guidelines for PoAs on a topic that the PD Forum considers as key to the successful roll-out of the programmatic approach. We wish to share in this letter some comments and questions on these guidelines, which, we hope, will be taken into consideration in the finalisation of the document. However these guidelines should not replace the promised guidance on the demonstration of additionality for PoAs that is still urgently needed to guide project developers in how to establish additionality for PoAs. This overdue guidance is now more urgent than ever since the eligibility criteria will be determined at the light of the guidance on PoA additionality.

#### **Focus of the guidelines on eligibility criteria for the demonstration of additionality and title of the guidelines**

From our understanding of PoAs, eligibility criteria should be the cornerstone of Programmatic CDM and are not restricted to additionality. This is in line with paragraph 6 g) of EB55 Annex 38<sup>1</sup>. As specified in paragraph 2 of the proposed draft guidelines, the guidelines focus on the eligibility criteria for the demonstration of additionality. However, the title might be misleading since it refers to the “eligibility criteria related to the inclusion of CPAs in registered programmes of activities”. In order to make it clear that the document focuses on additionality, the PD Forum suggests to rename the guidelines from “Draft Guidelines for determining the eligibility criteria related to the inclusion of CPAs in registered Programmes of activities” to “Draft Guidelines for determining the eligibility criteria for demonstration of additionality related to the inclusion of CPAs in registered Programmes of activities”.

#### **Applicability of the guidelines**

According to paragraph 1 of the proposed draft guidelines, the document is applicable to “registered PoAs for which the demonstration of additionality was performed according to paragraph 4 (e) of annex 29 EB 47 “Procedures for registration of a programme of activities as a single CDM project activity and issuance of certified emission reductions for a programme of activities”. However, the procedures referred to have been revised at EB55 and are likely to be further revised in the future. In addition, PoAs under validation have to define eligibility criteria as well and these criteria have to be validated by the DOEs. As mentioned in paragraph 2 of the document, these guidelines should be used by programmes developers and DOES

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<sup>1</sup> Procedures for registration of a programme of activities as a single CDM project activity and issuance of certified emission reductions for a programme of activities version 4

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regarding how to structure eligibility criteria, which suggests that they should be used during the preparation of the PoA-DD and CPA-DD and during the validation of the PoAs . The PD Forum would therefore like to seek clarification on

1. Whether the applicability of the guidelines is linked to a specific version of the procedures for registration and issuance of PoAs;
2. Whether these guidelines are applicable to PoAs under validation.

### **Language**

In paragraphs 5 and 6, there is currently a choice between “may” and “shall”. Given the variety of PoA types, the PD Forum believes that the use of “shall” could put an artificial burden on some PoAs that could not comply with these requirements but that would be fully additional and could demonstrate that by other means. The PD Forum therefore favours the use of “may” over “shall”. Alternatively, the guidelines could explicitly mention that the approach suggested in the guidelines is accepted by the EB but that alternative approaches will also be considered, as long as they ensure that the requirement in paragraph 4 of the guidelines is fulfilled.

### **Eligibility criteria for situations where the additionality of the PoA has been established by means of performing financial analysis**

The PDF welcomes this new provision that allows the retesting of the additionality at CPA level by the mean of a financial analysis.

However it is not clear for us whether this approach is compatible with PoAs supporting measures/technologies that have a low level of standardization (hydropower plants, energy efficiency measures in buildings, biogas projects, etc.) and for which the outcome of the financial analysis depends on many parameters. In this case the PPs should still have the opportunity to perform a full financial analysis of the CPA on the basis of a predefined excel sheet (tailor-made for the PoA and taking into account the type of industry and the host country) validated by the DOE and used consistently for all CPAs.

### **Para 67 (Annex 6) - Compliance with indicative timelines**

Issuance requests in the Completeness Check and Information & Reporting Check:

Over the past 6 weeks, on average, 27 files per week have entered the queue. In August alone, over 130 new files have entered the Completeness Check queue, compared to 90 in June and 97 in July. In comparison, over the past 6 weeks, approx. 18 files have been processed per week, i.e. 72 files per month. This represents a slight improvement compared to the average of just above 13 files processed per week since the beginning of 2010. This week, for the first time, 21 files have been programmed, which would set processing at 84 files per month still below last months' entries. A continuation of this trend would mean that the backlog would still not be resolved since this is still well below the number of files entering the process.

The re-entry of files into the Completeness Check queue, after previously having received an "Incompleteness note", represents roughly 15 files per month as of today, which adds a significant amount of additional workload to the process. We however, expect this number to increase in the near future because currently more files receive "incompleteness notes" during the Completeness Check than there are files re-entering the Completeness Check queue. This is due to the time that PPs and DOEs take to address the Incompleteness.

In the end the number of files to be processed will increase disproportionately to the number of

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files being processed. Thus we do not currently see an improvement significant enough to resolve the issue of delays and we therefore do not expect the times for completeness checks to be lowered within the coming months.

**Para 68 (Annex 7) - ► Action: The Board may wish to consider draft “Procedures for appeals against adverse rulings by the CDM EB regarding requests for registration or issuance” with a view to making a recommendation to the CMP at its sixth session, as contained in annex 7 to these annotations.**

Upon brief review of Annex 7 the Project Developer Forum wishes we note several concerns related to the proposed procedures, in particular with regards to VIII. “Consideration and Judgement of the [Appellant Body]” and X. “Compensation and damages”. We highly recommend the EB consider a brief “Call for Input” so stakeholders may provide their expanded input on this important issue, prior to making a recommendation to CMP6.

#### **Delays of invoices for registration fees**

We have noted with concern that the delay between reception of submission confirmation (of documents for request for registration) and reception of the required invoice to settle the registration fee payment is inconsistent and seems to increase in general. Since the latter is a pre-condition for the respective project to be added to the queue of projects waiting scheduling for completeness check, this has caused a further de facto delay of project processing. In order to avoid this unnecessary and costly delay we would thus want to advance the following suggestions:

1. Attach a pdf version of the respective invoice for the purpose of registration fee payment to the email confirming the submission of documents for request for registration. (preferred option)  
or:
2. Make the invoice available for download from a restricted section (which respective focal points can access) of the UNFCCC at same time as submission confirmation is sent. (alternative option)

It seems to us that option 1 could be implemented swiftly, since information contained in the invoices does not go beyond information in any case disclosed in the respective, publicly available MoC.

#### **Annex 34, EB45 Report – Guidelines for Completing the Monitoring Report Form (CDM-MR)**

The PD Forum has come across some inconsistencies in the template of the monitoring report form. The sections D and E on the content page, page four of annex 35 of EB45, and sections D and E in the main body of the monitoring report (starting on page 5) are inconsistent. The annex to this letter highlights these inconsistencies (in yellow) and proposes wording for correcting these mistakes. Furthermore, the date as of which version 1 of this document is in effect is not clear (marked in blue in the annex).

We are pointing these issues out in order to avoid incompleteness messages due to any misunderstandings caused by these inconsistencies in the future.

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**Annex: Page 4 of Annex 34, EB45 Report**

**MONITORING REPORT FORM (CDM-MR)  
Version 01 - in effect as of: DD/MM/YYYY**

**CONTENTS**

- A. General description of the project activity
  - A.1. Brief description of the project activity
  - A.2. Project participants
  - A.3. Location of the project activity
  - A.4. Technical description of the project
  - A.5. Title, reference and version of the baseline and monitoring methodology applied to the project activity
  - A.6. Registration date of the project activity
  - A.7. Crediting period of the project activity and related information
  - A.8. Name of responsible person(s)/entity(ies)
- B. Implementation of the project activity
  - B.1. Implementation status of the project activity
  - B.2. Revision of the monitoring plan
  - B.3. Request for deviation applied to this monitoring period
  - B.4. Notification or request of approval of changes
- C. Description of the monitoring system
- D. Data and parameters **monitored**
  - D.1. Data and parameters **used to calculate baseline emissions determined at registration and not monitored during the monitoring period, including default values and factors**
  - D.2. Data and parameters **used to calculate project emissions monitored**
  - D.3. **Data and parameters used to calculate leakage emissions**
  - D.4. **Other relevant data and parameters**
- E. Emission reductions calculation
  - E.1. Baseline emissions calculation
  - E.2. Project emissions calculation
  - E.3. Leakage calculation
  - E.4. Emission reductions calculation **/ table**
  - E.5. Comparison of actual emission reductions with estimates in the **registered** CDM-PDD
  - E.6. Remarks on difference from estimated value