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Subject **Clarification regarding eligibility criteria of CER generated from CDM Programme of Activities post- 2012**

Peter Zapfel
Office of Policy Coordination
DG Climate Action
European Commission
Brussels

Project Developer Forum Ltd.
100 New Bridge Street
UK London EC4V 6JA

Europe: +44 1225 816877
Asia: +65 6578 9286
Americas: +1 321 775 4870
office@pd-forum.net
www.pd-forum.net

To peter.zapfel@ec.europa.eu
From gareth.phillips@pd-forum.net
Date 29 April 2011
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CHAIRPERSON:
Gareth Phillips
gareth.phillips@pd-forum.net

CO VICE CHAIRPERSONS:
Leo Perkowski
Leo.perkowski@pd-forum.net
Rachel Child
Rachel.child@pd-forum.net

Dear Mr Zapfel,

We are writing to you to express Project Developer Forum members' concerns (PD Forum) regarding the use restrictions outlined under Article 11a of the EU ETS Directive 2003-87-EC (EU ETS Directive) of CER/ERU for compliance purposes under the EU ETS in Phase 3 and their implications for CDM Programme of Activities (PoAs).

The PD Forum sees the implementation of PoAs as a crucial step in developing institutional and technical capacity to coordinate, monitor and implement sector-wide mitigation actions in developing countries. Hence, any confusion regarding the acceptability or use of CERs from PoAs in the EU ETS may delay further the implementation of PoAs and development of CDM Project Activities (CPAs) of which there are currently only eight registered and four under validation, all of them based on small scale methodologies¹.

With this letter we seek clarification regarding two issues in order to remove uncertainties that companies face when investing in CDM projects and in particular in PoAs. A prompt resolution will be of essence as the 31 December 2012 deadline is fast approaching, while uncertainties remain.

1. PoAs registered prior to 31 December 2012:

Will CERs from CPAs included after 2012 be EU ETS eligible?

The EU ETS rules for Phase 3 specify that CERs from CDM projects registered before the end of 2012 are generally valid compliance means within the EU ETS unless they are subject to qualitative restrictions (currently HFC-23 and N2O from adipic acid production).

¹ <http://cdm.unfccc.int/ProgrammeOfActivities/registered.html>

According to CDM procedures, the PoA is registered with the CDM EB, while the CPAs, which make up the PoA, are included at any later point in time and are not subject to a registration process.

Hence, our understanding is that any CPA added after 2012 to a PoA , which has been registered prior to 1 January 2013, will be eligible to produce EU ETS eligible CERs, assuming that no use restrictions apply to the project type.

While this view is widely shared by many market participants, clarity on this provision is needed in order to provide the necessary certainty to make it worthwhile investing into PoA given the closing time horizon for registration.

Will a CPA added to a pre-2013 registered PoA but not hosted by a least developed country (LDC), be EU ETS eligible?

As it is the PoA which is registered and not the CPA, we conclude that CERs generated from a CPA hosted by any Party would be eligible in the EU ETS. Please confirm.

2. PoA registered after 2012:

Will CERs from CPAs in LDCs be EU ETS eligible if the PoA also includes non-LDCs?

PoAs by their nature can encompass very large regions, even spreading across national borders.

Given the Phase 3 use restrictions outlining that only projects in LDCs if registered after 2012 can generate EU ETS eligible CERs the question arises whether the CITL will filter CER according to host country identifiers or also PoA reference numbers.

The current setup of the CER identifier number allows for the distinction according to host country and this should also hold true for CER stemming from PoAs. Hence, in the case of a cross-border PoA that extends over LDCs as well as non-LDCs it should be possible to distinguish CERs coming from CPAs in LDCs and those from CPAs in non-LDCs. We therefore see no need for PoAs registered after 2012 being excluded from EU ETS eligibility on the basis that they include CPAs in non-LDCs. The distinction should be made based on the host country identifier of each CER.

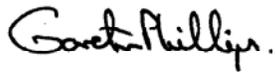
At its last meeting, EB 60, the Board clarified that if certain requirements are met additional Host Parties can be added to a PoA even after registration. Hence, the issue of cross-country PoAs can occur even after registration. The PD Forum therefore urges the EC to spell out clearly the eligibility requirements within the EU ETS for CERs generated from such schemes.

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Some of the aspects outlined above may require clarification from the UNFCCC Secretariat as to what is technically possible under the CDM Registry setup and current PoA specific registration and issuance rules. We recommend the EC consult closely with members of the CDM EB and the UNFCCC Secretariat. We are also available to discuss further this issue at your convenience.

Kind regards,



Gareth Phillips
Chair of the Project Developer Forum

Cc: 1. Damien Meadows, European Commission
2. Thomas Bernheim, European Commission and Member of the CDM EB
3. Martin Hession, Chair of the CDM EB