	CDM: FORM FOR SUBMISSION OF A “LETTER TO THE BOARD” (Version 01.2)
	<p style="text-align: center;">This form should be used only by project participants and other stakeholders for submitting a “Letter to the Board” in accordance with the latest version of the <i>Modalities and procedures for direct communication with stakeholders</i></p>
<i>Name of the stakeholder¹ submitting this form (individual/organization):</i>	Project Developer Forum
<i>Address and contact details of the individual submitting this form:</i>	Address: 100 New Bridge Street, London, EC4V 6JA Telephone number: +65 6578 9286 E-mail address: office@pd-forum.net
<i>Title/Subject (give a short title or specify the subject of your submission)</i>	Measures to enhance the CDM project cycle
<i>Please mention whether the submitter of the form is:</i>	<input type="checkbox"/> Project participant <input checked="" type="checkbox"/> Other stakeholder, please specify PD Forum
<i>Specify whether you want the letter to be treated as confidential²:</i>	<input type="checkbox"/> To be treated as confidential <input checked="" type="checkbox"/> To be publicly available (UNFCCC CDM web site)
<i>Please choose any of the type(s) below³ to describe the purpose of this submission.</i>	
<p><input checked="" type="checkbox"/> Type I:</p> <p style="margin-left: 20px;"> <input type="checkbox"/> Request for clarification <input checked="" type="checkbox"/> Revision of existing rules </p> <p style="margin-left: 40px;"> <input type="checkbox"/> Standards. Please specify reference <input checked="" type="checkbox"/> Procedures. Please specify reference Project Cycle Procedure <input type="checkbox"/> Guidance. Please specify reference <input type="checkbox"/> Forms. Please specify reference <input type="checkbox"/> Others. Please specify reference </p> <p><input type="checkbox"/> Type II: Request for Introduction of new rules</p> <p><input type="checkbox"/> Type III: Provision of information and suggestions on policy issues</p>	
<i>Please describe in detail the issue on which you request a response from the Board, including the exact reference source and version (if applicable).</i>	

¹ DNAs and DOEs shall use the respective DNA/DOE forms for communication with the Board.

² As per the applicable modalities and procedures, the Board may make its response publicly available.

³ Latest CDM regulatory documents and information are available at: <http://cdm.unfccc.int/Reference/index.html>.

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To cdm-info@unfccc.int

From gareth.phillips@pd-forum.net

Date 10th May 2013

Subject Measures to enhance the CDM project cycle

Dear Mr. Peer Stiansen,

Honorable Members of the CDM Executive Board,

The Project Developer Forum (PD Forum) welcomes the continuous effort of the EB and the Secretariat in improving clarity and transparency in the CDM project cycle, through guidelines and accessible IT tools for project management.

In line with this effort, the PD Forum would like to draw attention to the following areas, where we believe significant improvements are still possible and would be beneficial to the overall governance of the CDM.

1. ***Publish the name of the verifying DOE on the project webpage***

Currently, the name of the DOE undertaking the verification of a project is available only at <http://cdm.unfccc.int/Issuance/MonitoringReports/index.html>, where, however, only projects with a recently published monitoring report are listed. For projects that already entered verification some time ago, it is impossible therefore to easily identify the verifying DOE. Further issues arise also because the calendar function available at http://cdm.unfccc.int/Issuance/MonitoringReports/mr_for_date.html only allows identifying projects based on the MR publishing date, which is not available information on other webpages. Transparency and ease of access to information would be improved by publishing the DOE name in the webpage dedicated to the project in general (in the "Requests for issuance and related documentation" section) and in the MR webpage.^[1]

The information about the verifying DOE is important, as entities that are commercially involved in a project, but do not have respective rights in the MoCs, may not be informed adequately by PPs. In such a situation these entities are deprived from scrutinizing actions in relation with the verification.

PROPOSAL: amend the UNFCCC project and MR webpages to include explicitly the name of the verifying DOE.

2. ***Clarify the process to withdraw Monitoring Reports (MRs)***. The withdrawal of the MR may be requested by the DOE^[2]. The PCP does not require that the Secretariat or any other CDM body needs to obtain any "confirmation" from PPs in order to withdraw the MR. Nonetheless, there were cases^[3] where confirmation was requested from the PPs, following the termination of the verification contract. However, before any answer was provided by the PPs, the MR was withdrawn, resulting, therefore, in a redundant request.

PROPOSAL: Amend PCP paragraph 238 to clarify whether a confirmation by the PPs is required to withdraw a MR. It is suggested that such confirmation is NOT required, as it is under the discretion of

the PP(s) who contracted the DOE to terminate such a contract and request the withdrawal of the MR. Rather, in order to enhance transparency, it would be useful that a notification is sent to the applicable Focal Point(s) to inform about the discontinuation of the verification and the withdrawal of the MR.

3. **Review the completeness and review process to increase transparency and avoid penalization of unfairly judged projects:** Following Decision 3/CMP.6, paragraph 56, which “Requests the Executive Board to revise the procedures for registration to allow the effective date of registration [...] to be the date on which a complete request for registration has been submitted” the EB partially revised the applicable rules (EB 59, Annex 12 from 18 February 2011), but maintained the request for a “new submission” of projects for registration if they do not meet the requirements of the review and reporting check. This request for a “new submission” generates a loop where projects that had already been attested to have submitted a complete request for registration are required to resubmit and thus lose the original date of registration as defined according to Decision 3/CMP 6, paragraph 56. Furthermore, projects that receive a review after having been published for registration also lose the original date of registration if the review leads to a change in the project documentation, regardless of the fact that a complete submission had been attested before and how insignificant the changes are.

In addition to this incomplete implementation of Decision 3/CMP.6, paragraph 56, the current procedure to “kick out” projects out at different stages lacks transparency and consistent implementation. First there is no clear documentation of the number and kind of incompleteness messages received at the stage of the completeness check, nor at the level of the information and reporting check. This fact is in conflict with the current version of the PCP which requires that “the secretariat shall [...] communicate the underlying reasons [...] and make them publicly available on the UNFCCC CDM website” (paragraph 63 and 66).

This lack of transparency does not only prevent the development of “common understanding” which would allow for “minimizing rejection rates at the completeness check stage” as required by Decision 3/CMP.6, paragraph 57, it also makes it difficult to monitor and understand to what extent such rejections may be related to mistakes and failures in the evaluation of the UNFCCC secretariat or to failures and omissions of the DOEs, both of which generate situations which imply a severe and unfair impact on the project and its investor, especially as long as an appropriate procedure to raise and process appeals is not in place. Furthermore it is not possible to monitor and understand how Decision 3/CMP.6, paragraph 59 is being implemented, i.e. if it is ensured that “editorial errors which will not affect the assessment of compliance with validation [...] requirements do not lead to a determination that the request for registration [...] is incomplete”.

In these cases, project participants may suffer significant damage, both in terms of delay in the registration process and additional costs (i.e.: additional hours that need to be paid to the DOE to re-submit the files) for reasons which are beyond the very nature of the project. This problem is particularly severe for those projects submitted for registration before 31.12.2012, which, in case of resubmission in 2013, will lose their eligibility under the EU ETS. Although we recognize that substantial progress has been made by allowing PPs or coordinating/managing entities to contact the Secretariat through a dedicated e-mail or telephone call for obtaining clarifications on the incompleteness messages received, there is still no formal appeals process to prevent or avert misunderstandings and unfair judgments.

PROPOSAL:

- a) Given the fact that incompleteness messages or reviews of any kind may be related to misunderstandings or errors incurred by the UNFCCC Secretariat’s reviewer or to DOE mistakes and editorial shortcomings of the CDM documentation, we recommend that a formal iteration and consultation with the Project Developer and/or the DOE is established at each step to allow for justification and cross checking of the appropriateness of the incompleteness message or the review. Where incompleteness messages or reviews are related to mistakes or misunderstandings on the side of the reviewer or where they turn out to be “editorial errors which will not affect the assessment of compliance with validation”, the UNFCCC shall determine that the request for registration is complete. This process shall ensure a minimum right to be heard as prescribed by the principles of the rule of law as long as an appropriate appeals process is not yet in place.
- b) In addition to proposal a) the implementation of a sound and solid appeals process is urgently required to address situations which cannot be solved by a simple interaction between the UNFCCC Secretariat, the DOE and the Project Developer.

- c) A transparent disclosure of all incompleteness messages and non-compliance messages related to the information and reporting check shall be made available in a timely manner on the UNFCCC website to allow adequate monitoring of the project pipeline as well as the number and nature of the incompleteness and non-compliance messages. The *“Information note on the results of the completeness checks”* which has last been published for the period from 01 October 2011 - 31 March 2012 is not satisfactory due to format and significant delay of information.
- d) To comply with Decision 3/CMP 6 and especially to avoid any unfair impact, especially as long as an appeals process is not implemented, we urge the CDM EB to revise its rules to assure that projects which were attested to have submitted a complete request for registration at the level of the completeness checks are not required to resubmit in response to requests that arise from the information and reporting checks or later reviews and thus may effectively safeguard the registration date *“to be the date on which a complete request for registration has been submitted”*. This is especially important for cases where incompleteness messages or reviews are based on misunderstandings on the side of the UNFCCC secretariat or *“editorial errors which will not affect the assessment of compliance with validation”*.

4. ***Improve rules and procedures for the definition of the registration date in case a request for review is received and successfully closed out:*** According to the PCP, version 3.1, paragraph 98, it is defined that projects which were approved after issuance and appraisal of a review *“the secretariat shall register it as a CDM project activity or PoA on the first working day subsequent to the finalization of the decision. The effective date of registration in such cases shall be the day on which the latest revisions to the validation report and/or supporting documentation were submitted.”*

As discussed above, the requirement that the registration date is changed in case of a revision of the validation report and/or supporting documentation is seen as being in conflict to Decision 3/CMP.6, paragraph 56 and, especially in the case that revisions relate to *“editorial errors which will not affect the assessment of compliance with validation”*, also in conflict to Decision 3/CMP.6, paragraph 59.

In contradiction to these principles we have observed examples where a project (registered project n. 8253) had its registration date defined by the date of submission of the reply to the request for review (30/12/2012), despite the fact that not even minimal changes in any of the project documents were made (last version of the documents was submitted instead on 22/11/2012).

Considering the principle of transparency and also the extreme relevance that the registration date has with regard to the eligibility of CERs from CDM projects submitted before 31/12/2012 within the EU ETS, it is crucial for project participants to have certainty and more clarity about the expected registration date and that the CMP guidelines, especially Decision 3/CMP.6, paragraph 59 are implemented in appropriate manner.

PROPOSAL: Amend and improve the current rules and procedures regarding the definition of the registration date based on the submission of complete project documentation as attested by the completeness check, especially in the case of a request for review where the documentation is not changed or where *“editorial errors which will not affect the assessment of compliance with validation”* have been corrected.

5. ***Options in case of unsatisfactory relationship between DOE and PPs:*** the CDM rules imply that the same DOE that submitted the request for registration of a project, also submits the response to the Request for Review (RfR), in case this occurs. However, in case of dispute between DOE and PPs, or in case of DOE lacking the necessary expertise to finalize the response to the RfR within the short timeframe allowed, the PPs are locked into a relationship with a single DOE that cannot be changed. Experience shows that there are cases where this lock-in causes the projects to be stuck for long time, with severe damage for the PPs and their projects. The current procedure which allows PPs to contact the Secretariat through a dedicated e-mail or telephone call to obtain clarifications is deemed not efficient and independent enough to resolve issues quickly and fairly, and the processes to request clarification as well may require several months to conclude, if EB decisions are involved. Alternatively, the Secretariat could provide qualified guidance through an ombudsman (as suggested in the Research on Governance under the CDM Policy Dialogue^[4]) or to allow the PPs to select a different DOE to submit the response to the RfR.

PROPOSAL: amend PCP, paragraph 81 to allow PPs to contract a DOE different from the one used for validation to submit the response to the RfR. In addition, plan for the establishment of an ombudsman to

handle appeals of PPs in conflict with DOEs incapable of providing timely and qualified answers to the RfR. A similar treatment is suggested for paragraph 208, in relation to the RfR during issuance process.

6. **Right to be heard in the case of negative decisions:** The current CDM rules do not leave room for interaction with the PPs after the rejection of a project is agreed by the Secretariat and the RIT, following a Request for Review (RfR). There are, however, indications that negative decisions can be taken based on factual misunderstandings. Examples include:

- the negative outcome of a RfR based on negative assessments by Secretariat and RIT but for different and even contradicting reasons;
- rejections based on perceived gaps of information that was in fact in the documentation but not considered by the assessor;

In such cases it is unfair that the decision is automatic.

Rather, transparency of the process and clarity in the assessment would be enhanced by:

- firstly, informing the PPs of the assessments of the Secretariat and the RIT in full (currently the notification to the PPs only informs about whether the suggestions are in agreement or not, but no information is provided on their content); the assessments and the full EB decision should also be made publicly available (edited for confidential information, if needed) on the date of the final decision – a decision cannot be considered valid and final if the wording of the decision is not final;
- secondly, where the assessments of the Secretariat and RIT agree but for different – or even contradicting – reasons, the assessments should be considered to not agree and follow PCP para 96 rather than para 93.
- thirdly, it would be beneficial, in case of suggestions to reject, to allow for one additional interaction round with the PPs/DOE, so that possible misunderstandings by the Secretariat/RIT are sorted out, as recommended by the CDM Policy Dialogue research on governance (p37, point e i)).

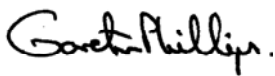
PROPOSAL: Amend PCP, paragraph 89 (and in parallel, paragraph 216, for the issuance case), in order to include: (a) sending the full assessments to the PPs, (b) in case of a negative assessment, giving the opportunity to PPs to interact with the Secretariat for further clarifications that may be needed in light of the Secretariat/RIT assessment, (c) in case of a negative assessment, giving PPs the faculty to add a note commenting on the suggestions of the Secretariat/RIT, to be taken into account by EB at the meeting when the review is finally ruled upon, and (d) publishing the (edited) assessments and the full EB decision on the date when the ruling becomes final and (e) amending the PCP para 96 to include cases where the conclusions are the same, but assessment are significantly different/contradicting.

7. **Transparency in the POA registration process:** a UNFCCC webpage illustrates the status of POAs in their registration process (<http://cdm.unfccc.int/ProgrammeOfActivities/index.html>). However, unlike for stand-alone CDM project activities, not all steps in the registration process are visible. In particular, all steps related to the “pending publication” phase (i.e. awaiting fee, awaiting scheduling, undergoing completeness check, under information and reporting check) are not accessible, and this leads to uncertainty and lack of clarity on the timeline for POA registration.

PROPOSAL: amend the UNFCCC webpage to make all steps of the POA registration process visible.

We would of course be available to discuss any of these points further with you,

Kind regards,



Gareth Phillips

Chair, Project Developer Forum

SOURCES

- [1] The PCP, version 3.1, in its paragraph 180, requires that the “UNFCCC CDM web page where the monitoring report is made available shall contain the following information:
 (a) The name and reference number of the CDM project activity or PoA;
 (b) A link to the monitoring report;
 (c) **The name of the DOE contracted** by the project participants or the coordinating/managing entity for the verification; (...)”
- [2] The PCP, version 3.1, paragraph 238, says that “if the DOE requests the withdrawal prior to the publication of the request for issuance in accordance with paragraph 195 above, the request for issuance for the specified monitoring period will not be marked as “withdrawn”. If the DOE re-submits the request for issuance for the same monitoring period after such withdrawal, the request for issuance shall be treated as a new submission.”
- [3] E.g. Mail from CDM Registration and Issuance Team on 19 November 2012 to the Project Participants of project 3901 “Gansu Longwangtai Hydropower Project”.
- [4] Recommendation 3 in the executive summary of the Governance Report, and the recommendations in Chapter 6 “Review of the functioning of the secretariat”. See www.cdmpolicydialogue.org/research/1030_governance.pdf.

Please provide any specific suggestions or further information which would address the issue raised in the previous section, including the exact reference source and version (if applicable).

>>Suggestions are included in the text above, with reference to each specific issue.

If necessary, list attached files containing relevant information (if any)

- [replace this bracket with text, the field will expand automatically with size of text]

Section below to be filled in by UNFCCC secretariat

Date when the form was received at UNFCCC secretariat

Reference number

History of document

Version	Date	Nature of revision
01.2	08 February 2012	Editorial revision.
01.1	09 August 2011	Editorial revision.
01	04 August 2011	Initial publication date.
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