CDM POLICY DIALOGUE RESEARCH PROGRAMME RESEARCH AREA: GOVERNANCE

FINAL EDITED REPORT,
OCTOBER 1, 2012

CDM Policy Dialogue

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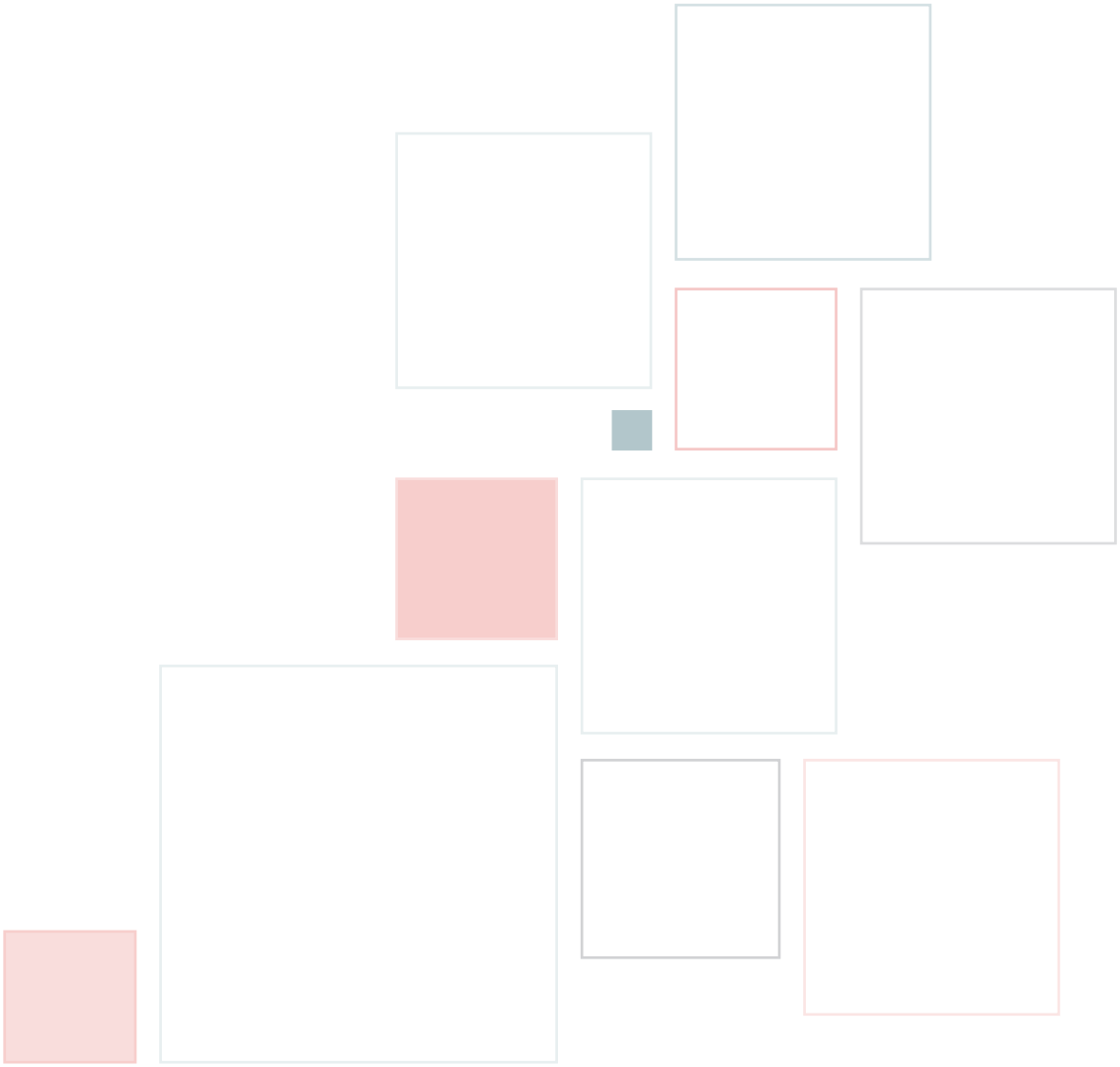
Executive summary



This report assesses the governance of the clean development mechanism (CDM) and forms part of the research commissioned by the High-Level Panel on the CDM Policy Dialogue. Two other reports cover the impact of the CDM and the future context of the CDM.

The CDM Policy Dialogue was established by the CDM Executive Board (EB) in late 2011 with the objective of providing recommendations on how best to position the CDM to respond to future challenges and opportunities so as to ensure the effectiveness of the mechanism in contributing to future global climate action. The CDM Policy Dialogue is implemented by a High-Level Panel, which is composed of distinguished individuals who possess a broad range of experience and expertise in fields of relevance to the operation and aims of the CDM.

The High-Level Panel formulated a series of leading questions for the research on governance with respect to whether the CDM should: (i) streamline the project cycle; (ii) change the methods for determining additionality; (iii) modify the role of the secretariat; (iv) improve the validation and verification model; (v) professionalise the EB; (vi) implement an appeals mechanism; and (vii) strengthen the current stakeholder consultation system.

This report addresses each of the above questions in individual chapters and provides a detailed set of recommendations. In preparing such recommendations the feedback from stakeholders received in response to the specific calls for public input of the CDM Policy Dialogue was taken into consideration. In addition, the research called on scientific literature and literature composed by stakeholders prepared outside the framework of the CDM Policy Dialogue. The assessment highlights the remarkable improvements made to the functioning of the CDM in the past few years and the strong ongoing momentum for further improvements, which is visible in the secretariat's management plan for 2012.

The principles upon which the good governance of the CDM should be based are well understood: accountability, responsiveness, inclusiveness, transparency and efficiency of decision-making, participation in decision-making by all relevant stakeholders and due process. These principles cannot be considered in isolation, as they are mutually reinforcing (e.g. a system which is more transparent or more responsive to the demands of stakeholders is bound to be more accountable). They are nevertheless a good starting point for a structured discussion on the governance system of the CDM and its potential for improvement.

In general, the assessment of stakeholders and the research show that, in essence, it is the overall accountability of the CDM that needs to be strengthened and integrated within the CDM regulatory body and across the entities engaged with the CDM. It is ultimately the question of the legitimacy of the mechanism that calls for enhanced transparency of decision-making, inclusiveness of stakeholder groups and accountability within the regulatory body. This includes a more inclusive debate on standards amongst stakeholder groups worldwide.

With regard to integrity, the research suggests applying much more rigorous reasoning in the determination of additionality and, at the same time, establishing more standardised approaches that are specific to technologies, in contrast to the current, often technology-neutral, approaches. While improved rules on additionality would mean being able to determine the additionality of projects with a much higher level of certainty and would allow for a more predictable approval process, the access of projects to the CDM, however, would become more restricted overall.

A synthesis of the prepared recommendations highlights several key cross-cutting areas for improvement in the governance of the CDM, which are discussed below. The recommendations are categorised under accountability, efficiency and transparency. Note once again that some of the recommendations bridge more than one area (e.g. allowing for better communication of requirements is not only an imperative with regard to transparency but is also bound to improve the efficiency of the CDM).

Accountability

Enhanced accountability and decision-making capacity. The research identified the clear lack of an overall accountability system within the structures of the CDM regulatory body, including the lack of a clear definition of the roles of the different bodies and of their mutual accountability. Several recommendations stem from this finding: one suggestion is to improve accountability by introducing a mechanism for appeals, instituting a grievance process and designating an ombudsman. Another recommendation is to establish clear and explicit decision-making roles in conjunction with the above-mentioned recourse mechanisms. This would include vesting the secretariat with the decision-making capacity needed to effectively manage the daily operations of the CDM. This would, in turn, improve not only the efficiency of the CDM processes (validation and verification) but also the overall legitimacy of the CDM.

RECOMMENDATION 1: Institute a mutual accountability framework to guide relations between the EB and the secretariat, supported by a number of performance indicators, and review the framework on a regular basis.

RECOMMENDATION 2: Formally vest the secretariat with the decision-making powers to enable it effectively manage the daily operation of the CDM, freeing up the EB to assume a more supervisory and policymaking role.

RECOMMENDATION 3: Provide for transparent decision-making by the secretariat and grant project proponents the right to be heard within a certain period during which they can object to a ruling and the option to address complaints to an ombudsman.

RECOMMENDATION 4: Institute an appeals body with the power to confirm or remand decisions of the EB and focus on the requisite improvement of requirements and the establishment of due process within the CDM project cycle.

RECOMMENDATION 5: Institute a parallel grievance mechanism for consideration of the grievances of affected local stakeholders and non-governmental organisations (NGOs) in relation to the potential impacts of projected and ongoing CDM projects.

Targeted collaboration with designated national authorities (DNAs). Broader collaboration on a legal level would allow for the establishment of an integrated mechanism to support and coordinate local stakeholder consultation processes and may form the basis for enforcing possible sustainable development requirements that are specific to CDM projects.

RECOMMENDATION 6: Assist DNAs in coordinating more effective local stakeholder consultations and improve the accountability of project proponents to local communities throughout CDM project design and implementation.

Transparency

Increased publicity. The increased exposure of decisions and the development of standards to the public would complement the above-mentioned measures and strengthen accountability within the CDM. A public discourse could not only be geared towards disseminating the benefits of the CDM but also be open to a critical review of the decision-making practice and the standards developed or under development. Such a discourse, in an arena of qualified groups from science, industry and NGOs, will ensure the acceptance and appropriateness of the standards developed and may serve the EB as an external point of reference in assessing the quality of standard-setting. Against the background of the continuing criticism of the CDM, the mechanism needs to regain legitimacy through public recognition in a more inclusive discourse.

RECOMMENDATION 7: Continue to increase the involvement of qualified stakeholders in the review and development of regulations and standards by opening up more opportunities for them to review and comment on proposals, such as in response to calls for comment or at targeted workshops.

Communication of requirements. The EB needs to ensure that the designated operational entities (DOEs) as well as the project participants (PPs) are unambiguously clear about the requirements imposed by the regulations. The research recommends a series of measures, including transparent decision-making, the public availability of the rationale for decisions, improving the language of the rules in order to ensure their objectivity, the training of DOEs and PPs alike and an increased level of regulatory support and clarification in case-specific matter. This will promote the quality of the CDM from the outset, greatly reduce frictions during the assessment of project applications and consequently reduce the time and resources required to achieve the registration of a project.

RECOMMENDATION 8: Increase the publicity of standards and regulations by clearly marking new and amended ones, attach to each decision the respective rationale prior to publication and increase the support provided to those stakeholders needing content to be clarified through increased training and other measures.

Efficiency

Automation of the CDM operations. The introduction of automated workflows, implemented in an IT system, has the potential to considerably reduce the incidence of errors, promote a swift process and limit the scope for duplicate data. This would greatly improve not only the performance of the validation and registration procedures, but also the operations within the secretariat itself.

RECOMMENDATION 9: Award high priority in the work programme of the regulatory bodies to the digitisation and automation of workflows and conduct a work programme for continued improvement in this area.

Standardisation efforts and stricter reasoning in the determination of additionality. The continued

standardisation of frequently used technology and country-specific data contributes to achieving increased objectivity in the project approval process. This, in turn, helps to reduce frictions in the validation and verification process and the project cycle procedures. The determination of additionality in particular benefits from more objectivity through the availability of pre-approved values (e.g. profitability benchmarks). Likewise the continued extension of the list of positive technologies that are automatically accepted by the CDM further reduces the time and resources required in the approval process. In the face of the ongoing challenges of determining additionality and the new issues posed by the adoption of standardised methodologies, stricter reasoning needs to be applied in the determination of additionality. The EB must establish rules for: (i) determining how the CDM, through the 'intervention', can cause project owners to alter from their baseline behaviour; (ii) establishing the rationale for the project owners' behaviour; and (iii) defining what constitutes a sufficient level of intervention to ensure that the intervention has produced the required change.

RECOMMENDATION 10: Consider introducing a standard for additionality that clearly refers to the intervention of the CDM as the defining factor in project additionality.

RECOMMENDATION 11: Award high priority in the work programme of the regulatory bodies to the introduction of pre-approved default data and standardised approaches to the determination of baselines and additionality.

An integrated and project-specific approach to standard-setting. In order to promote the credibility of the offsets, additionality has to be recognised as the core principle of the mechanism. The current technology-neutral approach to determining additionality does not always provide enough certainty. A more accurate system would employ additionality standards specific to each project type. To this end, a distinct, project-specific standard could be established that integrates baseline methodology, additionality determination, monitoring methodology and specifications with respect to specific validation requirements and the stakeholder consultation process. In this context, today's problematic project types like large hydro dams may be treated more specifically to produce a much more certain statement of additionality than the current approach does. While such a standard would stand separately from the current rules, it would combine the available methodological elements. This principle already exists to a certain extent under the current rules for programmatic CDM (programmes of activities) (e.g. by standardising additionality determination through eligibility criteria). Not only would context-specific standards help to improve the integrity of the offsets, but their more-specific nature would allow prevalent deficiencies in the validation or stakeholder consultation to be addressed in a targeted way and improve the overall performance of the process. This would also open up the scope for addressing other aspects, like sustainable development, in a targeted manner.

RECOMMENDATION 12: Consider introducing an integrated approach specific to a technology or project type for determining additionality and estimating baselines, in order to increase confidence and certainty in the determination of additionality. Consider prioritising these approaches for more controversial project types.

Targeted collaboration with DNAs. The active role of the host countries with respect to the CDM is already a factor in the success of projects today. This includes taking the initiative to collect country-specific standardised data, identifying and training local experts, and endorsing baseline technology studies and default values that represent the appropriate national circumstances.

RECOMMENDATION 13: Further engage the DNAs in the development of regulations and expand not only the capacity-building provided to them but also their role in providing capacity-building to groups engaged with the CDM.

In conclusion

The above set of recommendations allows for a number of different configurations of the institutional set-up of the CDM that can equally combine the perceived benefits. This research does not imply a preference for any such design, but it is pertinent to outline them, particularly in relation to the role of the regulator, the role of the secretariat and the actual purpose of the mechanism.

- **Two alternative future roles of the regulator.** Taking together the different key areas for improvement, the research shows two prototype roles of the regulator that could combine the perceived benefits in the best way:

Firstly, the secretariat could further strengthen its role in decision-making. While this would be expected to lead to a swift and responsive administration of the operations of the CDM, it would require decisions to be made explicit and decision-making to be embedded into an improved accountability system.

Secondly, the secretariat could focus on improved training, forming part of an improved accreditation framework, through which the secretariat could ensure that the DOEs were aware of the expected requirements. The secretariat

would not engage in project assessment to the extent that it does currently, rather the DOEs would be vested with broader room for making decisions. The secretariat would monitor the performance of the DOEs within a strengthened accreditation framework.

- **Two alternative future roles of certified emission reductions (CERs).** There needs to be a very clear and conscious decision made on the future purpose that CERs issued under the CDM should have. This purpose has important implications for the way in which additionality and baselines are determined.

If the CDM is to be an offset mechanism, additionality is the condition sine qua non of the mechanism: a CER transacted (e.g. into the European Union emission trading scheme) must offset a true tonne of emitted CO_2 in order to ensure overall integrity. The requirements for the determination of additionality need to be respectively strict.

If the CDM is to be a reward programme for, inter alia, low-carbon investment, additionality is not necessarily the core of the mechanism, but rather the appropriate metrics according to which subsidies are attributed to mitigation activities. Some domestic offset programmes already utilise adopted CDM rules for their purposes. The requirements for the determination of additionality may be less strict in such a context, as the ultimate goal is to comply with a target and the offset projects are instrumental in reaching it. This leaves room for multilateral or bilateral agreements on targets and standards that may go beyond climate change.

Acknowledgements

The research on the different topics covered in this report involved exchanges with numerous key experts who provided substantial inputs in addition to the input received in response to the research programme's call for inputs. First and foremost, the secretariat was key to providing a factual basis and insights into the current momentum for reforms within the UNFCCC. Without its committed collaboration the comprehensiveness of this report would not have been possible.

Terms and abbreviations

ACM	Approved Consolidated Methodology (large scale)
AE	Applicant entity
AIE	Accredited independent entity
AMS	Approved Methodology (small scale)
AP	CDM Accreditation Panel
CCS	Carbon capture and storage
CDM	Clean development mechanism
CERs	Certified emission reductions
CMP	Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol
CP	Common practice
CPA	Component project activity
CPA-DD	Component project activity design document
DNA	Designated national authority
DOE	Designated operational entity
E+/E-	CDM rules on the treatment of national and/or sectoral policies and regulations that give comparative advantages to either more emission-intensive (E+) or less emission-intensive (E-) technologies or fuels, aiming at preventing the CDM from setting negative incentives for national policymaking
EB	CDM Executive Board
EU ETS	European Union emissions trading scheme
HFC	Hydrofluorocarbon
ICSC	International Civil Service Commission
IR	Information and reporting
IRC	Information and reporting check
IRR	Internal rate of return
JI	Joint implementation
JISC	Joint Implementation Supervisory Committee
LDC	Least developed country
LSC	Large scale, in the context of project size
MAP	Management Plan of the CDM
MoC	Modalities of communication
N2O	Nitrous oxide
NMM	New market mechanism
PCP	CDM project cycle procedure
PDD	Project design document
PFC	Perfluorocarbon
PLF	Plant load factor
PoA	Programme of activities
PoA-DD	Programme of activities design document
QA/QC	Quality assurance/quality control
REDD+	UN mechanism for reducing emissions from deforestation and forest degradation (REDD) in developing countries. REDD+ goes beyond deforestation and forest degradation and includes the role of conservation, sustainable management of forests and enhancement of forest carbon stocks
RIT	Registration and Issuance Team
SBL	Standardised baseline
SSC	Small scale, in the context of project size
TT	Technology transfer
VVM	CDM validation and verification manual
VVS	CDM validation and verification standard

The research on the governance of the CDM under the CDM Policy Dialogue

This report assesses the governance of the clean development mechanism (CDM) and forms part of the research commissioned by the High-Level Panel on the CDM Policy Dialogue. The CDM Policy Dialogue was established by the CDM Executive Board (EB) in late 2011 with the objective of providing recommendations on how best to position the CDM to respond to future challenges and opportunities so as to ensure the effectiveness of the mechanism in contributing to future global climate action. The CDM Policy Dialogue is implemented by a High-Level Panel, which is composed of distinguished individuals who possess a broad range of experience and expertise in fields of relevance to the operation and aims of the CDM.

The High-Level Panel formulated a series of leading questions for the research on the governance of the CDM with respect to: (i) the functioning of the project cycle procedures; (ii) the appropriateness of the determination of additionality; (iii) the validation and verification services provided by private auditing firms; (iv) the effectiveness of the secretariat; (v) the role of the CDM EB; (vi) the implementation of an appeals mechanism; and (vii) current stakeholder consultation (see chapter 11).

This report is the result of the joint collaboration of a number of researchers, who all contributed a chapter in relation to the leading questions. Secretariat staff gave substantial support by providing factual outlines and internal information sources. The following list itemises the contributions of the individual researchers.

- **Perumal Arumugam**, Registration and Issuance Team and Methodologies Panel, India *Chapter* Current state of additionality determination – Current state of additionality determination
- **Michael Gillenwater**, Greenhouse Gas Management Institute, USA *Chapter* A fundamental analysis of the concept of additionality – A fundamental analysis of the concept of additionality
- **Crispian Olver**, 8linkd, South Africa Njogu Morgan, 8linkd, South Africa *Section* The role and functions of the secretariat – The role and functions of the secretariat *Chapter* Review of the functioning of the secretariat – Review of the functioning of the secretariat
- **Margaret Lo**, The Climate Group, Hong Kong Vanessa Cassano, The Carbon Disclosure Project, UK *Chapter* Current criticism of the constitution and conduct – Current criticism of the constitution and conduct *of the EB*
- **Laurence Boisson de Chazournes**, University of Geneva, Switzerland Mara Tignino, University of Geneva, Switzerland *Chapter* CDM appeals process – CDM appeals process
- **Ernesta Swanepoel**, independent legal expert, South Africa Andrew Gilder, Imbewu legal consultants, South Africa *Chapter* Concerns voiced about current stakeholder participation – Concerns voiced about current stakeholder participation

The final report was prepared by **Mischa Classen** (First Climate), including chapter 4, "Proposed reforms to the project cycle", and chapter 10, "Current criticism of the performance of DOEs and proposed options", as well as the detailed final recommendations to the High-Level Panel. Jutta Rothe (First Climate) contributed important parts, specifically to chapter 10.

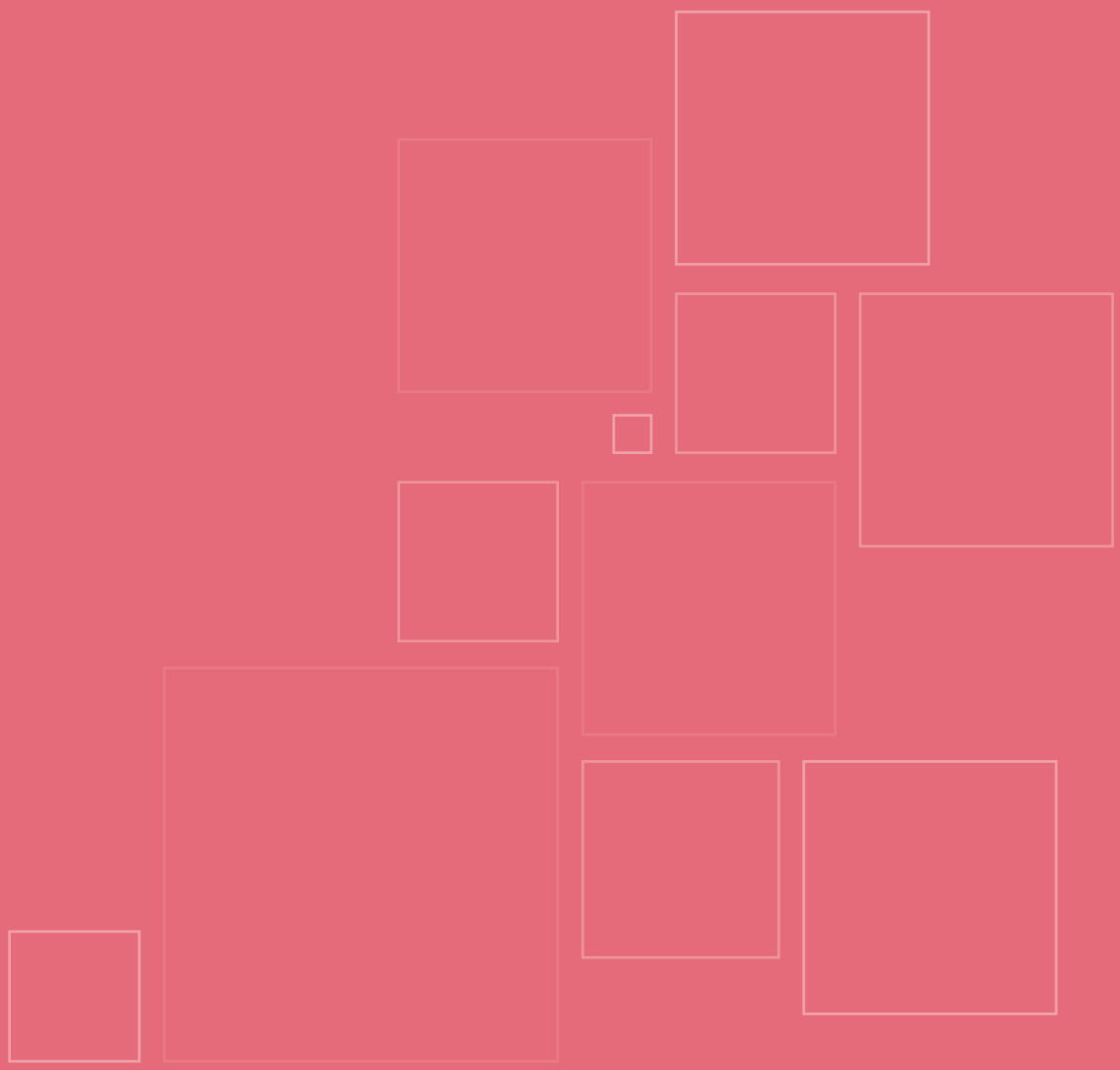
Structure of the report

Part I – Inherent quality: project cycle rules provides for an overview of the relevant rules and assesses the way in which additionality is determined within the project cycle procedures. It explores ways of improving the determination of additionality and the efficiency of the project cycle operations.

Part II – Checks and balance: roles and accountability gives an overview of the roles and functions of the entities engaged in the CDM. It critically assesses how the functioning of the bodies can be improved and how accountability can be improved.

Part III – Final recommendations follows on from the findings and recommendations detailed in the first two parts and provides a response to the leading questions. It contains a number of detailed recommendations.

I – INHERENT QUALITY: PROJECT CYCLE RULES



1 The project cycle

This chapter briefly outlines the key steps in the CDM project cycle and the actors involved. The text (and the numbering therein) refers to the graphs in the respective section and covers relevant rules and procedures according to the new regulatory framework that came into effect on May 1, 2012.

The new regulatory framework consists of the project standard (PS), the validation and verification standard (VVS) and the project cycle procedure (PCP) documents, adopted in December 2011 by the EB at its sixty-fifth meeting. They consolidate guidance provided in the CDM validation and verification manual (VVM) and various decisions of the EB. After a transitional period in which the old versions and the consolidated rules will coexist, the so-called VVM and VVS track will become the exclusive rule by October 1, 2012.

The different steps along the project cycle that are undertaken by the different entities are displayed in Figure 1 (pre-registration and registration), Figure 4 (post-registration and pre-issuance) and Figure 5 (pre-issuance and issuance).

1.1 Pre-registration

1.1.1 Project design

The project participant(s) (PP(s)) of a proposed CDM project activity completes a project design document (PDD) [1] regarding a CDM project activity or a programme design document (PoA-DD) regarding a CDM programme of activities (PoA). The PP submits the PDD, along with the supporting documentation, to the designated operational entity (DOE), a private third-party certifier accredited by the EB and contracted by the PP to perform validation of the project activity.

The PDD establishes the following basic elements required to assess compliance with the requirements of the CDM standards and guidelines:

Baseline scenario. In accordance with the methodology used and the provisions made in the PDD, the scenario that would occur if the project were not initiated, or the scenario that is considered a reference, depending on the case, is determined.

Additionality. The PDD further details why the project would not be implemented without the incentive provided by the CDM. This is typically done by means of financial analysis (internal rate of return (IRR) or net present value (NPV)), providing evidence that the prospective revenue does not meet expectations at the time of making the decision to go ahead. Alternatively, evidence can be provided showing that the project faces barriers that are alleviated by means of the CDM.

Environmental impact. An assessment of impacts on the environment is provided, in accordance with applicable national laws and regulations.

Local stakeholder consultation. Due account is provided of how the local stakeholders affected have been consulted, what their concerns were and how they have been taken into consideration. This step may also occur partly during the validation phase; it is, however, a requisite for the closure of validations.

Starting date. The PDD establishes the starting date of the operation, if available. This is the date on which construction starts or key parts are contracted, whichever is earlier.

Notification of prior CDM consideration. The PDD establishes that the project did notify the UNFCCC of the intention to request registration for the project, and that this happened less than six months after the starting date of the project ('prior CDM consideration'[1]).

In preparing the PDD, PPs may use a baseline and monitoring methodology previously approved by the EB. Alternatively, the PP may propose a new baseline and/or monitoring methodology, which shall be submitted by the DOE to the EB for review and approval, prior to validation and the submission of the project for registration.

1 See notifications posted at http://cdm.unfccc.int/Projects/PriorCDM/notifications/index_htm.

1.1.2 Approval by the Parties

PPs secure a letter of approval (LoA) from the designated national authority (DNA) of the country or Party not included in Annex I to the Convention (non-Annex I Party) hosting the project activity or PoA and a letter of authorisation [2] from the any Party(ies) included in Annex I to the Convention (Annex I Party) involved. The registration of a project activity can take place without an Annex I Party being involved at the stage of registration. The LoA must state the following:

- That the country has ratified the Kyoto Protocol.
- That participation is voluntary.
- And that the proposed CDM project activity or PoA contributes to sustainable development (SD).

1.1.3 Validation

The DOE conducts an independent evaluation [3] of the project activity on the basis of the PDD or the PoA-DD against the requirements of the CDM set out in the CDM modalities and procedures (CDM M&P) and the VVS.

The PP selects and enters into a validation contract [4] with a DOE accredited by the EB for the specific sector under which the project activity or PoA may be classified.

The DOE makes the PDD publicly available on the UNFCCC CDM website for global stakeholder consultation [5] and seeks comments for a period of 30 days.

The PP must submit the PDD or PoA-DD and any supporting documentation to the DOE. The DOE determines that a proposed CDM project activity or PoA meets all relevant requirements set out in the PS by following the relevant provisions of the VVS and other CDM requirements. If the DOE determines that the project activity or PoA meets all requirements, it will submit, via the UNFCCC CDM website, a request for the registration [6] of the proposed CDM project activity or PoA. Otherwise, the DOE may issue a negative opinion on validation, provide the PPs with a report and inform the Board of the outcome of its validation.

1.2 Registration: completeness check and review

The DOE, after determining that a proposed CDM project activity or PoA meets all relevant requirements as set out in the PS by following the relevant provisions of the VVS and other CDM requirements, submits to the EB, via the UNFCCC secretariat, a request for the registration of the proposed CDM project, using the prescribed registration request form, and all the required documents listed in the completeness checklist for requests for registration.

The process of registration involves the following detailed steps:

- A waiting phase in which projects are lined up while awaiting the payment of the registration fee and subsequently being scheduled for checking. This occurs for a pre-set number of cases per week.[2]
- A completeness check conducted by the secretariat in accordance with the published checklists [7].
- Vetting by the secretariat and the EB of the request for registration on the basis of the DOE validation report (information and reporting check) [8].
- Once the submission has been found to be complete, the publishing of the project as requesting registration.
- Upon the request of a Party or three members of the EB, a review of the request for registration [9]; otherwise the project activity is registered.

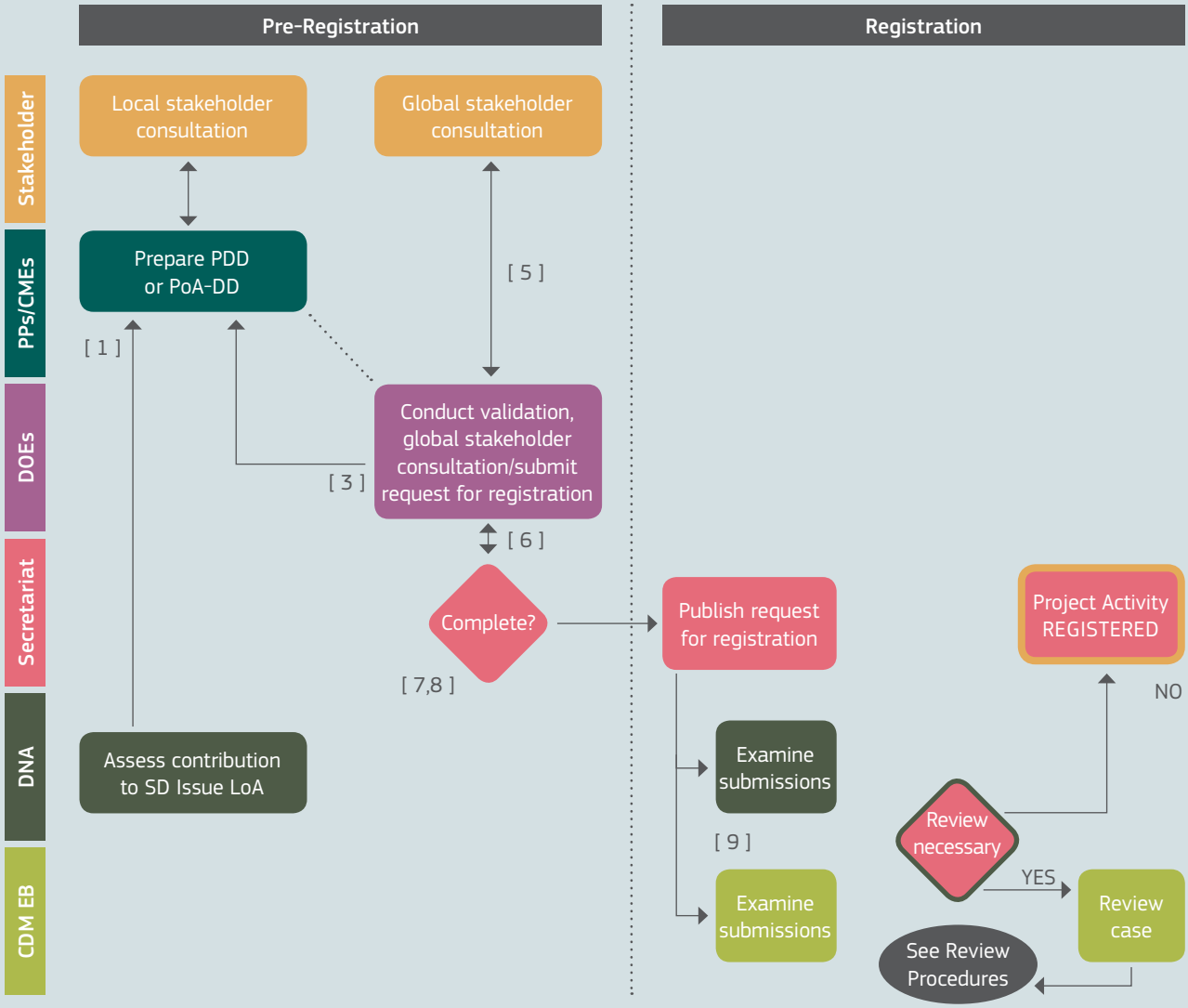
1.2.1 Completeness and information and reporting check

At EB 54 in February 2010 a two-tiered assessment of the submissions was introduced.[3] This procedure replaced the earlier rule, according to which each submission had to pass through three independent checks by the secretariat, the Registration and Issuance Team (RIT) and the EB. The

2 See https://cdm.unfccc.int/Projects/completeness_check.html.

3 For the procedure for requesting a review, see http://cdm.unfccc.int/Reference/Procedures/reg_proc07.pdf.

Figure 1. Project cycle steps during pre-registration and registration and the involvement of different entities



first tier of the new assessment is the completeness check, which is for checking the conformity of the submissions; the second is the information and reporting check (IRC), which assesses consistency and compliance with CDM requirements. Each of the checks follows a respective checklist[4] that is publicly available. Submissions that fail either test are returned and will have to be resubmitted, which includes passing again through the waiting queues of projects requesting registration. Figure 2 displays the business process diagram of the project cycle, from after the project case is submitted for registration by the DOE up until the request for registration is published. The two-tiered approach aims at filtering bad projects out before they are subjected to a thorough assessment, thereby preventing spending time on incomplete submissions. The need to queue again for a resubmission and the related delays create a strong incentive to get submissions right first time round.

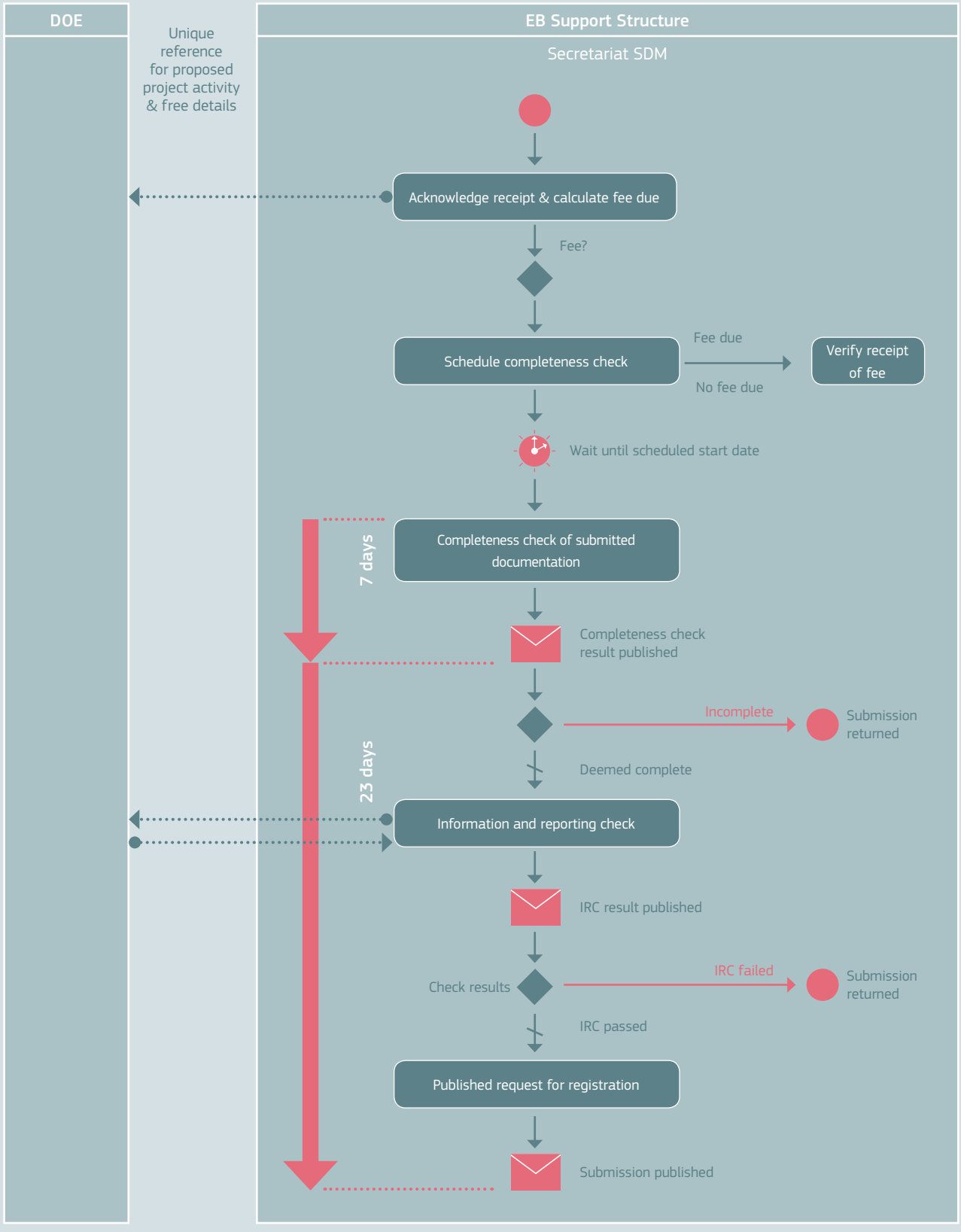
1.2.2 Request for review

After the submission has successfully passed the IRC, the project is listed for registration for 28 days. The secretariat prepares a summary note on the submission and makes it available to the Board within 14 days.

In the summary note the secretariat includes a recommendation on whether the project should be automatically registered or else a review should be requested. In the minimum 14 days left until the end of the listing period

4 For the completeness checklist, see http://cdm.unfccc.int/Reference/Procedures/reg_check_01_v02.pdf.
For the information and reporting checklist, see http://cdm.unfccc.int/Reference/Procedures/reg_check02_v02.pdf.

Figure 2. Process diagram for the request for registration of CDM projects, including checks conducted by the secretariat



Source: UNFCCC.

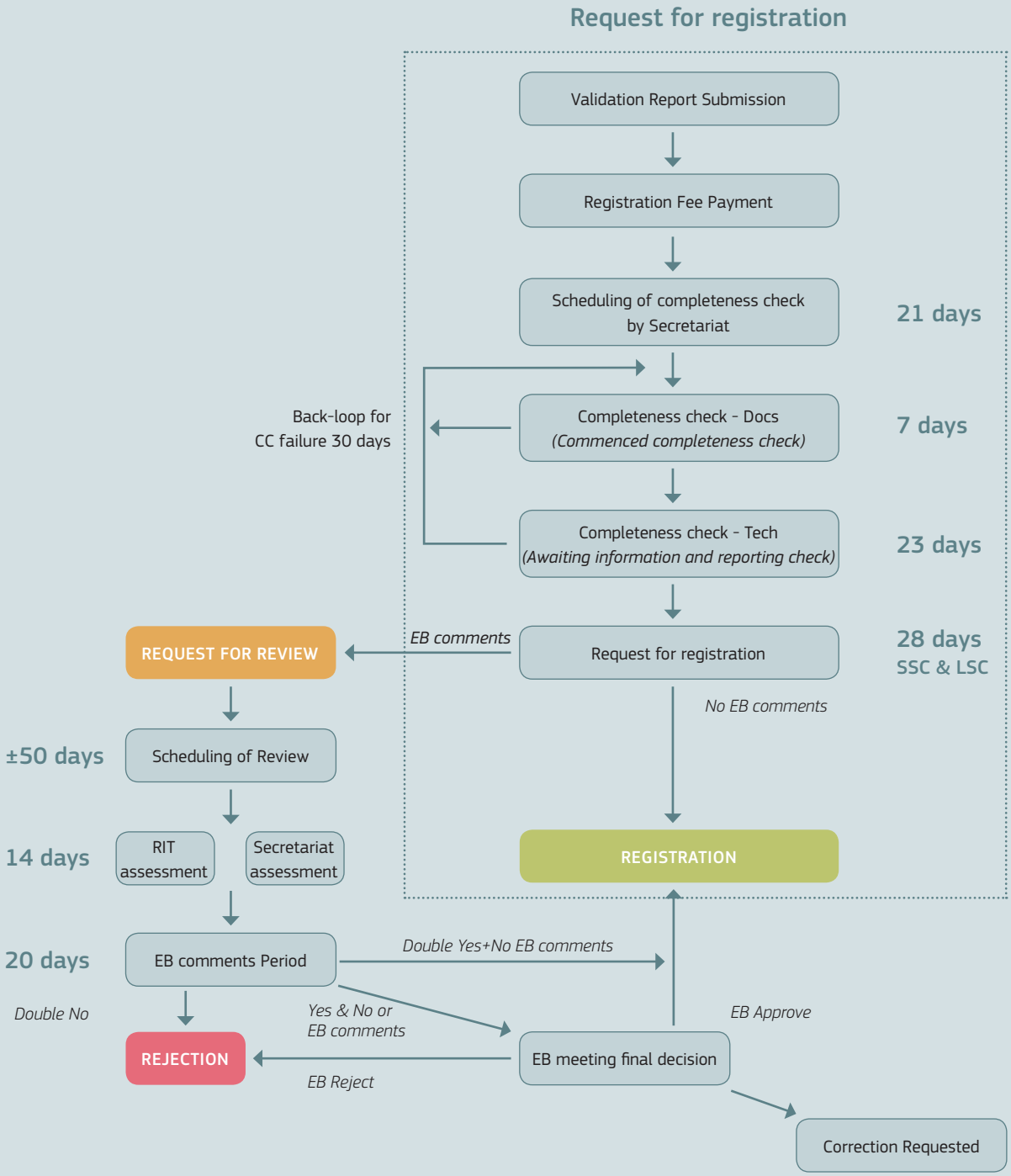
the EB members consider the summary note and may follow the recommendation. A review is initiated if three EB members submit a form providing the reasons for requesting such a review, which must be based on the latest CDM rules and any supporting documentation. This process is not automatic and in numerous cases the EB members do not follow the recommendation.[5] In such cases at least three members request a review despite the recommendation to register, or there are less than three members that follow the recommendation to request a review. It is also foreseen for a Party – host country or buyer country DNA – to request a review by sending an official letter to the EB. This, however, happens very rarely. If a Party or the EB requests a review, the project is marked as "under review".

The review procedure is illustrated in Figure 3. If a project is requested for review, two independent appraisals are independently sent to the EB. One is prepared by the secretariat and another prepared by the RIT (team comprising two experts, one acting as lead). If the parallel appraisal results in diverging results then the case is discussed at a following EB meeting. If the appraisal results in unanimous views, the appraisal becomes effective after 20 days, unless an EB member objects to the decision.

The PP is informed of the successful finalisation of the IRC and a subsequent request for review by e-mail. During the review the DOE responds to the review questions. Upon a rejection of the project submission, the PP is notified of the rejection. The rationale for the decision to reject is published after the decision has become final and hence the PPs do not have the option to respond to the ruling. However, the project may be resubmitted by the DOE to request registration again.

5 Personal communication from the secretariat, received on July 6, 2012.

Figure 3. Process timeline of procedure for reviewing CDM projects



1.3 Post-registration activities

1.3.1 Inclusion of component project activities in a PoA

The coordinating/managing entity (CME) can include new component project activities (CPAs) in a registered PoA. Section VI A of the PCP provides the detailed procedure for this process, which involves the following steps:

- Submission by the CME of CPA design documents (CPA-DDs) [10] to any DOE, which will confirm that the CPA meets the eligibility criteria for inclusion in the PoA and submit the specific CPA-DD to the Board.
- Review of the erroneous inclusion [11] or renewal of the crediting period of CPAs, in the case that a DNA involved in the PoA or a Board member identifies information that may disqualify the CPA from inclusion in the PoA or the renewal of its crediting period.

1.3.2 Changes to a registered CDM project activity or PoA

Section VI B of the PCP provides the procedure for requesting approval of changes that have occurred or are expected to occur to a registered CDM project activity or PoA. Such changes may constitute:

a) A temporary deviation from the monitoring plan as described in the registered PDD, PoA-DD, generic CPA-DD or the monitoring methodology;

b) Permanent changes, which may include:

i. Corrections;

ii. Changes to the start date of the crediting period;

iii. Permanent changes to the monitoring plan as described in the registered PDD, PoA-DD, generic CPA-DD or the monitoring methodology;

iv. Changes to the project or programme design of the registered CDM project activity or PoA.

The request for approval of changes [12] is to be submitted by the DOE, which performs a verification of the registered CDM project activity or PoA *as part of the request for issuance*, except under the following circumstances, in which case the request must be submitted *prior to the submission of the request for issuance* [13]:

a) Changes determined at the time of the verification of a registered project activity or PoA which require prior approval by the Board;

b) Changes that the PPs or the CME have requested a DOE to validate at any time prior to the commencement of verification.

1.4 Pre-issuance of certified emission reductions

1.4.1 Monitoring

PPs monitor the implementation of the project activity and the actual greenhouse gas (GHG) emission reductions achieved according to the selected approved methodology. If there are changes to the project activity as described in the registered PDD, PPs can notify the secretariat and request the approval of such changes in accordance with the procedures described above and the relevant guidelines in the PS.

The PPs of a registered CDM project activity or the CME of a registered PoA prepare the monitoring report(s) [14] and submit it/them together with supporting documentation to the DOE contracted by the PPs or the CME to perform verification of the monitored GHG emission reductions or removal enhancements.

1.4.2 Verification

Verification [15] is the periodic independent review and ex post determination by the DOE of the monitored reductions in GHG emissions that have occurred as a result of a registered CDM project activity during the verification period. The DOE verifies that emission reductions took place, in the amount claimed, according to the approved monitoring plan.

Certification [16] is the written assurance of the DOE that, during the specified period, the project activity achieved the emission reductions claimed in the monitoring report and as verified by the DOE. The DOE submits the request for issuance of certified emission reductions (CERs) [24] only after it has verified and certified the quantity of CERs claimed in the monitoring report. If the amount of CERs claimed is different from the amount of CERs estimated in the PDD corresponding to the monitoring period, the DOE must verify the reason for the discrepancy.

Section IX of the VVS provides detailed guidelines to the DOE for conducting the verification, which covers the following aspects:

a) Compliance of the project implementation with the registered PDD;

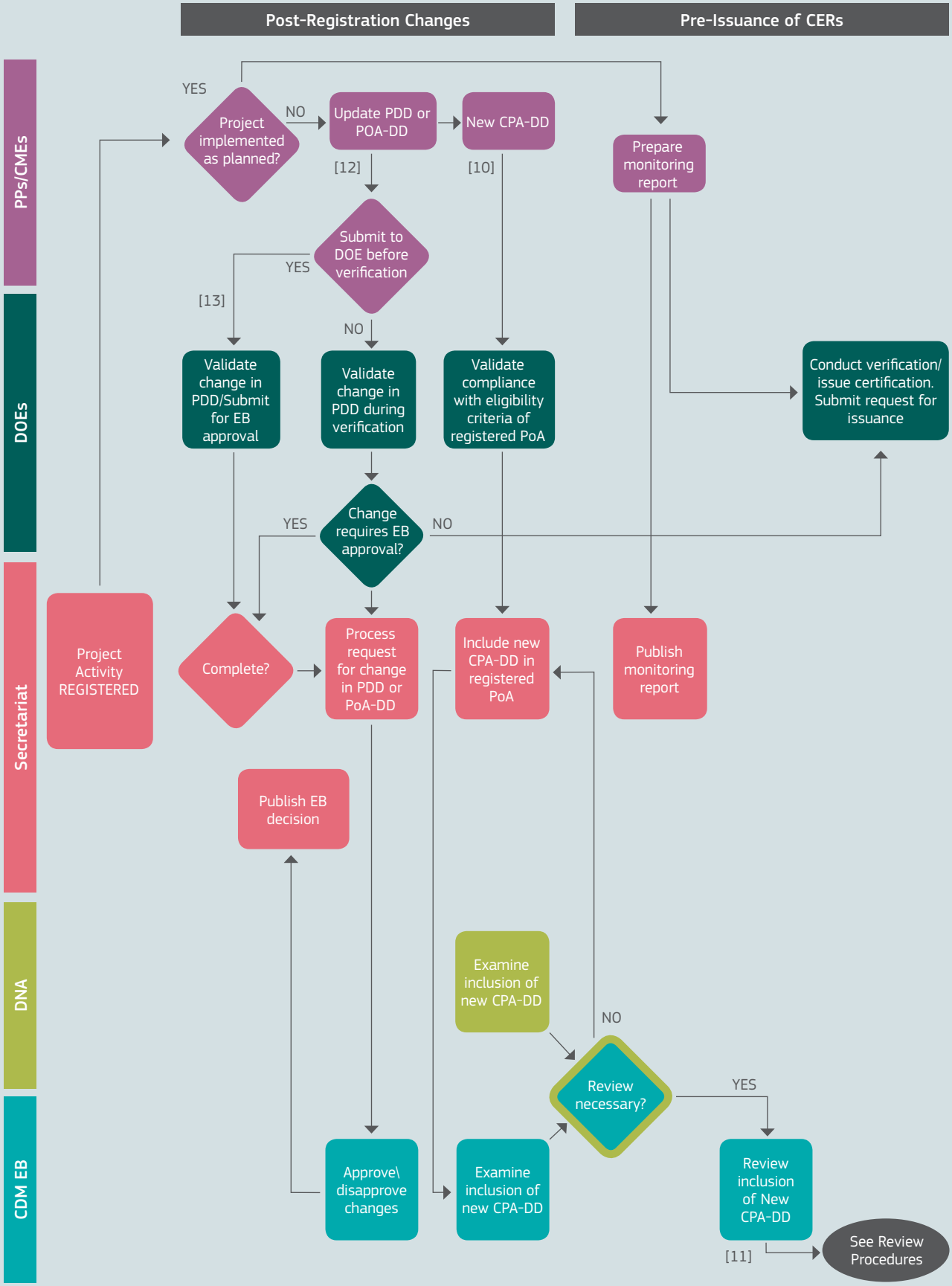
b) Compliance of the monitoring plan with the monitoring methodology, including applicable tool(s);

c) Compliance of the monitoring activities with the registered monitoring plan;

d) Compliance with the calibration frequency requirements for measuring instruments;

e) Assessment of data and calculation of emission reductions.

Figure 4. Project cycle steps during post-registration and pre-issuance and the involvement of different entities



1.5 Issuance of CERs

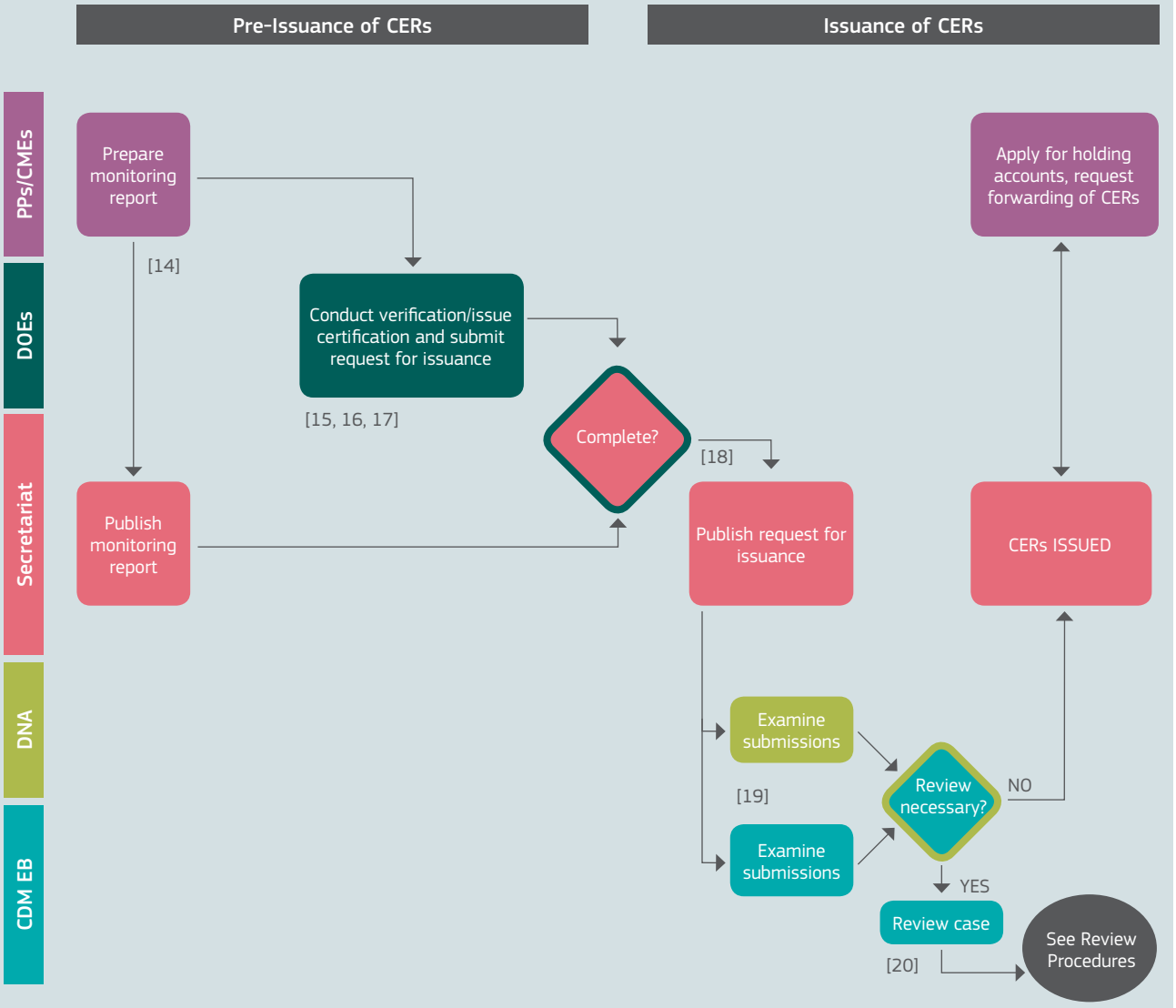
The DOE, after verifying that the monitored GHG emission reductions or removal enhancements meet the relevant requirements in the PS and after certifying the quantity of CERs claimed in the monitoring report, by following the relevant provisions of the VVS and other CDM requirements submits to the EB, via the UNFCCC secretariat, a request for issuance of CERs, using the prescribed issuance request form, and all the required documents listed in the completeness checklist for requests for issuance.

The process of issuance of CERs involves the following detailed steps:

- A completeness check by the secretariat in accordance with the published checklists **[24]**.
- Vetting by the secretariat and the EB of the request for issuance of CERs on the basis of the monitoring and verification report **[25]**.
- A review of the issuance if a Party or three members of EB request such a review; otherwise CERs are issued **[26]**.

Section VIII of the PCP provides the detailed procedures for the issuance of CERs.

Figure 5. Project cycle steps during pre-issuance and issuance and the involvement of different entities



1.6 Renewal of crediting period

The PPs or CME wishing to renew the crediting period of a registered CDM project activity or PoA update the PDD or prepare a new PoA-DD and new generic CPA-DD [21]. The PPs or CME have to contract a DOE to perform the validation of the updated PDD or new PoA-DD and new generic CPA-DD and submit the request for the renewal of the crediting period.

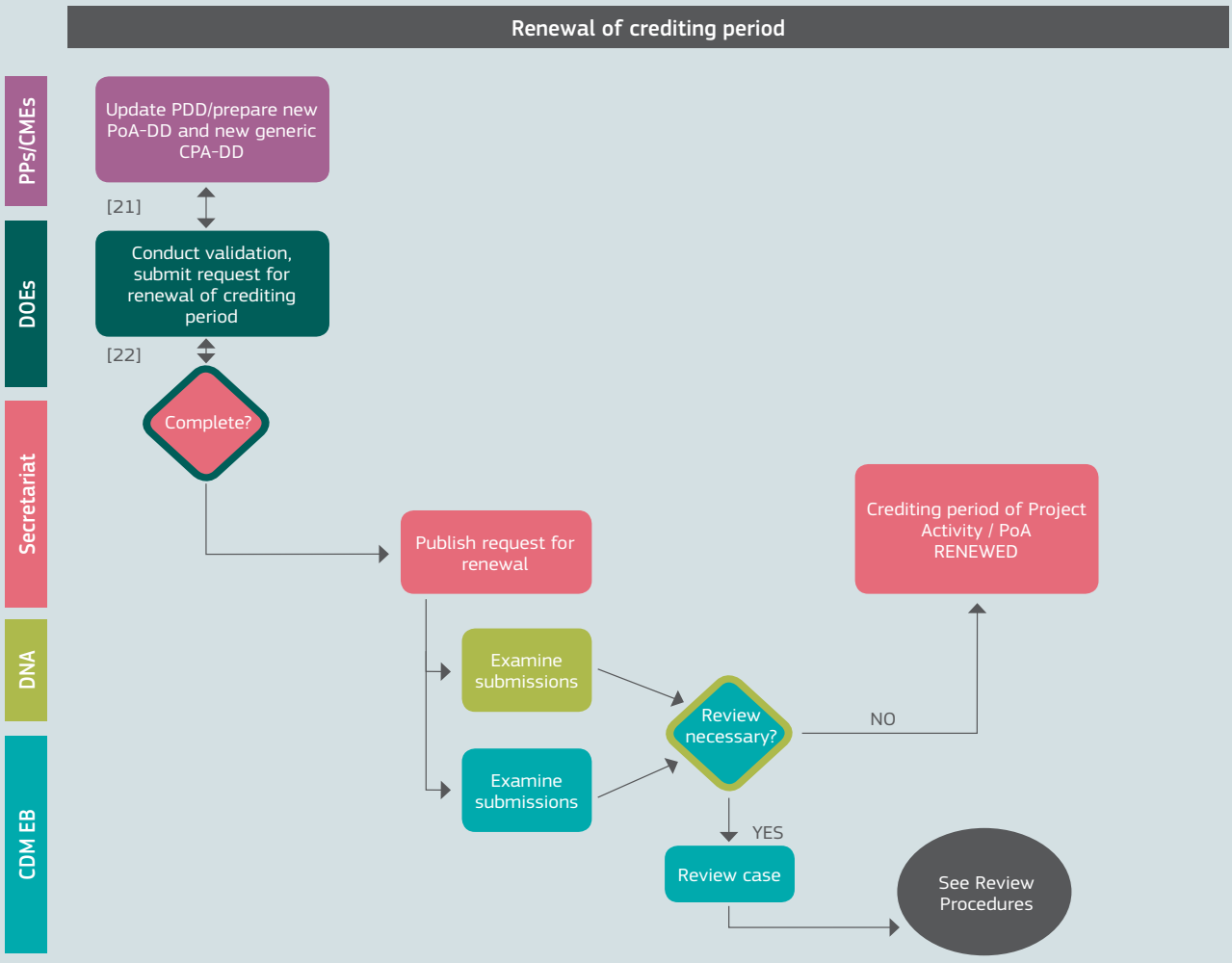
To support a request for the renewal of the crediting period of a registered CDM project activity PPs must update the sections of the PDD of the project activity relating to the baseline, estimated GHG emission reductions and the monitoring plan. The updates must be based on the latest version or update of the baseline and monitoring methodology at the time of requesting the renewal.

In the case of a PoA, the CME must update the eligibility criteria for the inclusion of CPAs in the PoA as per the latest applicable version of the methodology(ies) and include them in new versions of the PoA-DD and generic CPA-DD. Instead of a revised version of the PDD, the CME must prepare a new completed PoA-DD and a new version of the generic CPA-DD.

The DOE submits a request for the renewal of the crediting period of a registered CDM project activity or PoA along with the updated PDD, or new PoA-DD and new generic CPA-DD, and updated validation report [22].

Section IX of the PCP provides the detailed procedures for the submission and processing of a request for the renewal of the crediting period of a registered CDM project activity or PoA.

Figure 6. Project cycle steps in the renewal of crediting periods and the involvement of different entities



2 Current state of additionality determination

2.1 Rules and procedures for scrutinising project applications

This section details the prevailing rules that govern the determination of additionality and gives a short timeline of the adoption of the core regulatory elements therein. In addition, it highlights what standardised elements are implemented by the different guidelines. It aims to provide a basis for understanding the dynamics of the quantitative assessment results in the course of regulatory development. Furthermore, it provides for a better understanding of the prevailing processes of the EB for scrutinising project applications.

Overview and history

The EB has created various tools and guidelines for the demonstration of additionality in a consistent and adequate manner. The various rules that are currently in existence are presented in Table 1.

The regulations in Table 1 are among the cornerstones of the CDM; it is a prerequisite of the Kyoto Protocol that the emission reductions achieved as a result of the CDM have to be additional to any that would have occurred in the absence of the certified project activity (Art. 12, para. 12(c)).

A few of the above-listed tools and guidelines have adopted standardised approaches, inter alia:

- Attachment A to appendix B has included a few technologies, such as solar photovoltaic and solar thermal electricity generation, offshore wind technologies and marine technologies (wave, tidal); recently more technologies were included by the Small-Scale Working Group of the CDM and submitted to the Board for its approval.

- Under the microscale additionality guidelines, in particular the project activities up to five megawatts that employ renewable energy technology are additional; among the others, project activities are additional if they are located in one of the least developed countries (LDCs) or small island developing States (SIDS) or in a special underdeveloped zone of the host country identified by the Government before May 28, 2010.

- The guidance on investment analysis has provided a default return on equity for various host countries and the 15 sectors under the CDM are tabulated into three.

2.2 Additionality as a reason for the rejection and review of projects

This section presents the basic statistics showing the degree to which flawed additionality determination has given rise to the review or even the rejection of projects. The basic underlying hypothesis being tested is that the determination of additionality constitutes a major issue in the assessment of projects, which requires the allocation of resources, both from the secretariat and the DOEs, and is among the main drivers of lengthy process timelines. The section is purely descriptive and the discussion does not aim at discovering the root causes for the observed incidents.

Table 1. List of tools/guidance approved by the EB for the demonstration of additionality

Tool and guidance	Initial publication	Latest revision
Large scale		
Additionality tool	EB 16 report, annex 1	EB 65 report, annex 21
Combined tools	EB 27 report, annex 9	EB 66 report, annex 48
Guidance on investment analysis	EB 39 report, annex 35	EB 62 report, annex 5
Prior CDM consideration guidance	EB 41 report, annex 46	EB 62 report, annex 13
Objective demonstration of barriers	EB 50 report, annex 13	
Estimation of plant load factor for renewable energy projects	EB 48 report, annex 11	
Guidance on common practice	EB 63 report, annex 12	
Guidance on first-of-its-kind	EB 63 report, annex 11	
Small scale		
Attachment A to appendix B	EB 7 report, annex 6	EB 63 report, annex 24
Small-scale good practice guidelines	EB 35 report, annex 34	
Microscale additionality guidelines	EB 54 report, annex 15	EB 63 report, annex 23

How often is (failing) additionality the reason for the rejection of projects?

This question is answered by statistics drawn from the United Nations Environment Programme (UNEP) Risoe CDM Pipeline and the Institute for Global Environmental Strategies (IGES) database based on the data available for up to April 30, 2011. Figure 7 displays the reasons for project rejections; of the 217 total rejected projects, more than 75% were rejected due to (failed) additionality.

What is the percentage of projects rejected on the grounds of barrier analysis and financial additionality, respectively?

It can be seen from Figure 8 that of the 75% of the projects rejected for reasons of additionality, about 77% of the 163 respective rejections were related to financial additionality and the remaining rejections based on barrier analysis (which includes technology, prevailing practice and investment barriers). Further analysis was conducted to also derive how many projects among those rejected based on barrier analysis were rejected for various reasons.

Figure 9 shows the breakdown of the reasons for the rejection of 37 projects based on barrier analysis. It indicates the number of cases of investment barriers, technological barriers and prevailing practice barriers within the barrier analysis. All three barriers account for more or less the same proportion of the rejections.

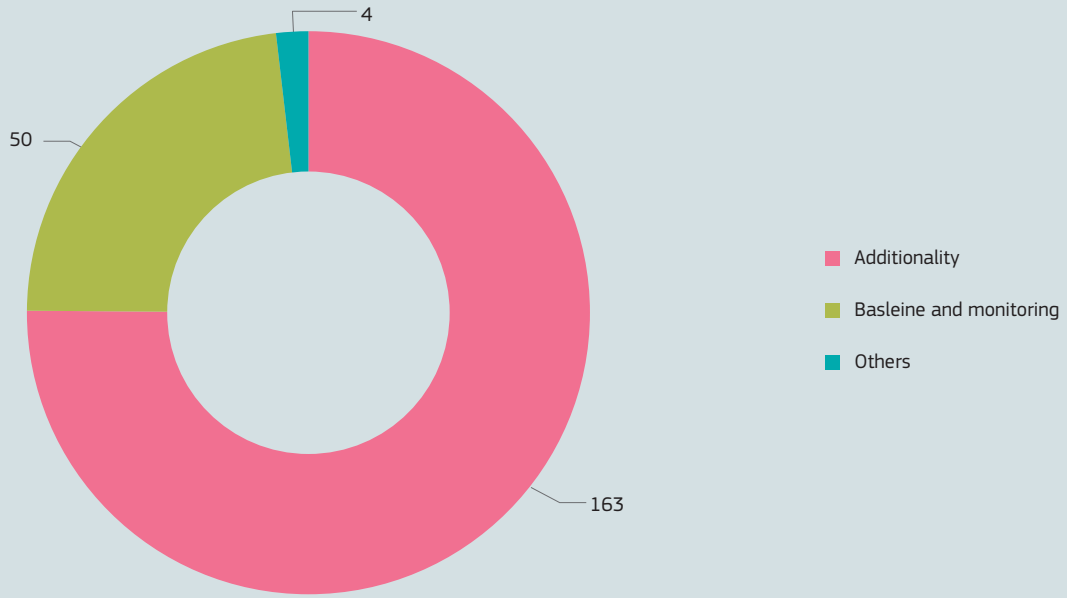
The analysis of the reasons for project rejection other than barrier analysis (Figure 10) resulted in the conclusion that the lack of prior CDM consideration[6] was the reason for about 7% of the 155 rejections. The tariff issue was the reason for about 20% of the rejections and the rest were due to the way in which the investment analysis was conducted, in particular the selection of the benchmark input values to the investment analysis. All of the tariff-related rejections took place within the span of three EB meetings (EB 51, 52 and 54), from December 2009 to May 2010, and all of the rejected projects were from the same host country, China. This peak in rejections ultimately relates to the discussion surrounding the tariffs applied in China and whether they were appropriate to use to determine financial additionality.

In the case of small-scale (SSC) projects using the SSC good practice guidelines[7] it is sufficient to demonstrate the existence of barriers in order to demonstrate the project's addi-

6 Prior CDM consideration means that the project considered applying for CDM registration within six months after the project start. This is one of the key requirements with respect to additionality (see also section Project design).

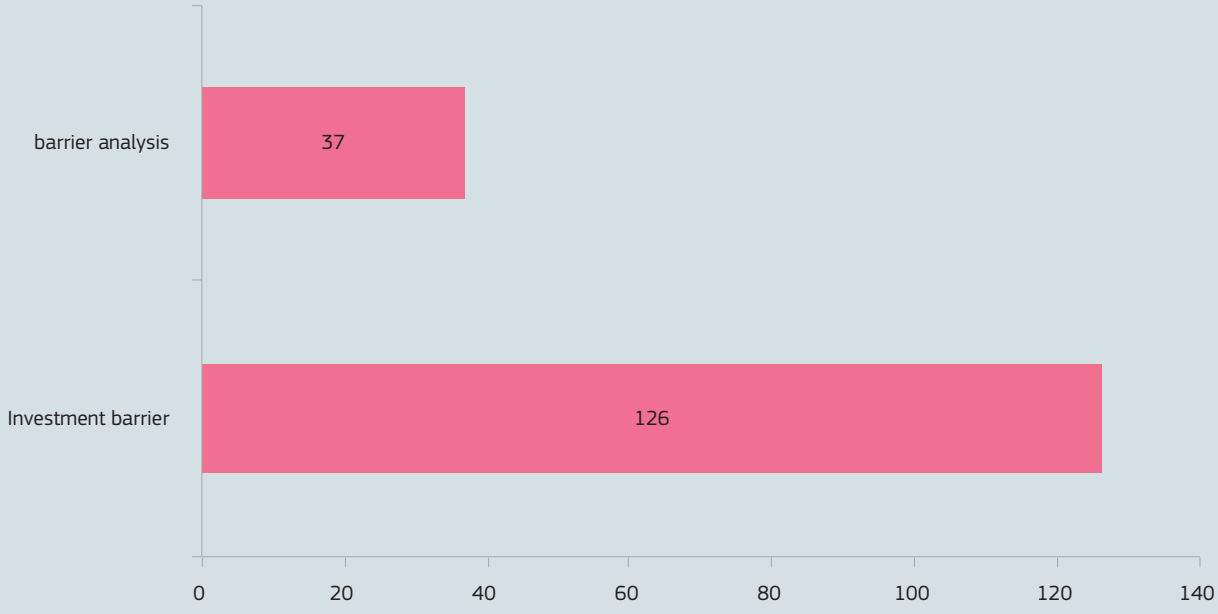
7 EB 35 report, annex 34.

Figure 7. Reasons for the rejection of 217 CDM projects



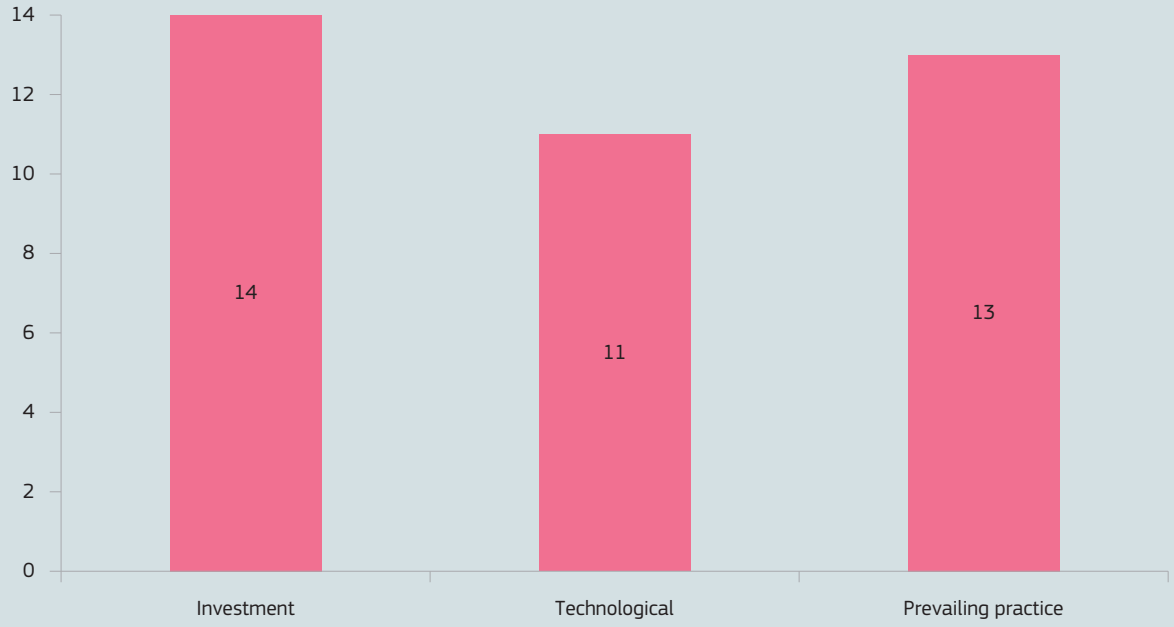
Source: Data from United Nations Environment Programme (UNEP) Risoe CDM Pipeline and Institute for Global Environmental Strategies (IGES) database as at April 30, 2011

Figure 8. Detailed reasons for the rejection of 163 CDM projects on the ground of additionality



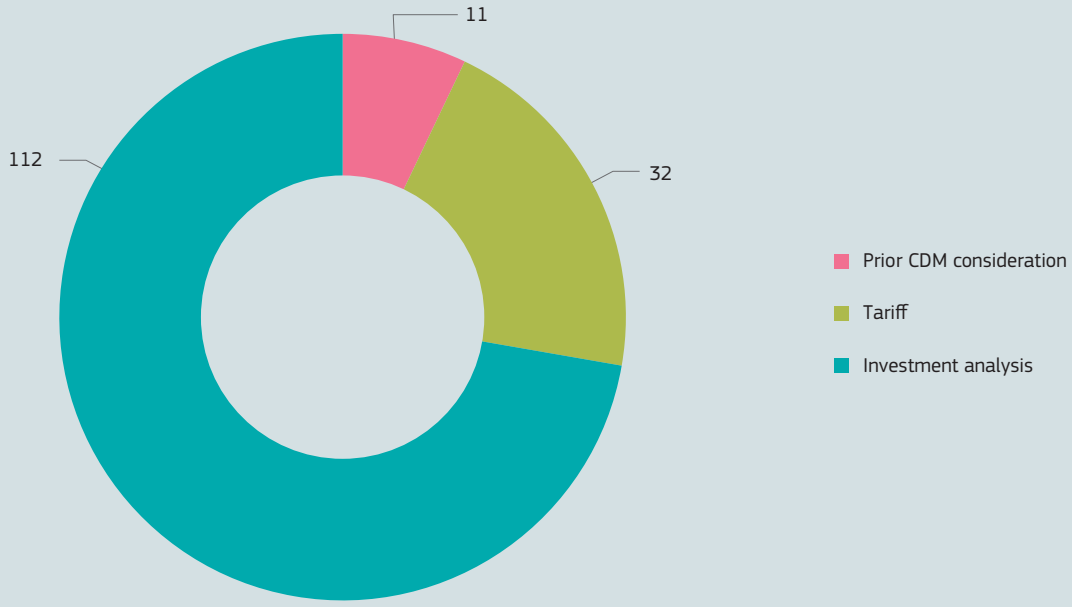
Source: Data from UNEP Risoe CDM Pipeline and IGES database as at April 30, 2011.

Figure 9. The different barriers claimed in 37 rejected CDM projects



Source: UNEP Risoe CDM Pipeline and IGES database as at April 30, 2011.

Figure 10. Composition of reasons for CDM project rejection other than barrier analysis



Source: Data from UNEP Risoe CDM Pipeline and IGES database as at April 30, 2011.

tionality. Nevertheless, it has been found that the reference to the guidance on the objective demonstration of barriers[8] devised for regular-scale project activities has often been the reason for requesting a review of small-scale projects to which the respective rules would not apply. This can be considered a regulatory ambiguity, whereby the regulator's expectations diverge from those of the validating DOE. The project rejections were due to the fact that the secretariat was not able to communicate its expectations to the DOE.

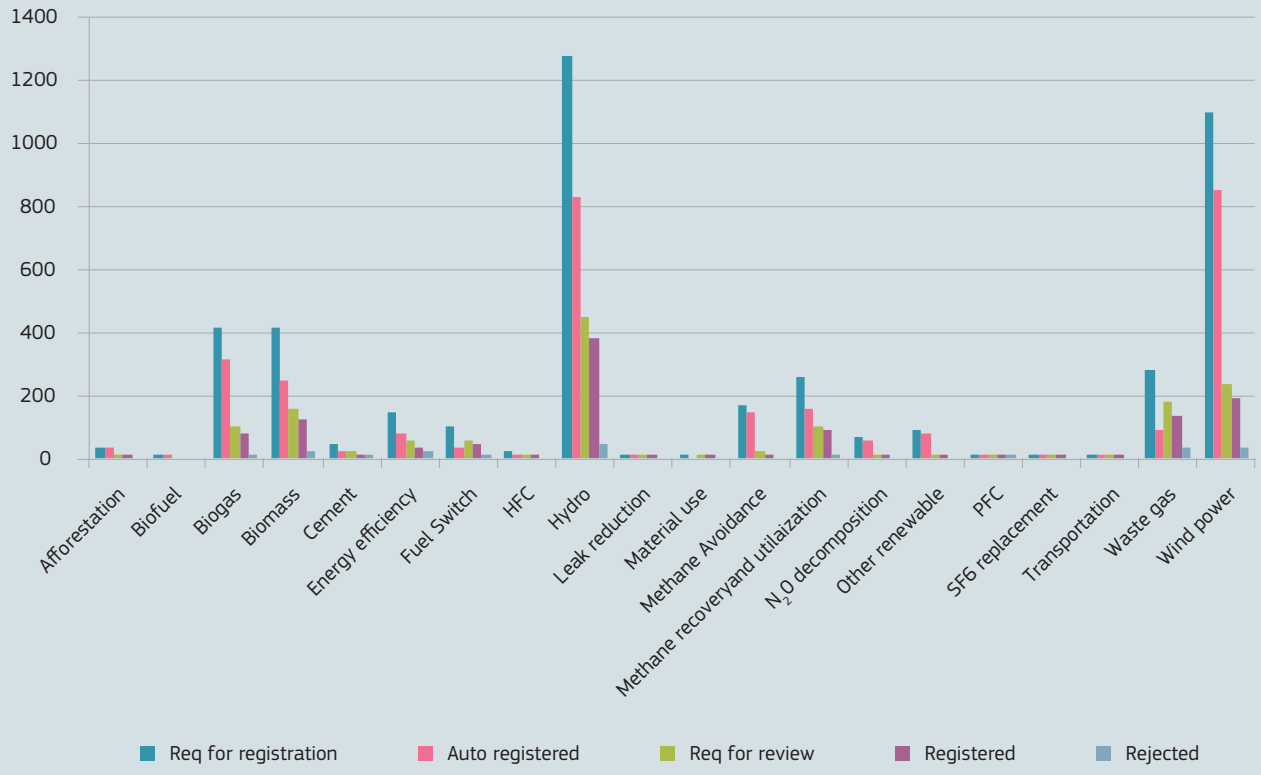
Are there regional or technology trends among the rejected projects?

Of 4,478 total projects that were requested for registration, more than 67% were automatically registered; while of the projects which were reviewed by the EB 80% were registered, so the percentage of projects rejected as a result of the review request is 20%. This is illustrated in Figure 11.

Of the 217 rejected projects, 74% were from Asia, followed by 22% from Latin America (Figure 12). Further analysis resulted in no clear answer as to whether there is a pattern in the rejected projects respective to a specific technology, region or type.

Those project types or methodologies for which a systematic accumulation of rejections was observed were assessed in more detail. Such an accumulation was due mainly to methodological developments or changed interpretations that rendered project types impracticable (Figure 13). Examples include the methodologies ACM0005 for cement-blending projects (all of the last 11 projects submitted for registration), AMS III B "Fuel switching in Israel" and AMS II E "Energy efficiency initiative in building energy efficiency in Brazil" (eight projects in one go). The analysis was also extended to identify patterns regarding combinations of technology and region. However, no clear trend could be determined.

Figure 11. Sectoral analysis of CDM projects (request for registration to rejection)



8 EB 50 report, annex 13.

Table 2. Technological trends in CDM projects rejected and reviewed

Sector	Requested for registration (in numbers)	Autoregistered (%)	Requested for review (%)	Rejected (%)
Afforestation	38	92.1	7.89	-
Biofuel	1	100	-	-
Biogas	419	75.4	24.6	2.4
Biomass	416	60.3	39.7	7.5
Cement	48	56.3	43.8	22.9
Energy efficiency	145	56.6	43.5	17.2
Fuel switch	106	39.6	60.4	11.3
HFC	21	52.4	47.6	-
Hydro	1,273	65.0	35.0	3.7
Leak reduction	9	66.7	33.3	-
Material use	1	-	100	-
Methane avoidance	169	87.0	13.0	-
Methane recovery and utilisation	263	59.3	40.7	2.7
N_2O decomposition	71	84.5	15.5	-
Other renewable	96	89.6	10.4	-
PFC	5	60	40	20
SF_6 replacement	10	80	20	-
Transportation	14	85.7	14.3	-
Waste gas	279	34.4	65.6	12.9
Wind power	1,094	78.2	21.9	3.4
TOTAL	**4,478**	**67.5**	**32.5**	**4.8**

Source: IGES database.

Figure 12. Share of CDM projects rejected, by region

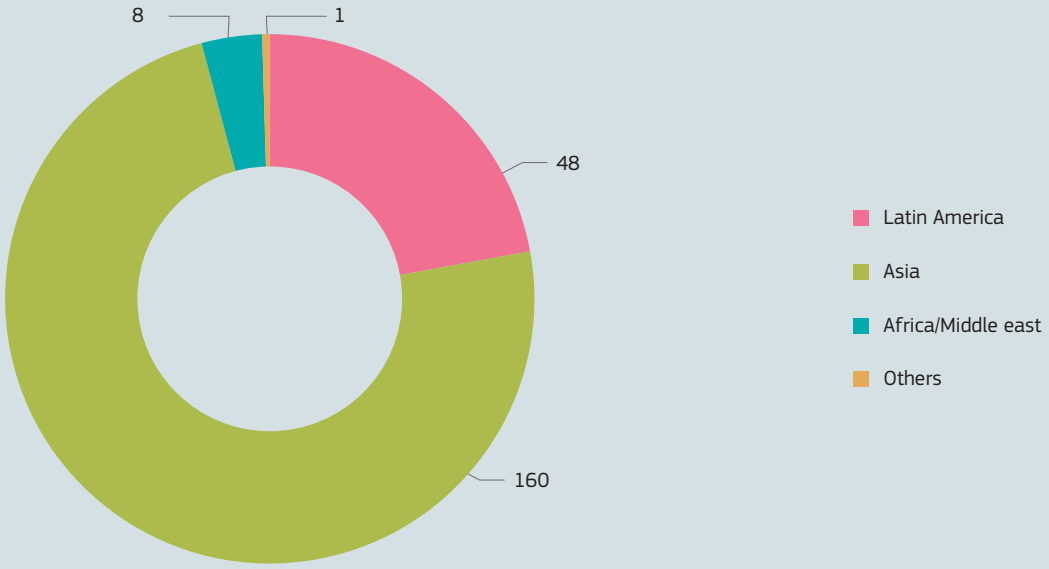
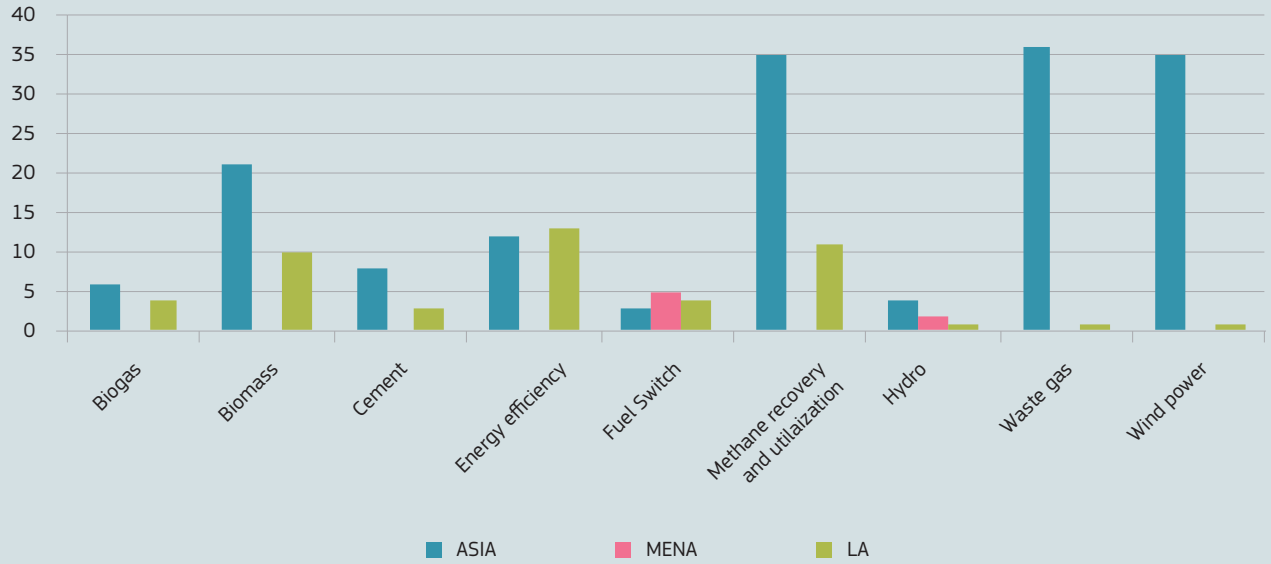


Figure 13. Rejected CDM projects according to sectors and geographies (Asia, Middle East and Northern Africa (MENA) and Latin America (LA))



2.3 Assessment of summary notes: the main issues in scrutinising additionality determination

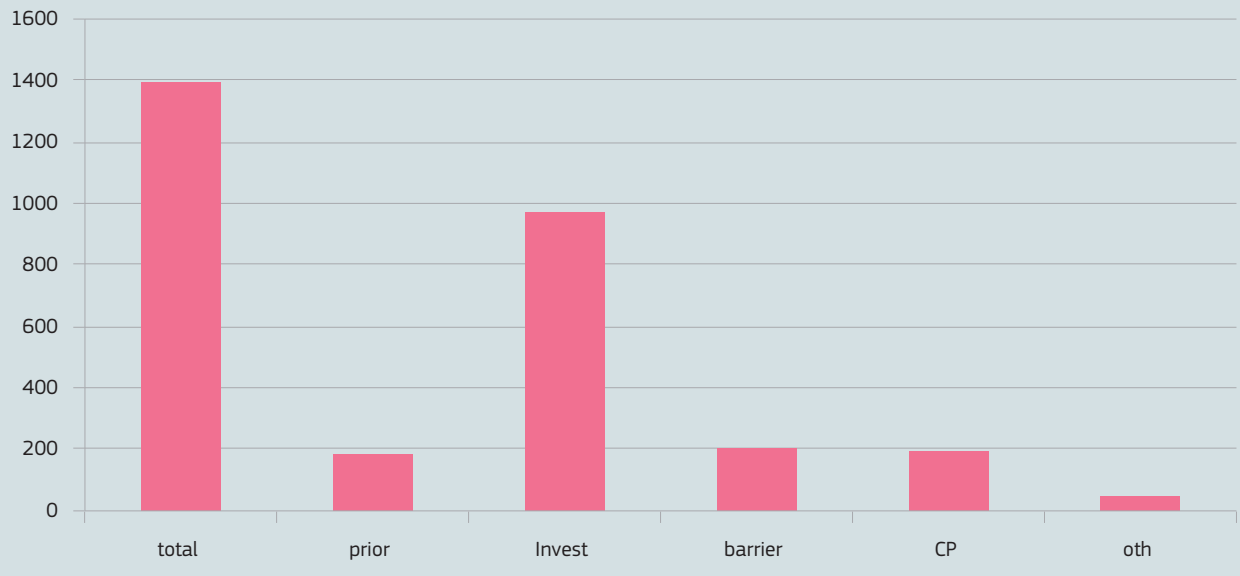
This section provides an analysis of the data contained in the IGES[9] and UNEP Risoe databases,[10] as well as an assessment of the summary notes for a sample of 800 projects in CDM sectors 1, 4 and 13.[11] The summary notes were made available by the secretariat and the assessment occurred on site in the edifices of the secretariat. Those three sectors were selected because they cover more than 75% of the projects submitted for registration.

The summary notes contain the rationale for the EB's request to review a request to register a project (see also section Request for review). Each note was read in order to conclude to what extent additionality was a concern in the autoregistration, review or rejection of projects. Whenever an issue with the project was raised on account of the baseline, baseline scenario or applicability, it was eliminated, and when there was an overlap of any of the above with regard to additionality, then this was evaluated as an issue related to additionality.

It should be acknowledged that the source to be used to find out about the practicability of determining additionality would be the validation protocols (i.e. the issues with respect to the determination of additionality that were raised during validation). However, such an assessment might be masked by mere issues of insufficient quality (e.g. diverging input parameters, etc.). These aspects will be evidenced instead by assessing the inputs from project developers and DOEs.

In order to assess the reasons for projects being reviewed across the complete CDM pipeline, IGES data were considered and the sectors that saw more than 20 review cases identified (see categories in Figure 14). All other sectors were disregarded because they are little used and had the potential to distort the assessment on the grounds of the limited experience of PPs, DOEs and the secretariat with them. The sample is close to 95% (1,391 project activities

Figure 14. Reasons for requesting a review of a CDM project

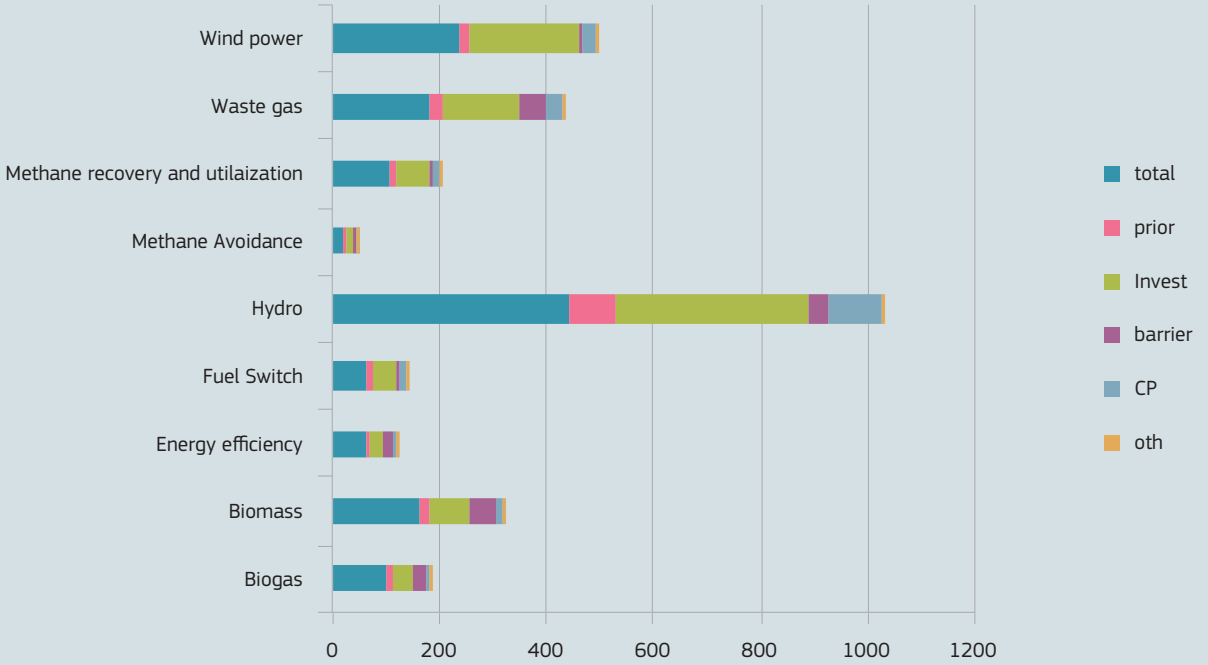


9 See http://enviroscope.iges.or.jp/modules/envirolib/view.php?docid=986.

10 See http://www.cdmpipeline.org/.

11 Covering energy industries (renewable energy — wind, hydro, solar and other renewable, excluding biomass) and manufacturing industries (waste gas utilisation).

Figure 15. Differentiation of CDM project review cases according to reason for review and project technology



of the 1,456 requested for review) of the projects requested for review.

The analysis showed that among the projects requested for review about 61% were requested for review on account of investment analysis and the rest were equally shared between being requested for review for reasons related to prior CDM consideration, barrier analysis and common practice analysis (Figure 14).

The analysis was also extended to see how these different elements of additionality played a role in each sector (Figure 15 and Table 3). The result can be interpreted as follows: the wind power sector has issues with its projects largely based on the investment analysis; while in the case of the hydro sector, following investment analysis, both prior CDM consideration and common practice analysis have played an equal role in requests for project reviews. In the waste gas utilisation sector more projects are trying to use barrier analysis (technological and prevailing practice) and about 20% of the projects requested for review fall in this area.

The additionality-related concerns responsible for CDM project reviews and rejections can be clustered into the following groups encompassing all sectors covered by the CDM.

Prior CDM consideration and continuing parallel actions

The EB provided a guidance document at its forty-first meeting stating that, in order to demonstrate prior CDM consideration for a project activity with a start date later than August 2, 2008, an information note needs to be submitted to the secretariat and host-country DNA within six months from the start date of the project activity, which is usually determined by real expenditure committed to the development of the project.

The assessment found that reviews were requested for about 190 projects on the basis of lack of prior CDM consideration. Of these, about 122 projects had reviews requested before 2009, of which 12 were rejected. The remaining 68 projects were requested for review after 2009, of which 8 were rejected. As the guidance was adopted four years ago, it can be expected that virtually no projects with a start date after August 2, 2008 will face a review on the grounds of questionable CDM consideration anymore.

Investment analysis

The investment analysis is conducted to determine that the proposed project activity is: (i) not the most financially attractive one; or (ii) not economically or financially feasible without the revenue from the sale of CERs.

Table 3. Differentiation of CDM project review cases according to reason for review and project technology

Sector	Total projects (number)	Prior CDM consideration (%)	Investment analysis (%)	Barrier analysis (%)	Common practice analysis (%)
Biogas	103	16.01	44.4	27.2	9.88
Biomass	165	9.62	50.6	28.9	7.05
Energy efficiency	63	6.78	44.1	33.9	8.47
Fuel switch	64	18.9	56.8	10.8	12.2
Hydro	445	14.5	61.7	5.64	16.8
Methane avoidance	22	18.2	54.65	18.2	4.55
Methane recovery and utilisation	107	9.80	61.8	8.82	12.8
Waste gas	183	9.52	55.6	20.6	11.5
Wind power	239	5.77	79.2	2.69	9.23

The appropriate method of investment analysis is chosen from among simple cost analysis (project activities that do not generate any revenues other than from the CDM), investment comparison analysis or benchmark analysis.

Benchmark analysis

The issue of benchmarks has to be considered for two situations:

a) The benchmark is provided by the host country;

b) The benchmark is not provided by the host country but calculated by the PP using various financial methods.

The results of the assessment lead to the conclusion that where a benchmark is available for a specific sector in a host country, for example China, fewer projects in the initial pipeline are requested for review. This happened particularly in late 2008 after the appropriateness of the benchmarks had been approved. The accepted projects formed the precedent for any subsequent projects of the same type in the same year.

In the case of project activities that do not have a benchmark published by their host country, reviews are requested quite frequently. It should be noted that most of the issues raised in these cases relate to the calculation of market premiums and beta values for the estimation of the expected return on equity. The EB has issued guidance on investment analysis, which has enabled PPs to choose the right type of benchmark and enabled the DOE to validate the project against these guidelines.

The EB has also clarified that a return on equity used by host countries to decide on tariff cannot be used as a benchmark; a few projects from a specific host country have been rejected on account of this.

Inputs to investment analysis

Investment cost: Projects can be categorised into those with a feasibility study report (FSR) approved by competent government agencies and those without an official FSR. Once the agencies have approved the report, the chances of a review being requested are low. On the other hand, without an FSR, if suitable third-party sources are not used correctly or comparisons with other projects are not done very comprehensively, then a review is frequently requested.

Tariff: Most of the projects which have been rejected on the basis of the tariff are located in one particular host country: China. The EB has contested the appropriateness of the tariffs awarded to Chinese projects and in the course of the discussions called to review a number of Chinese wind and hydro projects.[12] The adoption of an information note[13] in June 2010 containing a list with reference tariffs to be used for input into the investment analysis has clarified the situation for now. This issue is considered to be related to input values to investment analysis rather than as an E+/E- policy issue.

12 See a detailed discussion in the research report entitled "Assessing the impact of the Clean Development Mechanism under the CDM Policy Dialogue", section 5.2.2. Füssler (2012) discusses the development of regulation and decisions in a dedicated chapter.

13 See http://cdm.unfccc.int/Reference/Notes/reg_note07.pdf.

Plant load factor (PLF): Most of the issue related to the PLF of projects in the renewable energy sector was resolved when the EB provided guidance on how to validate the PLF in the renewable energy sector. However, the PLF is often still an issue for waste gas utilisation projects.

Barrier analysis

The EB has issued guidance on how to objectively demonstrate barriers to a CDM project activity. The document represents quite a significant step forward and most of the validation activity is based on it. However, it should be noted that, although the guidance is not relevant to small-scale projects, quite often small-scale projects are requested for review referring to it. As indicated earlier, no specific trend has been found among projects rejected or requested for review related to barrier analysis. It has been noted that the number of projects that request registration using barrier analysis has decreased since the adoption of this guidance document.

Common practice analysis

From the analysis of IGES data it has been found that 203 projects in the entire CDM portfolio were requested for review in relation to common practice analysis, of which only eight were rejected. The common practice analysis is in general complementary to the other additionality-related steps. It should also be noted that in many instances common practice analysis is not robust enough and in the absence of comprehensive national data only fragmentary information is used to assess what constitutes common practice. For example, in the case of hydro projects only investment cost is used, without considering the tariff. This is considered to be appropriate under the CDM. A specific reference in the additionality tool allows project proponents not to consider similar plants if no sufficient data are available, which has been done for many projects. The EB recently issued a relevant guidance document.[14]

The review questions are primarily related to data mismatch or improper reporting in the validation report. Thus, they are geared more towards obtaining clarifications than towards establishing non-compliance with substantive CDM requirements. The common practice analysis is not seen as a critical element in assessing additionality; therefore, this step is redundant for certain sectors, such as hydro, wind and other renewables in India and China.

Consideration of E+/E- policies in the determination of additionality

This category comprises the specific issue of cases in which the determination of the baseline scenario is affected by national policies and measures. While a clarification of how to treat E- and E+ policies exists, the EB has decided to assess projects on a case-by-case basis. Except for the reviewed and rejected projects mentioned in the discussion about the Chinese tariff-award policy above, no other projects have been rejected by the EB on such grounds. However, research on decision practice provided evidence of inconsistent ruling[15] in a comparative assessment of Chinese and South Korean renewable energy projects. The PP normally uses all subsidies and preferential tariffs available to them in the investment analysis (conservative assumption) and only considers the clarification when setting the baseline if the baseline is not mandated by a law/regulation. However, there is a systemic potential conflict of multilateral incentives, such as the CDM, with domestic ones. It is the prerogative of the host country to determine the level and kind of support it provides to climate-friendly technologies. The EB has no influence over the determination of, for example, the level of feed-in tariff and therefore host countries could be incentivised to apply a level of support taking into consideration the expected revenue from CER sales, also to avoid oversubsidising projects and distorting the markets. While this stacked level of support might be appropriate, the domestic contribution would be lower than without the revenue from the CDM and the host country is considered to be gaming the CDM rules. This constitutes an inherent conflict that may give rise to other case-by-case rulings in the future.

2.4 Conclusions

The analysis shows that indeed the determination of additionality is the major reason for rejecting projects or calling them for review. While these are mostly cases of deficiencies with respect to the investment analysis, it has to be stated that this in part reflects the more frequent use of the investment analysis. With respect to barrier analysis, there is no clear trend observed.

The main reasons for project rejections can be related to the tariff, the benchmark profitability or the input values established in the PDD. The results can be interpreted

14 Guidance on common practice (EB 63 report, annex 12), see http://cdm.unfccc.int/Reference/Guidclarif/meth/meth_guid44.pdf.

15 See Castro et al. (2011), section 2.3, "Current practices at the UNFCCC in the treatment of RE promotion policies".

predominantly by the underlying regulatory developments. The observed rejections were related to the decisions of the EB with respect to the appropriateness of the tariffs used for Chinese hydro and wind projects. After the release of benchmark tariffs this wave of rejections stopped as DOEs and PPs can refer to those tariffs. While there were no clear trends with respect to the technology of rejected projects, some of the rejections could be clearly attributed to methodological changes that made the project non-compliant with the revised version of the methodology.

However, statistical data indicate that some project types were less frequently called for review. While biogas, methane avoidance and wind power projects were called for review in less than 30% of cases, fuel switch and waste gas projects saw rates of review request at above 60%. This picture may in part reflect the profitability of fuel switch and waste gas projects. The projects that are generally less commercially attractive (biogas and biomass) or are more clearly additional (methane avoidance) are more successful in terms of swift CDM registration.

The more detailed analysis of the summary notes revealed that predominantly the values used in the investment analysis were contested, namely investment costs, tariff, PLF and profitability benchmarks.

It also showed that in situations where the host country provided for structures that resulted in pre-approved (default) values the projects were less likely to be called for review. Specifically, the generic requirement for an FSR provides for an officially endorsed calculation that is less likely to be contested by the EB. Likewise, the existence of benchmark profitability values increases the success of projects relative to those cases in which the benchmarks have to be calculated and come under the scrutiny of the EB.

In all of the cases in which the Board made a ruling that clarified the determination of additionality the frequency of review requests was reduced. This was found to be the case for prior CDM consideration, where the frequency of reviews dropped after the adoption of respective guidelines. Other rulings are too recent to observe an effect, such as the rules on common practice and first-of-its-kind. It must be noted that the guidelines for barrier analysis still have the potential to give rise to project reviews as their applicability to small-scale projects is not entirely clear.

Among the underlying root causes for the review and rejection of projects, the following can be stated:

a) Reporting of facts in validation reports: Projects that compare and justify investment cost against other similar projects in the region are less prone to review.

b) Timing of investment decision: When the project requesting registration is already commissioned, request for review is more prevalent. Such a situation may occur if the approval process, inclusive of validation, took a long time and the project implementation was started before the project validation. This may have an impact on the credibility of the prior CDM consideration.

c) Benchmark: In countries and sectors where there are no mature markets or historical data, selection of premium risk and expected return are prime reasons for rejection.

d) Tariff: In the case of projects for which power purchase agreements were available at the time of validation, the rate of review is lower than if these same projects had otherwise compared their revenues with other similar projects and demonstrated investment additionality that way.

e) Process issues:

i. New review procedures: It was noticed in some of the summary notes that the reason given for project rejection was different between the RIT and the secretariat, but since both confirmed the rejection the project was rejected. However, in the case that the rejection occurs for different reasons, this should warrant a detailed consideration of the case by the Board.

ii. Detailed information: The summary notes provide much more detailed information than the review questions being asked by the EB.

In conclusion, the following measures could be conceived to reduce the level of project reviews on the grounds of contested determination of additionality:

- Standard validation template for all DOEs.
- Clear specification when adopting procedures and guidance as to whether or not they are applicable to all project activity types or not (e.g. regular scale versus small scale).
- Digitisation of validation reports: not accepting the request for registration if the list of documents that are the minimum required for registration are not submitted.

- Development of good practice guidelines for investment analysis.
- The UNFCCC has started to compile the investment and maintenance costs for different technologies as a reference cost base. Once that is accomplished, issues related to investment cost will be reduced.
- If possible the summary note prepared by the secretariat for the Board should be made available to the public in order to understand the issue completely.
- If, during the registration process, issues are raised in relation to the monitoring of a parameter and its adherence to a methodology, then this should be taken due care of during verification.
- If, during the process of registration, the lack of information or further substantiation of a fact is an issue, then this should be resolved during the IRC process itself.
- Elimination of the validation requirement for projects which are deemed automatically additional (e.g. projects following the microscale additionality guidelines and technologies on positive list).
- If the opinions of the RIT and the secretariat differ on a specific sub-issue, then this should be brought to the attention of the EB.
- Based on the experience gained from issues such as the Chinese tariff issue, information notes could be published by the EB on frequently recurring issues, outlining how the EB has evaluated the responses from the PP, the range of documents considered appropriate and the rationale for EB decisions. The development of positive lists could be based on the synthesis of approved and appropriate data and documentary evidence.
- Currently, in the context of inconsistent ruling practice, PPs are not making use of the clarification on E-/E+ to remain conservative. Guidance regarding the treatment of national policies should be given specific to the case at hand, possibly as a section in the methodology, or the differentiation of treatment should be withdrawn.

3 A fundamental analysis of the concept of additionality

The purpose of this chapter is to address the questions: should the methods for determining additionality be changed? And, if so, how? Any serious attempt to answer such a question requires a careful exploration of the purpose of the process of determining additionality under the CDM. Only after completing such an exploration and clarifying said purpose can one discuss limitations in the current approach to additionality and evaluate options for its improvement.

But, before exploring the question of what additionality is for, it is helpful to place the question in the proper policy context. In the case of the CDM, the context is a programme that issues tradable credits used to make specific quantified GHG emission offset claims. Prerequisite questions are: what kind of programme is the CDM and what is the hierarchy of its mandates? This chapter makes the assumption that, first and foremost, the CDM should be a GHG offset credit programme and, therefore, its processes and rules must, at a minimum, satisfy criteria necessary for credible emission offset credits. Further, this chapter assumes that with regard to other mandates or objectives that may be layered onto the CDM (e.g. promoting non GHG related environmental co-benefits, gender rights, economic development, etc.), while important and worthy and potentially complementary to the CDM's central objective, they should not be allowed to become substitutes for the CDM's central objective. These assumptions will be explored further in this chapter.

In the process of having policymakers confirm the CDM's status as an offset programme, it is helpful to establish the core purpose of choosing an offset mechanism over alternative policy mechanisms. The relative advantage of an offset programme is that it has the potential to 'capture'[16] GHG emission reductions (or removal enhancements) in a way that is more cost-effective than would be possible using other policy mechanisms. In part, offset programmes achieve increased cost-effectiveness by using a market-based approach that incentivises private actors to search for, locate and price mitigation opportunities that policymakers either cannot access or lack information on. Offset programmes, such as the CDM, then issue tradable credits that can be used in lieu of mandatory (or voluntarily imposed) compliance obligations, such as substitution for an emission permit under a cap-and-trade system. The primary advantage of an emission offset programme relates to the use of a market-based mechanism that identifies and implements certain classes of mitigation activities that would be missed, or captured at a greater cost, by other policy measures. By incentivising the private sector, it would seem reasonable to expect that an offset mechanism has the potential to be more cost-effective than alternative policy mechanisms at mitigating emissions from at least some classes of project activities. Offset programmes should be cost-effective, given political constraints, in that they should target activities not easily identified or incorporated into other politically acceptable policy mechanisms (Bushnell, 2010; Gillenwater and Seres, 2011).

Additionality is fundamental to the very definition of an offset and is what distinguishes offset programmes from other policy mechanisms: economic subsidies. Subsidies are used to influence behaviour and produce extra public goods. But, unlike offset credits, subsidy programmes rarely involve rigorous procedures to determine whether a recipient of a subsidy would have engaged in the desired behaviour even in the absence of the subsidy. The purpose of assessing additionality is to exclude these freerider recipients from participation in the programme.

16 By capture I mean to identify and implement additional activities that will reduce GHG emissions.

However, offset programmes, relative to other policies, also have the potential to entail greater implementation costs, which are largely associated with the assessment of the additionality and baseline of proposed projects.[17] Offset programmes will involve errors in the assessment of additionality and baselines. These errors can include false positives (type I errors), in which non-additional activities are incorrectly recognised as being additional; false negatives (type II errors), in which truly additional activities are incorrectly rejected (Chomitz, 1998; Trexler, Broekhoff et al., 2006); and errors in the quantification of baseline performance.

The question for CDM policymakers is then: for each specific class of project activities, can baselines be predicted and additionality assessed with sufficient confidence so that the incremental benefits of an offset mechanism outweigh the incremental costs relative to the policy alternatives? In other words, the objective for policymakers is to design an offset programme that is better than the alternative policy options, which is done by: (i) minimizing errors in additionality and baseline assessments, while controlling transaction costs; and (ii) only including activities in the programme whereby the previous point is possible.

3.1 Challenges and stakeholder concerns

Lack of Additionality, historically, has been the leading reason given for the rejection of proposed projects under the CDM (by DOEs as well as by the EB), which has produced a continuous stream of adjustments, revisions and elaboration of CDM additionality assessment processes. Despite these adjustments and improvements, CDM stakeholders overwhelmingly continue to view the issue of additionality, and how it is addressed under the CDM, as the, or one of the, main aspects of the CDM in need of reform.

Although a precise or common understanding of additionality is still elusive in the stakeholder community, it is nonetheless understood to be at the core of the CDM's environmental integrity and credibility. Further, it is seen as one of the key challenges to the CDM's ability to achieve greater scale. For stakeholders who believe that the CDM lacks credibility, it is probably safe to assume that at the root of this belief is a perception that projects accepted by the programme are not additional.

Although this section does not catalogue stakeholders' concerns regarding additionality, they can be readily summarised, to varying degrees, as follows: (i) that the CDM process for determining additionality is overly politicised; (ii) that it is too subjective (also framed as too unpredictable); (iii) that it is impossible or impractical; and/or (iv) that it is too costly. Although rarely explicitly cited, the origins of these criticisms are partly rooted in the failure of the programme to employ a sufficiently evidence-based assessment process.

Stakeholders express competing desires. They want a CDM additionality process that has low transaction costs (e.g. is less complicated), while simultaneously wanting a process that is rigorous and near flawless. Another common call from stakeholders is for the CDM to move towards more standardised approaches to determining additionality and baselines, referring to specific options such as positive lists (also referred to as automatic additionality). As will be discussed below, standardised approaches offer the possibility of satisfying these competing desires, at the cost of shifting significant analytical and governance burdens onto to CDM administrators.

The various stakeholder perspectives generally derive from one or more general categories of challenges faced by CDM administrators (including DOEs) in assessing additionality and predicting baselines.

Comparison to a prediction of behaviour. For a given proposed project or class of similar project activities, additionality is assessed relative to a predicted baseline, which represents a scenario under identical conditions except for the absence of the recognised intervention created by the CDM. Although it may be possible to observe the behaviour of an actor under the influence of an intervention and another similar actor under near identical circumstances but where the intervention is absent, it is rarely possible to simultaneously observe the behaviour of the same actor under the same conditions both with and without the intervention present. Although repeated throughout the literature on the CDM and offsets, additionality *is not* assessed against a counterfactual baseline. Under the CDM, additionality is assessed prior to the implementation of a project; therefore, the baseline for this purpose is not a backward-looking counterfactual but a forward-looking prediction. Emission reductions, in contrast, *are* calculated against a backward-looking counterfactual. As will be discussed below, for a given project there are important reasons for maintaining consistency

17 The costs referred to involve all actors involved in the offset programme, including participants and administrators. There are also other costs, such as for monitoring (or measurement), reporting, validation and verification, as well as for methodology development. It is important to remember that other policy mechanisms will have their own problems, errors and transaction costs. Any comparison of an offset programme to alternatives should not fall into the classic trap of comparing a realistic option with an idealised alternative.

between the two baselines used for assessing additionality and calculating emission reductions.

Asymmetric information and misaligned incentives. CDM programme administrators require information from project proponents to assess additionality and predict baselines. Like other situations in which regulators face the challenge of asymmetric information (Akerlof, 1970), project proponents have an incentive to provide biased information that will increase the likelihood that CDM administrators will deem their proposed activity additional and assign them a more favourable baseline.[18] Aggravating this challenge are two other problems. Firstly, both the seller and buyer of offset credits tend to benefit from the approval of a non-additional activity; therefore, a third party is needed to assure offset quality (Michaelowa, 2009a).[19] Secondly, the most cost-effective mitigation projects – because only a small incentive is needed to cause their implementation – are also the activities that are more likely to result in false determinations of negative additionality (Meyers, 1999; Greiner and Michaelowa, 2003; Bushnell, 2011).

Multiple factors influencing behaviour. The actual behaviour of project proponents is likely to be a function of multiple variables (i.e. factors), including, but not limited to, variables affected by the recognised intervention, as well as random noise inherent to natural and social systems. This complexity can make the modelling and predicting of behaviour difficult. Actors can also vary in their objective functions (e.g. financial profit, political expediency and preservation of established heuristics) and their expectations of future performance and risks (Greiner and Michaelowa, 2003).

Subjectivity and uncertainty of determinations. Due to the challenges listed above, there will be some inherent subjectivity in the assessment of additionality and the prediction of baselines, which has been critically noted by some researchers and programme participants (Schneider, 2007; Wara and Victor, 2008; IETA, 2009). Although standardised approaches can enable more-objective assessments, there will still inevitably be some subjective judgements made in the setting of standards. This subjectivity can lead to uncertainty on the part of project proponents regarding the likelihood that their proposed project will be determined additional. This uncertainty on the part of project proponents, as will be discussed below, is directly coupled with the ability of the CDM to cause projects to be implemented and have confidence in the additionality of those projects.

Addressing these challenges entails administrative and other transaction costs associated with measurement, reporting and verification (MRV) and, most importantly, investigations to support the development of more-credible and evidence-based approaches to determining additionality. The application of more standardised approaches to determining additionality and baselines under the CDM should reduce some transaction costs (e.g. related to proposal development and validation), while increasing others (e.g. related to upfront research and development of evidence-based predictive models for building standardised approaches).

3.2 Conceptual issues

This section addresses the conceptual issues associated with additionality in the context of the CDM and offset crediting programmes more generally. After establishing some essential assumptions, definitions of additionality and baseline which balance practical and scientifically credible issues are presented.

Fundamental to these definitions is the understanding that the process of determining the additionality of a proposed project is contingent upon the specification of a baseline scenario. Specifically, the explicit identification of alternative baseline scenarios and the selection of the most plausible baseline prediction is an intrinsic and essential part of the process of assessing additionality. And, although there may be complex motivations and multiple influences on project proponents, for the purpose of assessing additionality, the factor causing a project to be additional is the intervention created by the CDM, holding all other factors constant.

3.2.1 History of additionality under the CDM

The Kyoto Protocol refers to the additionality of CDM projects as "reductions in emissions that are additional to any that

18 One could also make an argument that in some circumstances actors may not be aware of how they would actually behave under an intervention-free scenario. They would also have no incentive to collect data that might question the additionality of their proposal.

19 Within an offset credit trading market there will typically be three roles involved: programme administrators (i.e. regulators and their designated auditors), actors proposing activities and buyers of any resulting offset credits. Unlike transactions of tangible goods and services where buyers can directly confirm the quality of the goods and services delivered, offsets represent public goods (e.g. GHG emissions), are intangible and therefore lack this incentive because the public, instead of the buyer, suffers the losses resulting from acknowledged poor quality. Programme administrators (with the support of auditors or verifiers) represent the interests of the public with respect to offset quality.

would occur in the absence of the certified project activity"[20] and to the additionality of joint implementation (JI) projects as "a reduction in emissions by sources, or an enhancement of removals by sinks, that is additional to any that would otherwise occur".[21] It is important to highlight a critical omission in the language of the Kyoto Protocol. No guidance was in the Protocol on what CDM administrators should recognise as being the intervention created by the CDM.

The Parties to the Convention recognised that both the CDM and JI required further elaboration prior to implementation, which was the focus of the seventh session of the Conference of the Parties. However, negotiators at that session were unable to reach consensus on a more precise definition of additionality (Michaelowa, 2009b).[22] That round of negotiations produced the Marrakesh Accords, which defined a project as additional "if anthropogenic emissions of GHGs by sources are reduced below those that would have occurred in the absence of the registered CDM project activity" (UNFCCC, 2001).[23] This language is little changed from the original language of the Protocol and simply substitutes "registered" for "certified".

Recognising the lack of guidance on additionality and baselines provided by the negotiating process, the newly constituted CDM Methodologies Panel attempted to address the issue soon after it was constituted in 2002. In its first draft PDD template in 2002, the Panel included language requesting that project proponents "provide affirmation that the project activity does not occur in the absence of the CDM" (Asuka and Takeuchi, 2004), thereby defining the existence of the offset programme as the recognised policy intervention for assessments of additionality.

Two months later, in response to stakeholders' claims that it was neither necessary nor appropriate for the Panel to clarify the definition of additionality provided in negotiated decisions, a second draft of the PDD was circulated.[24] The second draft used the following language: "why the emission reductions would not occur in the absence of the proposed project activity, taking into account national and/or sectoral policies and circumstances" (Asuka and Takeuchi, 2004). The second draft reverted to the earlier language, which left unspecified what the intervention for the purpose of assessing additionality was. It mentioned the need to consider existing and future policies, but did not clarify how these were to be treated with respect to predicting baselines (allowing for later difficulties with the E+/E- issue). Were policies, existing or new, to be considered as part of the baseline or not?

At its eighth meeting in 2003, the Panel added parenthetical language to the PDD asking project proponents to explain "how and why this project is additional and therefore not the baseline scenario" (Asuka and Takeuchi, 2004; Michaelowa, 2009a). The new language provided some conceptual clarity by highlighting a key characteristic of additionality, namely that it is about distinguishing a proposed project from a reference baseline. However, still no guidance was provided on what factors define a baseline scenario (i.e. the absence of a recognised intervention).[25]

In practice, CDM administrators have implicitly interpreted the potential to earn revenue in the form of tradable offset credits as the recognised intervention for assessing additionality and baselines.[26] However, for political and other reasons, language codifying this treatment has not been adopted. As a result the de facto CDM process for assessing additionality (i.e. the additionality tool) relies on several largely subjective tests (i.e. regulatory, investment, barrier and common practice),[27] although increasingly detailed guidance on the application of these tests has been developed over time (CDM, 2009; Haya, 2009).

Beyond a lack of precision, the existing CDM framing of additionality and baselines exhibits another problem. It is based on circular definitions. To explain: a proposed project is

20 See Article 12, paragraph 5(c), of the Kyoto Protocol.

21 See Article 6, paragraph 1(b), of the Kyoto Protocol. There appears to be no technical reason why the language on additionality in these two articles of the Kyoto Protocol differs.

22 Michaelowa (2009b) points to several reasons for negotiators' failure to elaborate a definition of additionality, including differences in views among Parties, a lack of understanding of the issues (especially by developing countries) and a sense that it was a technical issue, rather than one to be negotiated.

23 See decision 3/CMP.1.

24 Note the problem here. Negotiators assumed that additionality was a technical issue, yet when technical staff attempted to address it, they were rebuffed by stakeholders claiming it was a political issue. The result is that the issue was not addressed.

25 Since 2003 the wording of the CDM PDD form (version 7) has been revised to read: "Explanation of how and why this project activity is additional and therefore not the baseline scenario *in accordance with the selected baseline methodology*" (emphasis added).

26 Showing causation was included in step 5 of an early draft version of the additionality tool, which asked project proponents to demonstrate that CERs had a significant (or more specifically, causal) impact on project decision-making (Füssler, 2012).

27 See Michaelowa (2009a) for a detailed discussion of the CDM additionality assessment process and additionality tool. See Trexler, Broekhoff et al. (2006) and Gillenwater (2008) for a general discussion of various additionality tests.

Figure 16. Circular definitions in referring to additionality and baseline (referring to the project as the cause)

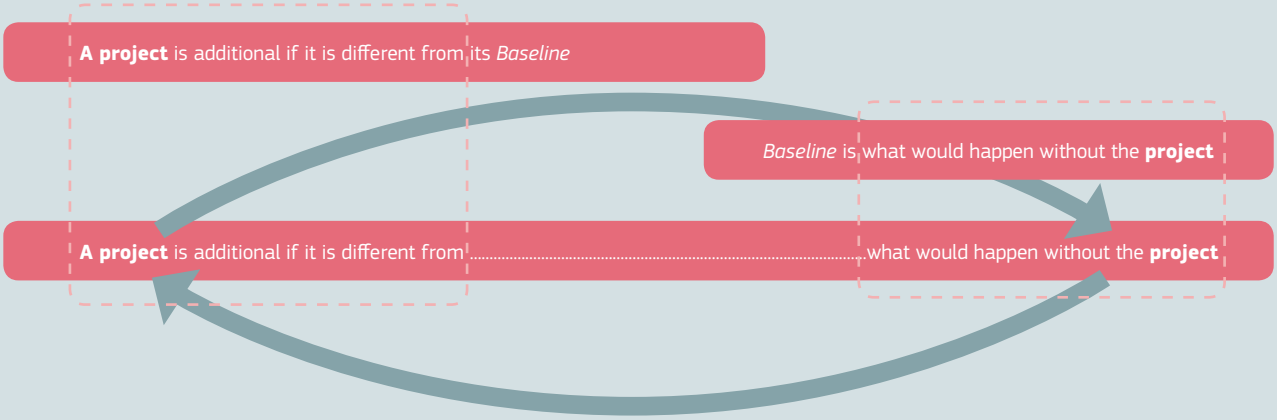
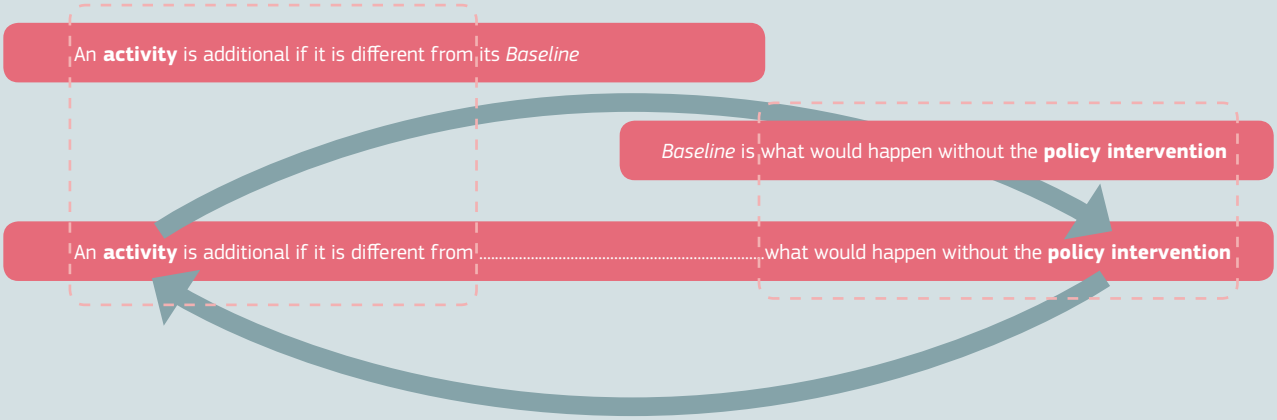


Figure 17. Non-circular definitions in referring to additionality and baseline (referring to the intervention as the cause)



additional if it is different from its baseline.[28] A baseline scenario is then the behaviour that occurs when that intervention is absent, while holding all other factors constant. Definitions of additionality and baseline are circular when they are founded on a question that asks whether a proposed project is causing itself to occur. Figure 16 outlines this circular aspect and contrasts it with language that references an intervention as the proper causal factor for the assessment of additionality, thereby avoiding the trap of circularity.

CDM policymaking and programme administration has probably been hindered by definitions of additionality and baseline that are ambiguous and circular. The foundation of any process for assessing additionality is the precise and explicit specification of a recognised intervention and the requirement that this intervention is *causing* the implementation of registered projects. The lack of such a specification has prevented the CDM from developing a credible and evidence-based approach to determining additionality.

Because we are generally only able to observe behaviour (e.g. performance) where the intervention is present, the assessment of additionality involves a prediction of what would happen without the intervention being present and then comparing the submitted proposal to that prediction. If a proposal is different from its baseline then it is deemed additional, otherwise it is not.

Because additionality is fundamentally about assessing whether one, or a combination of, interventions is causing behaviour to change, the entire concept of offsets must be built upon a careful understanding of the relevant intervention as well as assumptions about how behaviour is affected by these interventions.

28 There are some who argue that additionality is simply a determination of the eligibility of a proposed activity and that setting a baseline is then a separate process related to the calculation of credits for issuance. If this position is accepted, though, it is not clear what the basis for additionality is. If the concept of additionality is decoupled from the associated baseline then the programme will inherently entail some combination of higher false-negative (or positive) error rates in determinations of additionality and under (or over) crediting.

3.2.2 What is the intervention created by the CDM?

Additionality is typically described as the determination of whether or not the scenario under a project is different from what would have happened otherwise. Yet, this question cannot be answered without clarifying: otherwise except for what? Specifically, additionality is about whether and in which cases an intervention is causing behaviour to change. The assessment of additionality, then, must take into account the possibility that behaviour may remain unchanged even when the policy intervention is present.

Again, under the CDM, it is implicitly understood, by at least some stakeholders, that the expected economic value of offset credits is the only, or at least the dominant, intervention created by the CDM. Once an intervention is explicitly recognised by the CDM, then one or more treatment variables need to be specified that can be objectively measured or coded by experts using a elicitation protocol (Morgan and Henrion, 1990).[29] The associated treatment variable (i.e. causal variable) for defining a baseline under the CDM would be the project proponents' expected value from the sale of offset credits. The variable is an 'expected' value because the actual number of credits issued, as well as their future selling price, will be uncertain. For example, the treatment variable could be the NPV (i.e. discounting for time as well as uncertainty/risk) of the CERs expected to be earned by the proposed project.

Specifying the CDM's intervention in this way does not necessarily lead to a model for assessing additionality that solely uses financial analysis and financial variables to predict baselines. Obviously not every decision is based solely on a financial calculation; non-financial factors are important in some decisions. Specifying the intervention created by the CDM, however, is not the same thing as identifying all of the potential factors that affect the behaviour of project proponents. The behaviour of project proponents may be determined by a number of different factors (e.g. barriers), but this is a different question from what the intervention created by the CDM is. It is critical to separate these two questions, because once an intervention is specified then only behavioural factors that are affected by the specific intervention created by the CDM are relevant to the assessment process. For example, the deployment of more-efficient cook stoves in a region may be affected by a variety of cultural factors. But the definition of the intervention created by the CDM is a separate question to the definition of those barriers.

If the CDM (or affiliated entity, as discussed below under other issues) actively provides other types of direct support to project proponents that is intended to influence their behaviour (e.g. in-kind project development assistance, loan guarantees, etc.), then it may be appropriate to include other treatment variables in an assessment model. Taking from the literature on transaction costs, these other treatment variables may also be coded in terms of their economic value (Williamson, 2005). Non-financial barriers can then be represented in the model as transaction costs, thereby building a causal relationship with the treatment variable(s).

3.2.3 What is the theory of behavioural causation?

Along with carefully defining the intervention created by the CDM and specifying the treatment variable(s) that represent it, it is also necessary to assume an overarching theory of behaviour for project proponents. This theory guides the selection of other factors (i.e. variables) and the optimisation function (i.e. causal mechanism) to include in the models/algorithms used to assess additionality and baselines. In the context of the CDM, the actors relevant to a particular type of activity would be individuals and/or organisations (e.g. firms, coalitions of investors, or government agencies) with decision-making authority over investments or operations that affect emissions.

There are several theories of behaviour that could be assumed for the development of additionality and baseline assessment models. The fundamental difference in these theories is an agent's optimisation function. Rational actors behave "in a manner that will maximise their own well-being" (Grafton, Pendleton et al., 2001). Pure rationality, the basis of neoclassical economic theory, views behaviour as predictable and consistent across situations and time by assuming constant preferences. In the context of additionality and baselines, the primary model of behaviour for a rational economic actor would be a cost–benefit analysis. The variables relevant to the model would be economic and could include both financial variables (e.g. revenue and prices) and non-financial variables (i.e. transaction costs and economic utility). Typically, only private (versus public) benefits and costs would be considered under this theory of behaviour and actors would be assumed to maximise their expected private utility (van den Bergh, Ferrer-i-Carbonell et al., 2000). Assuming this theory does not necessarily reduce the assessment process to a simple financial analysis.

29 Expert elicitation is the synthesis of opinions of experts on a subject about which there is uncertainty due to insufficient information. An elicitation protocol involves a structured approach to questioning experts so as to obtain estimates of parameter values and uncertainties with minimum bias.

Grounding assessments in the theory of an economically rational actor can still account for behaviour where non-financial benefits and costs are significant. For example, some activities may entail public-relations benefits for a company that can be valued (albeit with difficulty). Similarly, transaction costs associated with overcoming information and other barriers can be included in an economic model.[30] The investment analysis portion of the current CDM additionality tool is an example of a model assuming rational economic actors.

There are some important classes of activities for which pure rationality is likely to be a poor theory of behaviour. Bounded rationality assumes that real-world actors are not able to make perfectly rational decisions in many circumstances. Both laboratory and field experiments indicate that individuals (versus firms or entire markets) exhibit behaviours that are often better represented by a theory of bounded rationality (Kahneman, 2003; Venkatachalam, 2008). However, firms and other institutions – as collections of individuals with institutional rules and cultures – as well as markets as a whole are not necessarily shaped by the same findings (Shogren and Taylor, 2008). For example, the social and economic context of firms can moderate some individual biases, while simultaneously introducing some new biases through social phenomena (Cyert and March, 1963). A firm will typically have more cognitive resources to identify and analyse choices than a single individual, especially when a decision involves large costs and benefits. However, when an activity involves small decisions by many actors and transaction costs are large (e.g. residential energy efficiency projects), bounded rationality theory is likely to be highly appropriate (van den Bergh, Ferrer-i-Carbonell et al., 2000). In these cases, more realistic assessment models can incorporate likely actor biases. The result can be that interventions may have a greater or lesser impact than would be expected under a pure economic rationality theory of behaviour.

A practical way forward for the CDM is to assume a theory of purely rational 'economic' actor behaviour, except in contexts where it is expected that specific biases are likely to be significant and where those biases can be analytically incorporated into the assessment process.[31] This way forward does not assume that actors (e.g. business managers, facility operators, project developers or investors) should be treated as having perfect information, perfect foresight, zero unmonetised transaction costs, unlimited access to capital or an exclusive focus on financial factors, or as operating in perfectly competitive markets, or as being ideal in any other way. However, for many classes of projects, economic rationality – which can still account for political and other factors through the inclusion of transaction costs – is an appropriate assumption for emission reduction activities given the significant long-lived investments often involved.

Baselines for public-sector projects, versus those initiated by the private sector, can be more challenging for the CDM because decision-making is often dominated by political concerns that may not be readily obvious. Unless decisions by these public-sector actors are based largely on financial considerations, then expected CER revenue is less likely to influence decision-making, resulting in a reduced probability that such project proposals are additional and lowering our confidence in the determinations of additionality for them.

Despite the point above, it is not necessary for CDM administrators to 'get into the head' of every project proponent. However, it is necessary to understand and make explicit assumptions regarding the decision-making process of entire classes of project proponents and their associated class of projects considered for inclusion in the CDM. The assumed theory of behaviour (i.e. objective function) will vary across classes, as not all actors prioritise the same factors, and therefore the behaviour of all classes of actors will not be equally affected by the intervention created by the CDM.

3.2.4 Intervention strength and causation

Additionality is unavoidably and inherently about whether the intervention created by the CDM is the cause of a change in behaviour. This fact cannot be avoided or ignored if offset credits are to be established as being credible. A proposed project may appear worthy and be viewed as not being 'business as usual', but this observation does not necessarily lead to the conclusion that the implementation of the project is being caused by the intervention of the CDM. For example, large hydroelectric projects may be deemed by the governing DNA as highly desirable for development reasons, but the risk-adjusted influence of CDM funding may be too small for such large capital-intensive projects for us to have any significant confidence that the CDM's intervention is causing such a project to be implemented.

30 Under the CDM, one of the three options for the basis of a baseline scenario in the Marrakesh Accords (see paragraph 48(b)) specifies the following: "emissions from a technology that represents an economically attractive course of action, taking into account barriers to investment". This option implicitly assumes a theory of rationally economic actor behaviour (Asuka and Takeuchi, 2004).

31 Greiner and Michaelowa (2003), Shogren and Taylor (2008) and McFadden (1999) make similar recommendations for the CDM and in the broader context of environmental policy and economic analysis, respectively. The assumption of an economically rational actor is also functionally adopted in the CDM's investment analysis guidance (UNFCCC, 2009a).

Of course, it is impossible to prove, ex ante, that the intervention created by the CDM is causing a proposed project to be implemented. But, just like for other predictions, the degree of confidence we have in our predictions varies. We have high confidence in some predictions and low confidence in others. One key factor in a prediction of project participants' behaviour is the significance of the specified intervention (i.e. signal) relative to the other factors influencing decisions (i.e. noise). The analogy of a 'signal to noise' ratio is useful when considering the confidence one has in an additionality and baseline determination. The additionality of a proposed project is then a function of the intervention's expected value (i.e. magnitude and uncertainty). The weaker the intervention (i.e. lower expected – meaning risk-adjusted – NPV from CER sales over the life of the project) relative to other decision factors, the lower our confidence will be in a determination of the project's additionality.

3.2.5 Defining additionality and baseline

Additionality is not defined by a given test or tool. Additionality is not an analytical technique. Tests, tools, prediction models and algorithms are only the embodiment of an effort to assess additionality and baselines. Before focusing on tests or approaches, it is essential to develop a precise and explicit understanding of what we are testing for.

For the CDM to be credible as an offset programme it is not tenable, as some stakeholders have argued (e.g. the Project Developer Forum (PD Forum)), to define additionality in solely legalistic terms (i.e. that a project is additional because a DOE or the EB says it is additional).[32] Instead, the credibility of the CDM, and GHG emission offset programmes more generally, needs to be built upon a precise and scientifically well-grounded definition of additionality. The following definitions are reasonable starting points (Gillenwater, 2012a; Gillenwater, 2012b):

Additionality is the property of an activity being *additional*. A proposed project activity is *additional* if one or more interventions are deemed to be causing the activity to take place. Under the CDM, the intervention is recognised to be the expected economic value of offset credit revenue. The occurrence of additionality is determined by assessing whether a proposed activity is distinct from its baseline (see below).

A **baseline** is a prediction of the quantified amount of an input to and/or an output from an activity resulting from the future behaviour of the actors proposing, and affected by, a proposed project activity in the absence of one or more interventions, holding all other factors constant (ceteris paribus). These actors are assumed to be economically rational except in contexts where it is expected that specific behavioural biases are likely to be significant and where those biases can be analytically incorporated into a model used for assessing additionality and assigning a baseline. The conditions of a baseline are described in a baseline scenario.

Again, additionality is assessed against a predicted baseline (ex ante), while emission reductions are calculated against a counterfactual (ex post) baseline. Which leads to the questions: should these two baselines be the same and what are the implications of them being different? As discussed in the preceding section, if project proponents lack confidence in the baseline that will be used for determining additionality and calculating emission reductions, then it will affect their perception of the strength of the CDM intervention. Further, it will lead to one of a number of undesirable outcomes that is likely to reduce the credibility of the overall process. Table 4 summarises these outcomes. In the table, A/BL is the baseline used for assessing additionality and ER/BL is the baseline used for calculating emission reductions. *Actual* is the true baseline, which we cannot observe but exists theoretically. As shown in the table, not maintaining consistency between the A/BL and ER/BL effectively assures that there will be a higher error rate in determinations of additionality and/or crediting relative to setting them equal.

32 Project developers have legitimate concerns about retroactive reversals of additionality determinations by the EB. However, addressing such concerns is really a separate issue from how we define and understand what additionality is.

Table 4. Possible outcomes with respect to integrity for different stringently set baselines for determining additionality (A/BL) and crediting emission reductions (ER/BL)

More stringent		Less stringent	Implications relative to ER/BL = A/BL
A/BL	ER/BL	*Actual*	extra false negatives
A/BL	*Actual*	ER/BL	extra false negatives and extra overcrediting
Actual	A/BL	ER/BL	extra overcrediting
ER/BL	A/BL	*Actual*	extra undercrediting
ER/BL	*Actual*	A/BL	extra undercrediting and extra false positives
Actual	ER/BL	A/BL	extra false positives
ER/BL = A/BL		*Actual*	conservative, but no extra undercrediting or false negatives
Actual		ER/BL = A/BL	not conservative, but no extra overcrediting or false positives
Actual = ER/BL = A/BL			theoretically perfect

3.3 Options for addressing additionality

The CDM has largely, with some more recent exceptions, relied on a process for determining additionality that relies on subjective case-by-case adjudication. Facts and interpretations are argued over and the eligibility of proposed project activities is judged based on the information presented. This approach has been criticised for a variety of reasons, including whether it is scalable as offset markets grow. In response, multiple researchers and other stakeholders have called for moving towards more-objective standardised approaches to assessing additionality and baselines (Kartha, Lazarus et al., 2004; Schneider, 2007; OQI, 2008; OQI, 2009; Schneider, 2009a; Hayashi, Müller et al., 2010)

This section discusses the main options for addressing additionality and baselines under the CDM, including: (i) a broad critique of the current CDM additionality tool; (ii) a more lengthy exploration of standardised approaches; and (iii) some issues with discounting to be considered and defining additionality as a probabilistic concept.

3.3.1 Technology- and context-neutral tools/guidance

The current CDM additionality tools (including the combined tool) are an example of a universal approach to determining additionality applied in a project-specific manner. Being universal, these tools can be viewed as a type of standardised approach, but one that is applied to any and every class of projects in all contexts. And, because they are so universal, a great deal of subjective judgement is required in the application of the investment analysis, barrier analysis and/or common practice test to each individual project proposal.

Given the diversity of project types and contexts which the CDM currently addresses, it seems unrealistic to expect a universal tool to produce reliable determinations of additionality without grounding its application in deep and careful studies of the technological, economic and behavioural factors governing each class of projects. The current additionality tool does not adjust to the varying ways in which decisions are made. For example, some decisions are largely governed by financial considerations, others by behavioural biases, and some by largely political considerations (e.g. public-sector investments).

Although standardised approaches are typically referred to as the alternative to this technology- and context-neutral approach, the problems with the current approach can be viewed as being grounded in an attempt to apply a universal standard across all projects. As a result, it does not adequately consider the actual variation across classes of projects.

The case-by-case assessment of a single project developer's motivations and intentions can also create an unwelcome perverse incentive (i.e. moral hazard). Consider two near-identical project proposals. The only difference between the two proposals is that the project proponent

behind the first proposal is of exceptional management and technical ability and the proponent behind the second has below-average ability. The first proposed activity is predicted to be profitable even without the intervention and is therefore determined to be non-additional based on a project-specific assessment. However, because of the second project proponent's poor management practices, the second proposed project is more costly, is unprofitable and is therefore deemed additional by the offset programme using the same assessment process. If the additionality of these two cases is judged independently, then it is possible to have an approach that promotes poorly run businesses over those that are better run. This problem can be avoided if processes for addressing additionality and baselines are built upon standardised models of a representative actor in a given context that assume all actors are of some average competency.[33]

3.3.2 Standardised approaches

A standardised approach, as discussed here, is a set of rules that can be applied in an objective manner (or with minimal subjectivity) for the determination of additionality and the setting of a baseline for a proposed project.[34] These rule sets can take the form of a model or algorithm and are probably best visualised as a collection of equations and objective logic conditions embedded in a decision tree. Such a model will ideally utilise as few variables as possible to distinguish additional from non-additional proposals. The purpose of these models is to predict behaviour under non-intervention conditions. The specification of an intervention and a theory of behaviour are two of the key input assumptions for the development of a model.

The equations or logic conditions in such a decision tree should be a function of measurable and verifiable variable values, rather than subjective considerations, thereby limiting the role of DOEs to verifying model input data. In some cases, a model can be reduced to a single threshold metric (e.g. a performance benchmark), whereby the model's algorithm simply determines whether or not the performance of the proposed activity is expected to be above or below a benchmark and then assigns a single alternative baseline scenario to the proposal. But the important point is that a standardised approach can take the form of any combination of rules in a decision tree.

A reason for using a standardised approach model with clearly specified variables is that it offers the potential for greater transparency, objectivity and replicability, as well as a falsifiable hypothesis that can then be challenged and improved upon. Scientifically credible predictions must be falsifiable, meaning that they should be specified so that a knowledgeable person could identify a case, if it exists, which demonstrates that the predictive model is incorrect. In the context of additionality and baselines, if a case is identified where a project was implemented without the presence of the intervention, and yet the applicable model said the project required the intervention to be present, then this would theoretically falsify the model. Such a finding could then lead to the modification or replacement of the model.

Standardised approaches offer the potential to address the common call of CDM stakeholders for a process for determining additionality that is both simpler to apply and more credible. The trade-off is that a large initial and ongoing investment of resources is necessary for the development of reliable standardised approaches.

Three general types of standardised approaches are typically referred to in the context of the CDM, including: (i) positive lists (automatic additionality); (ii) performance benchmarks; and (iii) penetration-rate thresholds.

In practice these three types are not necessarily distinguishable and can often be overlapping. For example, in order to precisely define a positive list standard, it is necessary to be extremely precise regarding the technical and other specifications that define the project type and applicability criteria so that it is possible to make fine distinctions regarding what is eligible and what is not under the standard. Once this level of detail of specification is reached, the standard can appear to be similar to a performance benchmark. Conversely, once fully specified, a performance benchmark can start to look like a positive list standard. The point is that a standardised approach is really akin to writing a technical standard that may draw upon a variety of variables, and thresholds which may include any combination of criteria thought of as a positive list, performance benchmark or penetration rate.

In all cases, any standardised rule set for determining the additionality of a class of projects should refer back to an evidence-based prediction that the CDM intervention is causing, with a reasonably high probability, the proposed projects within that class to be implemented. For example, simply showing that a class of projects is new or not

33 The same point can be made with respect to projects proposed for less-suitable sites or using inefficient technologies.

34 The CDM already includes examples of standardised methods for setting baselines for select project types and standardised additionality assessment methods for some small-scale project types. Other examples of standardised approaches can be found in the Climate Action Reserve and the Regional Greenhouse Gas Initiative. The Verified Carbon Standard is also in the process of developing standardised approaches.

common practice, by itself, offers little or no evidence that the intervention of the CDM is causing those kinds of projects to be implemented.

Creating standardised approaches

There are a number of desired policy outcomes resulting from the use of standardised approaches for assessing additionality and baselines, including:

- Public confidence and credibility with stakeholders;
- The accuracy of additionality and baseline assessments (i.e. minimisation of error rates);
- Predictability (i.e. low uncertainty) for actors (e.g. project investors) of the outcome of the process;
- Objectivity in variable value measurements and coding as well as model algorithms (e.g. decision points in decision tree are not based on subjective judgements);
- The option of administrative flexibility to address unique circumstances;
- The incorporation of processes for continual improvement of models;
- Minimised transaction costs (e.g. for data collection, model application and quality assurance);
- Resistance to manipulation (i.e. gaming);
- A highly transparent technical and empirical justification for the development and application of models;
- The opportunity for stakeholders to test, challenge and falsify models.

Many of these outcomes involve unavoidable trade-offs, such as flexibility versus predictability or accuracy versus cost. It is important to recognise, however, that some frameworks for developing standardised approaches will be worse in achieving all outcomes, while others will be better. The likely key to achieving better outcomes is to focus the framework on a rigorous investigation of the relevant class of projects, including input from technical experts and use of case studies. An analogy for this type of investigative work would be studies performed for rulemaking, in which regulators develop a deep understanding of the technological, economic and social issues associated with a class of activities in a given context prior to elaborating a regulatory standard or choosing the form and magnitude of an intervention to apply. For most classes of projects, this work will require significant investment of time and resources by CDM administrators if the quality of the standardised approaches is to be assured.

Each class of projects will generally require its own model or algorithm as well as applicability criteria for assessing additionality and assigning a baseline. Some individual classes of projects may be globally uniform in their technological, economic and social characteristics. In such situations a single model may be appropriate for that class in all contexts. In most other situations, though, it will be more appropriate to limit the applicability of a model to a precisely specified context, for example to a single country, urban areas, regions with low precipitation or where a reliable electricity supply is available.

Once a class of activities is specified, a limited number of candidates for the alternative baseline scenario can be elaborated along with a procedure for quantifying the performance (e.g. emissions) of each candidate. This quantification can be a function of empirical data from representative cases, expert judgement and/or ex post metrics (e.g. scaled to production output in the observed project scenario). Each alternative scenario is an outcome of a decision-making event, with each alternative outcome being functionally equivalent (i.e. delivering equivalent products or services).[35] One of these alternatives must be a duplicate of the proposed activity in the absence of the intervention. However, if the potential outcomes for a class of activities are so uncertain that a reasonable number of scenarios cannot be specified, then there are likely to be policy options, other than an offset mechanism, that would better capture any emission reductions from that class of project activities, because our confidence in the additionality of project proposals for that class will be low.

There are several scientifically credible investigation techniques available for informing the creation of models/algorithm for standardised approaches and collecting default data representative of a class of projects.[36] Many of these approaches can also be used to test models. The techniques include, but are not limited to:

- Engineering calculations and physical process modelling;
- Economic and other statistical and regression modelling;

35 With the caveat that adjustments can be made to address suppressed demand.

36 For examples of detailed investigations by technology type and country that could serve to inform the development of standardised approaches, see Schneider, Schmidt et al. (2008) and Schmidt, Born et al. (2012).

- Discrete choice surveys and analyses;
- Formal expert elicitation;
- Statistical surveys and market research studies;
- Case studies;
- Field experiments utilising control groups;
- Laboratory experiments (e.g. utilising techniques from behavioural and experimental economics).

Chomitz (1998) and Gustavsson, Karjalainen et al. (2000) discussed the use of case studies with separate treatment and control groups for baseline assessments.[37] Such cases can be drawn from historical records, be observed in the field or created through experimentation. By comparing cases, with and without an intervention while holding all other factors constant (or at least controlling for these other factors), it is possible to investigate whether the intervention causes behavioural change. Methods for designing and analysing case studies and control groups for interventions are well developed (Khandker, Koolwal et al., 2010).

The number of cases studies used does not necessarily have to be large to enable valid inferences to be made, especially where the dependent variable is narrowly defined (e.g. a deterministic classifier). A combination of approaches that involves a few in-depth studies, to inform the creation of a model, and then a larger sample of cases to test the model is likely to be a reasonable way forward for the CDM.

And, despite what some may claim, CDM administrators can use randomised trials with a control group for the creation and testing of models. Both laboratory experiments using techniques from behavioural economics (Weber and Camerer, 2006; Kagel and Roth, 2007) and social science field experiments for investigating the efficacy of interventions (Greenberg, Linksz et al., 2003; Harrison and List, 2004) are recognised methods of causal inference and can produce valuable information to inform and justify the CDM models. For some classes of projects it may be challenging or impractical to find concurrent cases to include in a control group (Meyers, 1999).[38] Investigators can then consider the use of historical cases, where data are available and historical conditions are deemed sufficiently representative (Hoyos, 2010).

Because of the time and resources required to develop a credible standardised approach, CDM administrators will need to choose which classes of projects and contexts (e.g. countries) to prioritise. It is in making these choices that CDM policymakers can factor in considerations like equitable distribution of projects, co-benefits and other sustainable development.

Allocating the work and burden of supplying resources to develop reliable standardised approaches is a significant barrier to their deployment. In any analogous regulatory context, this work would be assigned to a governing regulatory agency, which in this case is the EB and its support staff. Work on standardised approaches involves: (i) research and evidentiary data collection and analysis; (ii) building models; and (iii) keeping them updated. There is a potential role for DNAs in this effort, for example in terms of collecting nationally appropriate contextual data. There may also be co-benefits to having Parties, through their DNA, be responsible for the collection of this kind of evidence/data, as it can be verified and used to also support the MRV needs of other mechanisms and polices (such as national inventories) as well as non climate related statistical applications. Overall, though, the CDM will inevitably need to take on a role more in keeping with a traditional regulatory rulemaking body if the use of standardised approaches is to be significantly expanded.

Testing standardised approaches

A key benefit of using transparent and objective standardised approaches is that it can be subject to falsification. Model falsification can occur on the basis of a false positive (type I error), where the model says a proposal is additional when in reality it is not, or a false negative (type II error), where the model says a proposal is not additional when in reality it is (Trexler, Broekhoff et al., 2006).

Table 5 summarises the information provided by testing a model that uses a dependent variable that is a deterministic classifier against evidence from case studies or experiments. As illustrated in the table, it is possible to falsify a model based on a false-positive case, but it is more difficult to do so with false negatives. Testing is, therefore, more useful to ensure a model is conservative in its assessment

37 Chomitz (1998) outlines two approaches for gathering information to assess additionality and baselines. He refers to these two approaches as comparison groups (i.e. control groups) and simulation (i.e. financial or behavioural models). However, to predict additionality a model (i.e. simulation) of some form is always needed. Case or 'comparison' studies can be used to inform and test a model, but are not a separate and distinct approach that can substitute for an assessment model.

38 As an offset programme expands, it will also become increasingly challenging to locate representative cases to include in a control group.

Table 5. Possible outcomes of testing a model

True status of case	With intervention		Without intervention (control group)	
	Proposal implemented	Proposal not implemented	Proposal implemented	Proposal not implemented
False positive: model says case is additional but it is not	No new information	Model may need improvement, but case does not falsify model	*Falsification case*	Case supports model
False negative: model says case is not additional but it is	Not applicable, proposal is rejected, therefore full policy intervention is not applied to the case		Case supports model	Case supports false-negative claim, but does not falsify model

of additionality than it is to ensure it is unbiased.[39] Because it is easier to improve the accuracy of a model with respect to false positives, policymakers may have to accept that even rigorously tested models will be more prone to false-negative errors (i.e. falsely reject proposals that are truly additional).

3.3.3 Probabilistic additionality and discounting

For a given class of project activities, the output of the additionality and baseline assessment model can be specified in one of two forms. The model can select one baseline scenario, out of the predetermined list of alternatives. Or the output can be values of likelihood of one or more alternative scenarios being the correct baseline. The former type of output variable would be considered a deterministic classifier (i.e. it would classify a choice as one item of a given set of alternatives), while the latter would be probabilistic. A deterministic classifier model can easily be structured as a decision tree algorithm. Within the CDM, additionality is currently treated as a deterministic variable, either a proposed project is deemed additional or it is not.

An alternative option is to represent additionality by a probabilistic output variable that could then be used to discount the number of credits issued to a project. For example, Michaelowa (2008), Schneider (2009b), Meyers (1999) and Tanwar (2007) have suggested that the emission reduction credits issued to CDM projects be discounted on the basis of the likelihood that a project is actually additional (i.e. by the uncertainty in the additionality assessment).[40]

However, this option presents some challenges. The assessment process would not only need to assign one or more baseline scenarios to a proposed activity, but also need to provide estimates of the probability that each alternative scenario is the correct one. These extra data requirements would significantly increase the workload for those charged with developing methodologies as well as DOEs. Further, to falsify a probabilistic model, it would be necessary to test it on a sufficiently large and representative sample of cases to demonstrate that the probability estimates it produces are not reliable. The use of a deterministic dependent variable leads to a model that can be more readily tested and falsified.

If the number of credits issued to a project is discounted on the basis of the confidence we had in the project's additionality, then the discounting should be weighted by the uncertainty in that specific project. If identical uncertainty estimates are used for all projects within a given class, then the discounting provides no incentive for project proponents to increase the accuracy of their data. If the additionality of an entire class of activities is highly uncertain, and it is not possible to estimate this uncertainty separately for each proposal, then the entire class is probably not appropriate for inclusion in the CDM.[41] Further, if all projects in a given class are punished equally through a discount rate on credit issuance, then it will have the effect of weakening the strength of the intervention for the entire class of projects; and weakening the strength of the relevant intervention has the positive feedback effect of increasing the uncertainty in the determinations of additionality.

39 Testing for false positives will need to consider the effect of early adopters and other atypical actors (i.e. outliers) within certain classes of activities before a model is deemed completely falsified.

40 Referred to as "fractional additionality" in EPRI (2008).

41 As noted by Castro and Michaelowa (2010), Bushnell (2010) and Kollmuss, Lazarus et al. (2010), applying discounting to an entire class of activities is more likely to exclude truly additional activities, because they will have higher costs, than non-additional activities. See Kollmus, Lazarus et al. (2010) for a discussion of discounting applied to GHG emission offset programmes.

Within a class of projects, it may be that two or more candidates for the alternative scenario (none of which could be the same as the proposed project) are expected to be the correct baseline scenario with equal probability. For these classes, models and their output variables can be designed to allow the classification of more than one scenario as the likely baseline scenario. The performance metric (e.g. emissions) against which credits are then calculated could be the more conservative of the likely baseline scenarios or some other combination or average.[42]

For activities that are actually a bundle of many smaller activities (e.g. residential lighting retrofits under a CDM POA), it may be preferable to utilise a probabilistic dependent variable. For these classes, a model would be predicting the collective behaviour of many individual actors. Probability estimates could then represent the fraction of freeriders in the population and be used for discounting credit issuance.[43] Such an approach is analogous to that used for crediting utility demand-side management programmes. To support the evidence upon which such probability estimates are based, CDM administrators can employ techniques such as discrete choice analysis, expert elicitation, multivariate utility assessment and Monte Carlo modelling.

3.4 Other issues

Beyond conceptual matters and options for how to assess additionality and baselines, there are a number of other issues relevant to our understanding and application of additionality. Key among these are the following issues:

- How government policies, especially changes in policies, are addressed in the way baselines are established.
- How temporal issues are addressed, including crediting periods.
- How the issue of suppressed demand is addressed in baselines.

3.4.1 Relationship with government policies and the E+/E- issue

As has been painfully realised through the E+/E- issue, CDM administrators will have to make judgements regarding how additionality and baseline models address existing and future government policies that promote behaviours contrary to or in support of the objectives of the offset programme (e.g. subsidies that promote the consumption of fossil fuels or encourage deforestation). As asked by Chomitz (1998), "[s]hould baselines be evaluated under prevailing prices and policies, or in a hypothetical distortion-free policy environment?"[44] Similar questions can be asked with respect to official development assistance (ODA) funding. Are government subsidies or ODA funding part of the baseline, do we assume they do not exist in setting the baseline or are they part of the intervention? Fundamentally, there is no objectively correct solution to this issue. It is inherently a political consideration. Incorporating policies into baselines can produce perverse incentives for domestic governments, while excluding them can reduce the cost-effectiveness and/or economic efficiency of the CDM.

However, one consideration for how the issue can be addressed relates to the development of standardised approaches. If CDM policymakers decide that existing policies should be excluded from the definition of alternative baseline scenarios, then this choice will increase the complexity and uncertainty of standardised approach models because they must then model behaviour under conditions in which both the CDM's intervention and the excluded policies are absent. Such a decision will also decrease the likelihood that representative case studies can be identified, forcing the CDM to rely to a greater extent on other investigation and testing approaches (e.g. lab experiments).

3.4.2 Crediting periods and other temporal issues

The temporal issues related to determining additionality and baselines have been dealt with under the CDM primarily through the use of technology-neutral and predefined crediting periods during which all projects, once approved, are deemed to remain additional. However, how long a class of activities is actually additional is a function of factors, such as the capital lifetime of equipment and technological and market changes. Baseline scenarios inherently include

42 Effectively, the CDM combined and build-margin approach for electricity generation projects uses an average of two historically based scenarios (Kartha, Lazarus et al., 2004).

43 See the US Environmental Protection Agency's Conversation Verification Protocol for an example of models used to discount for freeriders (Vine and Sathaye, 1999).

44 Also see He and Morse (2010) for an example from wind power CDM projects in China.

predictions of these factors in an alternate future where the policy intervention is absent. With standardised approaches, crediting periods (and renewal frequencies) can be set in a more customised fashion to account for the characteristics of the project type and context.

Instead of a fixed crediting period of multiple years, the additionality of and baseline for an approved activity could be frequently reassessed as new evidence is collected and then adjusted if evidence indicates that earlier predictions and assumptions were incorrect. However, prior knowledge that additionality and baselines will be reassessed and adjusted on an ongoing basis will itself have an effect on the behaviour of project proponents. It will increase their uncertainty and hence reduce the strength of the intervention. Therefore, the potential for determinations of additionality and baselines of previously approved projects to be changed will reduce the confidence we have in determinations. The use of a predetermined crediting period eliminates or reduces this uncertainty by promising a fixed eligibility period. It also reduces the cost of administering the CDM, which would otherwise need to repeatedly assess the additionality and baseline for each approved project or class of projects.

Reassessing proposals later in time in the light of new evidence and changing circumstances, though, is important for improving the quality of models and adjusting the length of fixed crediting periods for future project proposals. However, to reduce the uncertainty of programme participants and the burden on programme administrators, a practical way forward is to continue to rely on fixed crediting periods and only apply improved models and rules to future proposals rather than retroactively changing the baselines of previously approved activities.[45] These fixed crediting periods can be tailored to each class of projects under a standardised approach.

The frequency at which standardised approach models and crediting periods are reviewed and updated should also be established on the basis of expectations of the pace of change for that class of projects. This would mean needing to consider whether the class of projects involved new capital or technologies that are not easily reversed (i.e. lock-in occurs once investment is made) or operational changes that can easily be reversed (e.g. modifications in operating parameters, such as choice of fuel mix). Even in the second case reversal risk may be real, but such changes should be addressed through the calculation of emission reductions because reversals affect the emissions in project scenarios. The logical way to set the frequency of updates for baseline prediction models is to look at the permanence of the proposed project activity. If it is something that can easily be changed or reversed, then a multistage crediting period with frequent renewal would be warranted. While if the proposed project involved an investment with a long-term lock-in effect, then arguably the crediting period should be the life of that capital with little or no need for renewal periods.

3.4.3 Suppressed demand

The issue of suppressed demand is relevant to additionality because it has implications for what is considered to be the appropriate baseline. Most simply, it is an example of why it is incorrect to assume baselines are always a simple function of history. If demand is expected to grow then the baseline should account for this growth. The challenge comes when demand growth is solely a function of the implementation of the CDM project. In other words, if the effect of the project is to increase demand for goods or services, then how should this increase be treated? If the baseline is set on the basis of the pre-project demand, then CDM projects may not be viable in less developed communities. But if it is set on the basis of some predicted higher demand, then there is a reasonable argument to be made that the CDM is promoting increases in emissions.

Suppressed demand is a serious ethical issue. However, it is not clear that the CDM can be a credible offset credit issuing programme if it is also tasked with promoting development even where that development may lead to increased emissions. Any standards that codify sustainable development may complement the CDM rules to assure additionality, but this must not be at the cost of an appropriate determination of a credible baseline. It should be noted that offset credit buyers are free to pay a premium for credits that offer additional benefits, such as providing additional goods and services to poor communities to account for suppressed demand.

3.5 Conclusions

Should methods for determining additionality under the CDM be changed? Based on the analysis presented here, the answer is yes. More importantly, it is not simply an issue of making modifications to existing tests and techniques used for determining additionality. The change that is called for is instead a fundamentally more precise and transparent conceptualisation of additionality and its relationship to baselines. Several themes were identified as recommendations for the CDM as it seeks to reform itself.

45 Revisions may be warranted, however, for proposals in relation to which fraud (e.g. submission of knowingly false information) is discovered.

An explicit recognition by the CDM that determinations of additionality will never be perfect is an important basis upon which to advance dialogue on reform. **Additionality assessments and baseline predictions do not have to be perfect for an offset mechanism to be a practical policy option; they only have to be sufficiently reliable that, for a given class of project activities included, an offset programme is as good as or better than the competing policy alternatives to capture the associated mitigation potential.**

Given this conclusion, it is nonetheless important to clarify the central objective of the CDM. There are two possible future directions for the CDM. One is as a credible offset crediting programme. And the second is as a reward and subsidy programme. If the first direction is chosen, then assuring the quality of determinations of additionality and baselines must be the overriding function of the CDM. **If the CDM is to be a credible offset credit issuing programme then it should prioritise additionality and baseline assessments above other considerations** and treat additionality as a necessary eligibility criterion for all projects registered. Neglecting or downgrading this objective relative to other objectives implicitly or explicitly accepts that the CDM is not an offset programme. The effect will be to commit the CDM to becoming something akin to a subsidy or recognition and reward programme whereby credit-based subsidies are issued on the basis of other criteria, such as perceived sustainable development benefits.

Additionality needs to be explicitly framed as a determination that the intervention created by the CDM (i.e. expectations for the CER price signal) is causing, with a sufficiently high degree of confidence, the implementation of proposed projects. This framing means that there will be some classes of projects that will be excluded from the CDM because the strength of the CDM intervention is too small relative to other decision-making factors to have confidence in this causal argument (i.e. low 'signal to noise' ratio of the intervention). For example, some classes of projects are largely driven by financial factors, but the risk-adjusted NPV of CER revenue may be too small relative to total project costs and revenues (on a risk-adjusted basis) to be expected to influence behaviour. CDM administrators can improve the probability of intervention causation by designing CDM rules in ways that lower risk (i.e. increase the signal strength), such as providing a longer-term guarantee of CER revenue, where it is warranted, and/or facilitating the ability of project proponents to obtain long-term Emission Reduction Purchase Agreements. Because the intervention created by the CDM is primarily in the form of the CER price signal, projects that are decided primarily on the basis of non-financial factors (e.g. political considerations with public-sector projects) are less likely to produce assessments of additionality in which confidence is high.

There are limits to what can be accomplished by the CDM if it is to continue to claim to be an emission offset programme. There will be many mitigation and sustainable development activities that, while worthy, are not best addressed through an offset crediting mechanism and therefore should be excluded from the CDM. There are a variety of other policy measures that the international community can deploy to better address those activities inappropriate for inclusion in an offset programme. One example is the E+/E- issue. The CDM is a mechanism poorly suited to encouraging countries to enact domestic GHG mitigation policies. The CDM was designed to influence private-sector project developers, not government policymakers. Another example is projects that are prevented primarily due to the risks that they face. The CDM does little to reduce the risk exposure of project developers.[46] These issues are better addressed using other policy measures, such as nationally appropriate mitigation actions or loan guarantees. It is impractical to expect the CDM to achieve sustainable development globally on its own. In choosing which classes of projects to include, CDM policymakers should:

- Firstly, only consider classes of projects for which there is a sufficiently high level of confidence in the baseline prediction and then that the intervention's 'signal to noise' ratio is high enough to be confident that the intervention created by the CDM is causing a deviation of behaviour from that baseline;

- Secondly, even if the above criterion is met, then consider whether the CDM is the best policy to capture those emission reductions. Is the 'signal' *too* strong, such that the CDM is not cost-effective for that class of activities (e.g. HCFC-22 manufacturing projects).

The CDM is, effectively, a regulatory rulemaking body, albeit one constrained by being embedded in an international regime. With the deployment of standardised approaches, the CDM will increasingly be forced to take on the characteristics and duties of a rulemaking agency. Therefore, in reforming the governance and operation of the CDM, policymakers should look to best practice in the design of rulemaking bodies. These best practices generally include the construction of and reliance on a body of long-term or permanent professional technical staff separated from a politically accountable (e.g. not permanent) management level of governance. It does not appear that the existing

46 For example, see the discussion on fuel subsidies in Schmidt, Born et al. (2012).

appointed CDM panels, given their part-time status, or the staff of the UNFCCC secretariat, given their culture and mandate, can properly fulfil this role. The new permanent technical staff will need to have a deep technical understanding of the classes of projects, and their contexts, to be included in the CDM.

The CDM needs a framework for developing standardised approaches that provides guidance on how investigations are conducted, what research techniques are acceptable, how those techniques are to be applied, the process by which final decisions on the specific rules for a standardised approach are made and, finally, the process by which these decisions are reviewed and challenged. This type of framework is common in regulatory rulemaking settings around the world. Ultimately, though, each standardised approach is likely to entail a fairly customised analysis and require a customised decision tree for predicting a baseline and determining additionality. **A generic formula applied to all classes of projects on the basis of metrics such as a penetration rate or performance threshold (e.g. top 20% of performers) is unlikely to produce reliable determinations of additionality unless combined with a thorough investigation of causation.** Standardised approaches should be built upon a sound evidentiary basis in support of a causal argument. Replacing project-specific assessments with a generic and arbitrary metric for determining additionality and setting a baseline (i.e. a standard for standardised approaches) is unlikely to prevent criticism. Regulatory rulemaking is an exercise that requires a significant investment of time and resources, if done well. It requires a careful investigation of technologies, economics and psychology (i.e. decision-making 'space', heuristics, etc.). And, once developed, a standardised approach will require ongoing testing (e.g. with empirical data, expert elicitation, discrete choice surveys, etc.).

4 Proposed reforms to the project cycle

In this chapter the project cycle procedures are reviewed, with the aim of identifying options for further streamlining the project cycle, without sacrificing environmental integrity.

Over the past few years policymakers, project developers, DOEs and the UNFCCC alike have voiced their concerns about the CDM. This discourse has shaped the current face of the CDM regulations and initiated a movement for reform within the UNFCCC.

Sections Main areas of historical criticism of the CDM, "Main areas of historical criticism of the CDM", and The CDM – a history of its reform initiatives, "The The CDM – a history of its reform initiatives", below are devoted to understanding the current momentum for reform of the CDM.

Section Root causes of the criticism of the CDM, "Root causes of the criticism of the CDM", follows on from the previous section on criticism, detailing the root causes of it.

Section Proposed and debated options for reforms, "Proposed and debated options for reforms", summarises stakeholders' current requests to improve the project cycle.

Finally, section Assessment of the options for reforms, "Assessment of the options for reforms", discusses some of the more relevant options addressed previously, namely:

- Option 1: Development of sector-specific standardised baselines;
- Option 2: Merger of validation and first verification;
- Option 3: Enhanced discretion in relation to decisions made by the secretariat;
- Option 4: Digitalisation of workflow and improved clarity of rules.

4.1 Main areas of historical criticism of the CDM

The following review gives a high-level overview of the main areas of criticism which the CDM has been confronted with over the period of its operation.

Insufficient level of integrity. Concerns about freerider projects that generate fake offsets were voiced as early as in 2007, as soon as the number of project submissions picked up.[47] While the main concerns in the beginning were predominantly linked to additionality, currently the aspects of prior CDM consideration[48] and inadequate[49] or insufficiently ambitious[50] baseline-setting are being discussed.

Insufficient recognition of local stakeholders' views. Although local stakeholder consultations are mandatory under the CDM, the weight and recognition of the consultation process is subject to criticism. More specifically, the lack of unambiguous guidelines (e.g. as to who constitutes a stakeholder)[51] has been critically commented on, alongside the insufficient scope of the consultations and opaque reporting practices,[52] and even the observation of fake consultations in some early cases.[53] The opportunity for local stakeholders to voice their concerns is commonly seen as an important factor in safeguarding the objectives of sustainable development and environmental soundness.[54] Chapter Concerns voiced about current stakeholder partici-

47 See e.g. Haya (2007), Scheider (2007) and later Haya (2009).

48 See e.g. criticism of large infrastructure projects by CDM Watch (2011) or AEA (2011), which led the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) to request the EB to revise the additionality tool (see decision 8/CMP.7, para. 18).

49 E.g. supercritical coal projects (SEI, 2011) or HFC-22 projects (UNFCCC, 2011b).

50 See AEA (2011) for a detailed discussion.

51 Boyd et al. (2009).

52 Schneider (2007).

53 Haya (2007).

54 This is specifically highlighted in Alexeew (2010) and in AEA (2011).

pation discusses the stakeholder consultation processes in depth.

Lack of enforcement of environmental and sustainability standards. The CDM does not take a stance on preventing environmental impacts and, in many cases, local authorities are not in the position to enforce local environmental or social standards. For this reason, the mechanism has been criticised for failing to safeguard its social and environmental soundness. The criticism, notably, of the adverse impacts of large hydro projects led to a ban under the European Union emissions trading scheme (EU ETS) on such hydro projects if they cannot meet a supplementary standard.[55] Some buyers impose other supplementary environmental standards on the offset users. Specifically, governmental buyers prefer to buy CERs with an additional Gold Standard certification.[56]

Unpredictability. Although critics admit that the CDM regulations have been considerably improved in terms of consistency, defined processes and clarity,[57] the level of predictability is still considered unsatisfactory by many.[58] Of specific concern are the frequent revisions of regulations and their retroactive application, the delays in processing project cases and the inconsistent decision-making owing to ambiguous interpretations or case-by-case rulings.[59] Unpredictability is one of the main obstacles to a private sector driven scale-up of mitigation projects.[60]

Poor governance. The governance set-up of the CDM has been criticised at two levels: firstly, the lack of transparency, which prevents not only public scrutiny of the decisions taken, but also the establishment of a learning curve and precedent cases;[61] and, secondly, the absence of the possibility of appealing against decisions, which does not meet the requirements of good governance. Most critics are urging the Board to expediously implement the respective procedures that have been being considered under the UNFCCC and the Subsidiary Body for Implementation (SBI) for over a year now.[62] Further, the administrative management has been criticised for its general inefficiency: duplication of checks,[63] insufficient staffing[64] and manual work steps have been pointed out as causing delays,[65] costing a considerable volume of available credits in the first commitment period.[66]

4.2 Root causes of the criticism of the CDM

While some of the criticism of the CDM does not pertain to the project cycle itself, it is specifically the issues around unpredictability and poor governance that have a direct bearing on the project cycle procedures.

A World Bank report[67] mentions three prevailing bottlenecks in the project cycle that ultimately have the potential to have an impact on the attractiveness of the CDM to private actors considering engaging in projects as financier or developer. These bottlenecks are: (i) insufficient predictability; (ii) the long time to market; and (iii) high upfront costs.

The World Bank report also touches upon the apparent key drivers behind the bottlenecks, which can be grouped broadly into three, sometimes overlapping, areas. The key drivers presented in Table 6 are discussed in more detail in the section following the table.

The table indicates that some of the key drivers can be addressed without having an impact on environmental integrity, specifically the treatment of national policies and the evolution of the CDM rules. Others, however, relate to the level of project scrutiny applied to safeguard CDM eligibility. Options for reforms addressing those key drivers have to

55 E.g. the standard of the World Commission on Dams, see http://ec.europa.eu/clima/policies/ets/linking/ji-cdm/index_en.htm.

56 See http://www.cdmgoldstandard.org/.

57 See the review of Gillenwater and Seres (2011), but also the more recent acknowledgement by the regulees (the International Emissions Trading Association (IETA) and the Project Developer Forum (PD-Forum)) in their responses to the CDM Policy Dialogue (CDM-PD) questionnaire, at http://www.cdmpolicydialogue.org.

58 It is not only the project developerswho complain about this (PD-Forum, 2011b), but also regulators who are about to design their domestic offset schemes contest the unpredictability of the CDM (EPRI, 2011b).

59 IETA published, in 2010, a report on the state of the carbon market, in which it discussed this topic (IETA, 2010).

60 A detailed discussion on investment behaviour is provided in CIRED (2011).

61 The CMP has requested the rationale for decisions to be published, see decisions 2/CMP.6, para. 12, and 2/CMP.5, para. 7(b).

62 See http://cdm.unfccc.int/public_inputs/2010/cmp5_para42_43/index.html.

63 World Bank (2012) discusses duplication in the context of delays in the CDM process.

64 The PD-Forum submitted a series of unsolicited inputs regarding the discrepancy between staffing levels and expected validations/registrations. The documents are available at http://pd-forum.net/page.php?m=6&s=14.

65 See PD-Forum (2010 and 2011a) and IETA (2010) with respect to delays and time lags.

66 World Bank (2010) estimates that the revenues lost due to delays amount to 800 million euro.

67 World Bank (2012) discusses the bottlenecks in detail in its report on CDM reforms.

Table 6. Key drivers for the apparent bottlenecks in the CDM project cycle

Key driver	Bottlenecks in the project cycle		
	Insufficient predictability	**Long time to market**	**High upfront transaction costs**
Lack of consistency and certainty			
Additionality determination	Need for interpretations and arguments – no certitude of acceptance	Increased period of scrutiny at validation and registration	Excessive data requirements
National policies	Missing rationale and inconsistent application	-	-
Constantly changing rules	Risk of non-compliance by the time of registration	-	Increasing cost of validation and adopting PDD
Duplication of checks			
Deviations from PDD	Uncertainty of consistent project construction	Time needed to check and approve changes	Increased cost of first verification
Overlaps in tiered checks	-	Time required for audits, waiting time at registration	Cost of validation and verification
Excessive data requirements			
Monitoring techniques	Risk of failure of monitoring	-	Cost of monitoring
Baseline data collection	-	Delay in data collection and validation	Cost of establishing baseline data

Source: Adopted from World Bank (2012).

strike a balance between a potential relaxation in scrutinisation while still ensuring environmental integrity.

Lack of consistency and certainty

The determination of additionality in the current regulatory set-up is a frequent cause of delays, unpredictability of outcome and high upfront costs. The reason for this is the fact that the often subjective nature of the determination requires extensive argumentation and calls for complementary checking. While the ongoing development of the rules aims at improving them, it still creates additional uncertainty as to what the interpretation will be in the next revision cycle. Many DOEs are therefore reluctant to take on opinions on issues that are under ongoing discussion. A recent example was the revision of the guidelines on what constitutes 'first of its kind' and 'common practice' and the related interaction with the additionality tool.

Where projects are subject to national policies that offer incentives for climate-friendly technologies, an area of systematic ambiguity is introduced in determining additionality. Such policies include feed-in tariffs, tax holidays and tax havens, and preferential loans. Although the EB challenged the additionality of projects in China in 2009,[68] it could not convey the rationale for its decisions, which led to severe delays and some project rejections. Only once a standardised tariff list was adopted could confidence be regained, but the related request of the CMP to establish consistent ruling was not followed. Instead the EB decided to continue ruling on a case-by-case basis.

Constantly evolving rules combined with the long time lag between the initial formulation of the PDD and project registration add an additional layer of incertitude. DOEs are required to apply the latest version of the rules, but the applied versions may have become outdated by the time the project requests registration. Furthermore, the evolution of the rules prompts DOEs to train their auditors on a constant basis, which is a reason for rising validation costs.

Long time to market

Deviations from the registered project description. It is obvious that there is a high probability that projects will

68 See He and Morse (2010) for a discussion on this topic, as well as Castro et al. (2011) and Füssler (2012) regarding options for the treatment of national policies going forward.

not be implemented exactly as they were described in the PDD. Since the PDD forms the basis for the decision on the project's compliance with the CDM requirements, deviations from the PDD necessitate renewed confirmation that the registration decision still holds. Therefore, at the first verification, the DOE must cross-check again the built reality of the project against the description in the PDD. Frequently discrepancies give reason to reassess the eligibility of projects. The ambiguity of the rules as to what constitutes a major deviation that requires approval by the EB and the opacity of the procedure have led to an average time lag of as many as 800 days from registration until first issuance of CERs.[69] In the case that DOEs adopt an autonomous decision, they risk a penalty if the secretariat disapproves their opinion. In some cases projects do not have CER issuance approved as the built reality of the project is not compliant with the CDM anymore, or the DOE may simply be reluctant to request issuance of CERs in the light of an ambiguous fact base and the related risk of a penalty.

Duplication of checks. Due to the staged approach of validation and verification, projects have certain features checked three times. The PLF, for example, is validated at the design stage, may be subject to scrutiny during the information and reporting check by the secretariat and will be cross-checked at verification again. A deviation from the designed PLF value at validation has to be reported and eventually a decision will be made as to whether the deviation can be approved by the Board. This obviously creates delays and costs that ultimately have to be borne by the project proponent.

Excessive data requirements

A sound monitoring of project emissions is required to maintain the certitude of the determination of emission reductions. The monitoring of technical parameters, however, often drives the costs of projects to disproportionate levels. Some methodologies require sophisticated measurement techniques that are not common in the sectors concerned. Specifically, small projects suffer from a disproportionate cost burden to gain the required level of confidence.

The determination of baseline data can also be a challenge for projects. Where a certain standardisation is present (e.g. by means of a joint effort to establish baseline data for the grid emission factor), projects are freed from data collection. However, in the cases that no baseline data are available and such data have to be collected and kept up to date, projects may face prohibitive barriers to registration. This is true specifically for projects in countries with poor infrastructure and for projects with an open and dispersed system boundary (i.e. projects at the household level in countries with a specific need for development are especially challenged). Although the establishment of baseline data is a costly exercise, it may create the foundation for a number of projects, to the extent that there is potential in a country.

4.3 The CDM – a history of its reform initiatives

Since the inception of the CDM the regulations have been improved step by step to address the criticism and deficiencies discussed in the previous sections. Many of the proposed countermeasures have been being debated for quite a while now. Some of them are at concept or a draft stage, while others have been partially implemented and are still being debated. It is therefore essential to understand which reforms are already 'in the making', which have been implemented but could not yet evidence their results and which ones are still waiting for a workable solution. To this end, this section categorises and summarises the current state of ongoing reforms to the CDM.

Reforms targeting the project cycle procedures

Streamlining administrative procedures and eliminating the duplication of work steps. The CDM project cycle procedures have seen countless stand-alone improvements geared towards increasing their efficiency. A key example is the merger of the two procedures for handling post-registration changes (deviations from the monitoring plan and project design changes), which became fully effective in May 2012.[70] This will allow for the resolution of these issues in only one approval step, saving time and transaction costs.

Streamlining regulatory documents and requirements. A key example is the current development of the CDM project standard,[71] which bundles the intricate body of CDM rules into one central document in order to improve clarity for the user. This is also an important step towards sorting out inconsistencies that have the potential to increase the level of subjectivity in the decision-making.

69 See IGES (2011) for a detailed analysis.

70 EB 65 report, annex 32: Clean development mechanism project cycle procedure.

71 See e.g. EB 64 report, para. 19, available at http://cdm.unfccc.int/EB/index.html.

Improved communication between PPs, DOEs and the secretariat. The improvement of predictability was and still is a key request made by developers and DOEs alike in calling for improved communication, the digitisation of PDDs, the automation of workflow and the establishment of accredited training schemes to generate a common understanding of the guidelines.[72, 73]

Risk-based approaches. With a view to increasing the efficiency of the CDM administration, stakeholders have questioned the efficiency of blanket checks and called instead for a spot-check approach. Such risk-based control systems move away from assessing 100% of the cases with a 100% assessment scope in each case. Instead, they focus checks on cases or areas of assessment scope in which, based on experience, non-compliance is most likely to occur or the potential error in terms of issued CERs may be significant. In the context of the new post-registration procedures, the Board has introduced a risk-based approach that aims at reducing the workload by releasing staff from dealing with 'straightforward' cases of issuance.[74] Risk-based approaches are frequently applied within the context of other assessment frameworks outside of the CDM, such as financial due diligence.[75] The small-scale project track, with its less rigorous requirements for smaller projects with a correspondingly limited potential for excess issuances, can also be viewed as a risk-based approach. Its adoption was an important reform that proved to be very successful. More recently the introduction of even more streamlined approaches for microscale projects has added another instance of methodological rigour being softened on the grounds of a limited risk of excess issuances.

Materiality. Following the principle of materiality, a conscious decision is made to exclude data from the scope of the assessment as long as the scale of the related potential damage is insignificant. The introduction of this concept aims to empower DOEs to make decisions without the risk of penalties for misstatements over immaterial facts. It is a principle that is referred to by other standards outside of the CDM, such as ISO 14064/65 or the EU ETS.[76] Materiality has been, for example, considered in small-scale methodologies (e.g. staged accuracy requirements in AMS III. AS depending on project size). However, the principle has so far not been used to determine the level of scrutiny to be applied by DOEs and the EB. Project developers and DOEs[77] alike have been calling for the application of the concept of materiality for a long time. The SBSTA discussed the topic in 2011, principles were finally agreed on at CMP 7 and the Board was mandated to implement the concept within the CDM rules.[78] A draft guideline was discussed during the 4th CDM Roundtable.[79]

Reforms targeting the structure and scope of projects

Promotion of upstream-bundling. A project organisation that bundles component activities creates efficiency and enables economies of scale. While this reform track has already been successfully started by introducing rules for PoAs back in 2007, still further improvements are called for today in order to increase the workability of a programmatic CDM. Major regulatory improvements include guidelines on the combination of multiple methodologies under a PoA, sampling techniques that meet the needs of PoAs and a standard for demonstrating additionality through eligibility criteria. The bundling of small-scale projects is possible in practice since the inception of the small-scale project track. While in the beginning bundled projects were common, today almost no project bundles are developed, owing to disproportional administrative risks posed by bundled approaches.

Expansion of scopes. In order to increase access to offsets, there are calls to promote the opening up of the CDM to novel project categories such as REDD+, carbon capture and storage (CCS) and nuclear. Wara and Victor (2008) mentioned the first two. The recent decisions made at CMP 7 created the foundation for the inclusion of CCS in the CDM. The exclusion of nuclear power, however, is a political decision that was not based on concerns regarding climate change.

Reforms targeting decision-making

Transparency, consistency and appeals. The decisions made by the EB are not always backed up by reference to an existing regulation. Since 2010 the decisions to reject projects have been substantiated by a detailed rationale

72 PD-Forum (2011b).

73 IETA (2011).

74 EB 61 report, annotated agenda, annex 5: Assessment report of CDM project cycle operations; EB 61 report, annex 23: Guidance for the development, revision and consolidation of standards and procedures related to the CDM project cycle (version 01).

75 E.g. the European Union anti money laundering directive, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:01:EN:HTML.

76 European co-operation for Accreditation 2010: EA-6/03 - EA Document for Recognition of Verifiers under the EU ETS Directive, available at http://www.european-accreditation.org/n1/doc/EA6-03.pdf.

77 See UNFCCC materiality site, available at http://cdm.unfccc.int/about/materiality/index.html.

78 Ibid.

79 See the entry under 2012 CDM Roundtables at http://cdm.unfccc.int/stakeholder/index.html.

that is published a couple of weeks after the final ruling.[80] The publication of rationales for decisions has been requested by many stakeholders and the CMP.[81] An appeals procedure has to complement such a move towards consistent ruling.[82] This reform, which features among the most prominent ones, is now, following the recommendation of the CMP, being prepared by the secretariat (see also chapter CDM appeals process).

Objectivity and standardisation. The standardisation of rules under the CDM and the determination of pre-approved values were identified early on as a means to greatly increase the efficiency of the CDM.[83] Standardisation means replacing the requirement for project--specific analysis with the use of pre-approved values or assumptions that are deemed applicable to a class of projects. A key achievement in this regard is the microscale additionality guidelines,[84] which allow for defining positive lists of project technologies deemed additional. Other important examples are the recently adopted list of default values for sustainable biomass fraction[85] and the list of lending rates[86] applicable in the calculation of financial additionality. The public-driven bottom-up approach used for methodological development and the steps for consolidation taken by the regulator have led to an array of standardised elements,[87] including tools and default factors that are shared by many methodologies and constitute a methodological tool box[88] under the CDM. The secretariat is currently conducting an assessment of all methodologies as to which further elements could be standardised.[89]

Standardisation is not the sole prerogative of the regulator. There is also scope for standardisation by the host countries. The setting of benchmark IRRs[90] by the Chinese DNA was a standardisation that is arguably an important element in the success of Chinese CDM projects. Another important example is the grid emission factor, which is established under the authority of respective host countries and is a factor in the success of grid-connected renewable energy projects.

Sector-specific standardised baselines (SBLs). With regard to standardising the calculation of emission reductions and the determination of additionality, in 2010 the CMP requested the EB to develop SBLs, which, in the context of decision 3/CMP.6, are defined as "a baseline established for a Party or a group of Parties to facilitate the calculation of emission reduction and removals and/or the determination of additionality for CDM project activities, while providing assistance for assuring environmental integrity".[91]

In response to that request, the EB has set up a framework for sector-specific SBLs applicable to a selected set of technologies.[92] Under the recently adopted procedure[93] and guidelines,[94] DNAs can propose a sector-specific list of technologies with positive additionality and a baseline technology with the corresponding emission factor. While the framework is restricted to certain project types, its design allows for expansion. Currently the first pilot baselines are being established by external consultants and extensive consultations with DNAs on the topic are taking place. As of today the framework is not operational and essential elements are missing, inter alia, guidelines on a corresponding monitoring methodology and a process to register projects that refers to existing SBLs. The World Bank (2012) elaborates on options for designing such modalities by, inter alia, designing tools and templates that tie in with specific baselines.

80 Information notes on the rulings available at https://cdm.unfccc.int/Reference/Notes/index.html#reg.

81 For the request to publish the rationale for decisions taken, see decision 2/CMP.5, para. 7(b).

82 For the request to implement an appeals procedure, see decision -/CMP.7, para. 14, based on decision 2/CMP.5, paras. 42—43. For stakeholders' views see http://cdm.unfccc.int/public_inputs/2010/cmp5_para42_43/index.html.

83 See Lazarus (2000) and Probase (2002) for early discussions. World Bank (2012) discusses the topic of standardisation and the framework for sector-specific standardised baselines and gives an overview of standardised elements (table 1, p.10).

84 EB 63 report, annex 23: Guidelines for demonstrating additionality of microscale project activities, available at http://cdm.unfccc.int/UserManagement/FileStorage/WVI3RN692YMCGLZT40QXBOUA8H5KFP.

85 EB 67 report, annex 22: Default values of fraction of non-renewable biomass for least developed countries and SIDS.

86 EB 62 report, annex 5: Guidelines on the assessment of investment analysis, appendix: Default values for the expected return on equity.

87 See World Bank (2012) (table 1) for an overview of standardisation tools.

88 Füssler (2012) details the tools at different levels in the methodological hierarchy with respect to the determination of the baseline.

89 Management Plan 2012 (UNFCCC, 2011a), table 2. Deliverables: improved objectivity, clarity and integrity in the CDM.

90 The Chinese Government published benchmark profitability rates for projects to meet in order to claim profitability.

91 Decision 3/CMP.6, paras. 44—52.

92 Fuel and feedstock switch; switch of technology with or without change of energy source (including energy efficiency improvement); methane destruction; and methane formation avoidance; see EB 62 report, annex 8.

93 EB 63 report, annex 28: Procedure for submission and consideration of standardized baselines (v.1.0).

94 EB 62 report, annex 8: Guidelines for the establishment of sector specific standardized baselines (v1.0).

4.4 Proposed and debated options for reforms

Following on from the previous sections, this section highlights the actually debated options for reforms. To that end, the inputs received were analysed and categorised into 'evolutionary' reforms (i.e. improvements of existing procedures) and 'revolutionary' proposals that may necessitate the major restructuring of existing procedures.

This section is based on the inputs received in response to the High-Level Panel's call for inputs, but it also includes inputs from earlier submissions made on the topic of project cycle improvements. Many of the evolutionary proposals do not create great controversy around their implementation; rather there is already an ongoing exchange between the regulator and stakeholders.

It has to be borne in mind that the EB is aware of the perceived deficiencies throughout the project cycle operations. The Management Plan 2012[95] (MAP 2012) establishes an objective-driven management plan, in which one objective[96] is "greater integrity, efficiency and enhanced predictability in the operation of the CDM through simplification, improved objectivity and compliance with sustainable timelines". That objective will be achieved by: (i) ensuring operational capacity; (ii) improving objectivity; and (iii) enhancing transparency. The following discussion on the proposals for reforms will reference respective work scheduled in the MAP 2012.

However, this discussion will not cover all of the scheduled improvements. Neither does it claim to cover all of the proposals received in response to the High-Level Panel's call for inputs. The intention is rather to cover the proposals that received a certain level of attention in the responses and have been the subject of a longer discussion dating back well before the inception of the CDM Policy Dialogue. The inputs have been grouped under the following topics:

- Digitalisation of the workflow and digitisation of content.
- Enhanced support functions.
- Enhanced discretion in relation to decisions made by the secretariat.
- Improved rules governing PoAs.
- Upscaling the PoA framework.
- Accredited training and reduced checks.
- Enhanced use of SBLs.
- Merger of validation with verification.

Digitalisation of the workflow and digitisation of content

Project developers are urging the establishment of a more automated workflow that inherently reduces the risk of making formal mistakes.[97] This includes the simplification and shortening of the PDD template to avoid spurious and repeated data[98] and could go as far as an automated consistency of parameters throughout the PDD or even provide for an interface for determining the materiality of data. Many other schemes use automated tools and most of the large project developers have built up IT solutions to manage their project portfolio under development or to monitor projects.[99] An interface between the UNFCCC and the infrastructure of project developers could catalyse further efficiency gains.[100] Another area of concern is the handling of modalities of communication (MoC),[101] which form the basis for offset commercialisation and party authorisation. Despite its importance the MoC process is based on printed forms with signatures, which implies that the originals are sent around the globe, and it requires manual data entry, creating room for errors and fraud. Stakeholders are dissatisfied with the current solution and propose making improvements towards establishing a fully digitised

95 EB 66 report, annex 2: CDM Management Plan 2012, available at https://cdm.unfccc.int/Reference/Notes/gov/info_note32.pdf.

96 The other overarching objective is the "expansion of the reach and reputation of the CDM through outreach, further development of requirements, increased distribution of projects, and focused skills development".

97 See the PD-Forum's submission in response to the CDM-PD questionnaire and its input to COP 17 Delegates (PD-Forum, 2011b) in line with IETA's position at COP 17 (IETA, 2011).

98 See the submission in response to the CDM-PD questionnaire of the Business Council of Australia and the Australian Industry Greenhouse Network.

99 See Robert Dornau's contribution to the Practitioners Workshop on CDM Standards at the UNFCCC, held in Bonn, in June 2011, available at http://cdm.unfccc.int/methodologies/Workshops/cdm_standards/s6_carbonflow.pdf.

100 See the input to the PD-Forum/DIA Forum technical roundtable of an established software company, available at http://www.pd-forum.net/files/e7826a3e51a12ab4ff07629269ebd93c.pdf.

101 The MoC define the process of how to attribute the property rights with respect to the CERs generated by a project. The PPs define the counterparty to which the CERs are to be forwarded at issuance.

system.[102] Such a system would provide the required efficiency and flexibility to handle investments in new CPAs, changes in property stakes and contract novation. The EB has already initiated a series of projects[103] to respond to the issues and final products are planned to be released by end of this year.

Enhanced support functions

Every seasoned project developer or auditor knows how intricate the CDM body of rules is, how often it is revised in parts and that revisions carry the potential for conflicting rules in the follow-up, thus requiring guidance on interpretation. This frustrating experience is the basis for the calls to improve the clarity of the rules and for the secretariat to provide responsive support. Many of the stakeholders are of the opinion that the 'time of learning' should be over and constantly evolving rules should be replaced by a stable body of rules with a yearly revision cycle. In addition, the accessibility of the rules has been criticised, in terms of the ability to find the required rules quickly and in terms of language barriers.[104]

While the secretariat has made a leap towards creating a single and coherent body of rules[105] and distinguishing different classes of documents,[106] stakeholders are aware that this step may not suffice to create the desired clarity. The rules and methodologies are complemented by a layer of clarifications that create a precedent for the interpretation of the rules. While the clarifications can be located on the website, they are, however, not consistently referenced in the rules and methodologies. With the consolidation of the rules into the VVM and VVS track the consistency, at least of the procedures and guidelines, will be improved. The general tone of the stakeholder inputs is that the CDM approval process is perceived as too risky and that more support needs be given. Some state that it is for this reason that the CDM often fails to leverage additional investment and the viability of projects needs to be secured to a large degree without carbon revenues.[107]

Enhanced discretion in relation to decisions made by the secretariat

Generally the call for improved clarity goes hand in hand with the call for an appeals mechanism. This indicates that clearer and more stable rules are seen as a means also to mitigate the potential for unjust treatment by the regulator. Indeed, changes in regulations have led to unanticipated delays and even project rejections, which has had an impact on project developers.[108] The purpose of avoiding unjustified damage[109] through enhanced communication with the regulator has also been expressed (e.g. in the Project Developer Forum's (PD-Forum) proposal to enact a case-specific focal point for communication with the UNFCCC and direct on-the-record calls between DOEs and the secretariat before taking negative decisions).[110]

Often delays relate ultimately to the inability of the secretariat to provide a timely clarification of requests or to resolve conflicts with a final ruling. The secretariat is, however, a service provider to the EB and tends to remain neutral, while the decisions are taken by the Board. Therefore, decisions that involve an interpretation of the rules require a formal decision by the Board, which can take up to several months. Many of the decisions are implicit (e.g. the secretariat prepares the decision, which becomes effective after a period in which Board members may object to the ruling; hence, formally, it is a decision made by the Board). If during that time no EB member objects to the ruling, it becomes final. Currently, there is no dedicated[111] way for stakeholders to address appeals to the secretariat, where the decision was in fact made.

102 See the input of the PD-Forum, dated September 9, 2011, following the Integrated UNFCCC Workshop in August 2011, available at http://www.pd-forum.net/files/1d204ad43e36b6605e92c068a4519fa6.pdf.

103 Referring to the following projects listed in the MAP 2012: General overhaul of IT system (105); taking into consideration options for a staged digitisation of data (106); digitised workflow for MoC (137); automated workflow for PoA monitoring and verification (partly entailing IT-aided workflows) (138); and prior CDM consideration (139).

104 Some stakeholders called for a translation of the rules into the six UN languages.

105 The verification and validation standard, the project cycle procedures and the project standard.

106 For the decision and documentation framework see http://cdm.unfccc.int/Reference/Notes/info_note02.pdf.

107 See the response to the CDM-PD questionnaire of the German development bank KfW.

108 Arguably the most prominent case was the bankruptcy of a large project developer in 2008 that was affected by changes in monitoring requirements for its agricultural waste digester projects. See EPRI (2012) for the case study on AgCert.

109 It has to be borne in mind that the ability of the project to claim offsets starts off at registration. Projects that are operational and thus in the position to start crediting effectively incur damage for every day that the registration is delayed.

110 See the input of the PD-Forum at the Joint SDM Workshop in March 2012 on top priorities for improvements, available at http://cdm.unfccc.int/stakeholder/workshops/jws/sdm_jws/presentations/jws_pres52.ppt.

111 In the modalities for direct stakeholder communication (EB 62 report, annex 15), stakeholders do not have the right to request a communication on case-specific issues.

Some stakeholders recommend, therefore, assessing the processes of other regulatory bodies in order to inform future steps for reform.[112]

Improved rules governing PoAs

While there is a common view that the workability of the rules on PoAs has been considerably improved in terms of core elements over the last year, stakeholders are still sceptical of the eventual success of PoAs as they see a number of hurdles that still need to be addressed. Challenges are posed specifically in view of the fact that the current rules have an impact on the ability to secure investments. Specifically, the current modalities that govern issuance (MoC) complicate the appropriate structuring of carbon finance into individual CPAs, which introduces considerable counterparty risks.[113] Also, the potential for liability claims with respect to erroneous inclusion still remains unresolved and on the wish list for reforms.[114] While the registration of PoAs provides evidence of the interest in this project type, the regulations around sampling, monitoring and verification remain untested. There is a certain amount of scepticism that the CERs from PoAs can be produced under the current rules without generating disproportionate transaction costs.

Upscaling the PoA framework

Some of the stakeholders highlighted the need to further develop the guidelines governing PoAs. The current set-up does not allow for the scale-up of mitigation activities, as was the intention of a programmatic CDM.[115] Firstly, the removal of the application of threshold limits for micro-scale and small-scale projects that employ technologies at the household level is requested.[116] This would avoid the need for an artificial stratification of CPAs into structures with combined mitigation efforts below the threshold limits, thereby reducing the administrative burden. Secondly, the option of a standardised inclusion of CPAs by CMEs without verification by a DOE has been suggested.[117] Rather, the DOE would verify that the CME has adhered to the quality assurance/quality control (QA/QC) procedures in place. This, however, would have to be reflected by shifting the liability for erroneous inclusions in part to the CME. As a consequence of the two proposed modifications, the face of PoAs could be changed considerably, with a CME that would bear responsibilities akin to the CDM regulator, only it would govern only a streamlined transect of the body of rules. Such an arrangement could be considered a prototype for a decentralised CDM structure.

Accredited training and reduced checks

Another avenue mentioned by stakeholders consists in a shift of the secretariat's role from checking towards capacity-building.[118] This, in essence, entails the enhancement of the secretariat's support functions, as discussed above, but suggests a much more central role for DOEs and a greatly increased level of accredited training provided to them. It was a recurrent request of stakeholders to give DOEs more discretion in making their decisions,[119] although there is not a unanimous view. The secretariat could use the released project assessment resources to establish accredited training for DOEs. While keeping its standard-setting functions, the secretariat would ensure adherence to the rules from the outset. The stakeholders' responses touched upon this area rather vaguely. It has a bearing, however, on other existing offset schemes, such as the voluntary carbon standard (VCS) and the California GHG Offsets Program,[120] under which the DOEs (or verifier) state the compliance of the project with the programme's standard and the programme owner (or authority) does not scrutinise the project anymore. There is of course the concern that the integrity of the mechanism is not ensured at the same level anymore. With the introduction of a risk-based approach to project assessment, however, the EB has already adopted a guideline that introduces a departure from scrutinising every project with the same stringency. This framework could be further extended to tie in with the suggested shift in resources towards training. On the other hand, some claim that the project rejection rate is low already and thus an extra layer of scrutiny by the secretariat would not add considerably to the mechanism's integrity. A better understanding of the rules by DOEs would be more effective in ensuring integrity from the outset.

112 E.g. the response to the CDM-PD questionnaire of the Center for European Policy Studies or the Electric Power Research Institute (EPRI, 2011c).

113 See World Bank (2012), p.21.

114 While the latest revision of the guidelines on erroneous inclusion constitutes a workable proposition for the DOEs, the potential for third-party liabilities still has, according to project developers, the potential to deter investors. See also IETA (2011), the response to the CDM-PD questionnaire of KfW and the side event at Carbon Expo 2012, "From Problematic to Programmatic: Tools to Make Your PoA a Success", contribution by Jorund Buen, "PoA risks from an investor's perspective".

115 World Bank (2012) (p.20) discusses the barriers to the implementation of PoAs.

116 See the response of the PD-Forum to the CDM-PD questionnaire, as well as World Bank (2012) (p.20).

117 See World Bank (2012) (p.22) for a more detailed discussion.

118 See the PD-Forum's submission in response to the CDM-PD questionnaire, PD-Forum (2011) and IETA (2011). The secretariat's shift towards training was mentioned as the top priority of the PD-Forum in the First Joint SDM Workshop in Bonn in March 2012 (see http://cdm.unfccc.int/stakeholder/workshops/jws/sdm_jws/presentations/jws_pres8.ppt).

119 See PD-Forum (2011b).

120 EPRI (2011a), pp.14—15.

Merging validation and verification

While most stakeholders complained about the redundancy of checks, some proposed avoiding checks by postponing them until the first verification. This can be done partially,[121] but could lead to the omission of the validation. While specific elements such as stakeholder consultations and the collection of the required documentary evidence would still occur ex ante, the PDD would be established on the basis of the implemented reality and validated in conjunction with the first verification.[122] The California GHG Offset Program follows a similar approach.[123] The motivation for this approach is the experience that projects will never be implemented exactly as described in the PDD at design stage. The residual (i.e. the relevant aspects deviating from the PDD) is then subject to renewed approval by the EB, which causes delays and opens up potential ambiguity as to what constitutes a relevant aspect (see section Root causes of the criticism of the CDM).

Enhanced use of SBLs and standardised approaches

While the call for the enhanced use of SBLs is prominent among the inputs to the CDM Policy Dialogue, inputs remain vague with respect to concrete concerns and proposals. Some highlight critically that in setting the baseline the right balance between integrity and the undue restriction of projects has to be found.[124] There were no views voiced regarding the methodological approach taken by the secretariat, except for CDM Watch expressing concern that the approach is not able to ensure the protection of environmental integrity. This concern is essentially grounded on the fact that the framework is geared at also determining additionality on the basis of sector-specific baseline technologies. An individual project may exhibit an emission performance that beats the baseline technologies, but could still have been built without the incentive provided by the CDM, or, in other words, might not be additional to the baseline, despite employing a technology that is deemed additional by the respective SBL.

The call for the extended use of standardised approaches was also prominent in the responses to the CDM Policy Dialogue's call for inputs. Such approaches include the use of positive lists for the determination of additionality, default fallback values and standardised baseline emission factors. However, as with the use of SBLs, standardised approaches face similar concerns with respect to the integrity of the mechanism.

4.5 Assessment of the options for reforms

Of the options listed in the section above, some of the more prominent ones are discussed below.

4.5.1 Option 1: Development of sector-specific standardised baselines

Stakeholders are unanimous in their view that the work under the framework for sector-specific SBLs should be extended. This would include the acquisition of sector-specific data and the establishment and approval of baselines for future use. It would also include the further development of a workable regulatory framework and an increased level of interaction with the respective host-country DNAs.

Benefits

De-bottlenecking. The availability of an SBL for a specific sector has the potential to spur on project development, since many of the bottlenecks could then be addressed effectively. The availability of predefined baseline data and the prospect of automatic additionality eliminate the need for onerous data collection and allow for a clear-cut additionality check.

Integrity and net emission reductions. This efficiency gain will provide leeway for establishing tight and conservative baselines that achieve a systematic undercrediting of mitigation efforts, both safeguarding the integrity of the offsets and implying a level of domestic ambition in the baseline.

Compatibility with new market mechanisms. The framework for SBLs is considered to be much more compatible with the design of emerging new market mechanisms

121 The PD-Forum proposes postponing parts of the post-registration approval and integrating requests for deviation from or changes in monitoring plans into the request for issuance.

122 World Bank (2012) suggests exploring this option for project activities that do not require prior validation on the basis of a high degree of standardisation that ensures compliance with the CDM rules. The PD-Forum's response to the CDM-PD questionnaire supports such an option for small-scale projects.

123 EPRI (2011a), pp.14—15.

124 Eg. Submission in response to the CDM-PD call for inputs received from Perspectives and CDM Watch.

(NMMs).[125] Owing mainly to the fact that no project-by-project assessments will be required and to the ability to reflect a certain level of host-country ambition in the baseline, this is the option of choice for many stakeholders.

Drawbacks

Development costs. The work on SBLs shows that, based on experience with similar data acquisition efforts, the establishment of SBLs will be costly. Estimates range between 0.5 and 5 million euro, depending on the availability of data.[126] The costs will have the potential to limit the commercial applicability of SBLs to mitigation activities and the number of countries with the appropriate potential for projects. Therefore it is not a given that poor countries will benefit from the framework per se. That said, SBLs will constitute an opportunity for climate finance to create the basis for catalysing desired mitigation activities by funding a specific SBL.

Methodological issues. In the course of the ongoing work on establishing SBLs, fundamental methodological issues with the approach have been discovered.[127] While this is a first reality check for the framework, the issues were to be anticipated given experiences with earlier baseline studies. The issues encountered relate to the design of the framework, which is based predominantly on design values. This leads to baseline estimates that rely on manufacturers' data and are therefore very conservative. Furthermore, issues were identified in relation to operationalising the notion of 'technology' in a complex industrial sector and to the treatment of data gaps in the QA/QC guidelines, which leads to very conservative assumptions that have the potential to result in an unworkable baseline.

Limits to DNA involvement. The framework assigns a central role to the DNAs, which entails their active participation in data gathering and in providing an opinion on which SBLs should be developed. This will require many more resources than their current role; not all DNAs might be prepared for this.

Appraisal

Due to the lack of experience with the SBL framework, an appraisal of this option is difficult to establish. Considerations on a more fundamental level, however, can be made.

In order to become fully operational, a series of building blocks, currently not in existence, have to be adopted, including the adoption of modalities as to how to make use of SBLs in practice. In line with the concrete proposals made so far, the SBLs would be complemented by specific guidelines on monitoring and project approval. This would lead to the top-down creation of a coherent set of rules on how to develop and approve projects under an SBL. These rules would be informed by, but separate from, the traditional methodologies. With this arrangement, SBL methodologies would resemble the PoA set-up, with the difference that the host countries would play a greater role than with PoAs and that the determination of baselines and additionality would be hugely facilitated. Whether such an arrangement will be successful in spurring on projects will ultimately depend on the attractiveness of the traditional CDM set-up or the PoA track, both of which will compete for the same projects.

Previous experiences with traditional CDM methodologies employing a benchmark approach[128] and the preliminary findings from the work on pilot SBLs indicate that methodological issues will have to be overcome before the framework can become a workable option. Despite considerable work done within the last year, progress seems to be limited and no SBL is yet available. Many of the 'initial issues' highlighted by the Methodologies Panel in July 2011[129] still persist today. Therefore, a critical review of the progress and prevailing obstacles may be needed to assess the applicability of the framework's design. A first 'real-life' test of a specific SBL is required in order to assess the resulting offsets and prioritise further improvements. This will also have to entail a profound discussion on how to ensure the integrity of the approach or, alternatively, a conscious decision that a certain number of non-additional projects will be accepted if only the baseline is stringent enough. However, what level of stringency is appropriate, as well as what rationale will form the basis for decision, remains open for discussion.

In the light of the above reasoning it can be concluded that it is too early to make recommendations with respect to using SBLs, other than calling for a critical monitoring of

125 Füssler (2012) explores the suitability of SBLs in the context of NMMs and the interaction of the CDM with national policies.

126 This estimate is given by Hayashi et al. (2010), who were studying the establishment of SBLs not in relation to the framework for sector-specific SBLs. However, it is assumed that the estimates hold true also for the specific SBL framework.

127 Personal communication with the researcher involved in the study on SBLs in the Ethiopian cement production sector.

128 AM0070 "Manufacturing of energy-efficient domestic refrigerators" or the rejected NM302 CDM methodology for cement and clinker production facilities based on benchmarking.

129 See http://cdm.unfccc.int/Panels/meth/meeting/11/050/mp50_an11.pdf.

the progress and an analysis of the prevailing methodological issues. The framework may need to further develop to reflect the emerging findings from the work done and the discussion with Parties and their DNAs.

4.5.2 Option 2: Merger of validation and first verification

The merger of the validation of the project description and the verification of the concurrence of the implemented project is geared at avoiding duplicate checks and approval of unavoidable discrepancies.

Benefits

This option can be expected to effectively address the key drivers for the bottlenecks described in section Root causes of the criticism of the CDM, specifically the issues with design changes and duplication of checks.

Drawbacks

By the approval of a specific project constellation ex ante the validation creates in principle the certainty that the project will be accepted by the CDM. Without this certainty the consideration of the CDM in the investment decision will be called into question. The omission of the validation removes this ex ante certainty, which can be regarded as impairing the integrity of the mechanism.

Appraisal

However, while the validation in practice ensures a near-certain registration, this by no means implies a certain issuance of CERs. For this reason, successful validation may not substantially reduce the perceived risk of non-issuance, which puts into perspective the theoretical reasoning that validation ensures integrity. The same holds true for projects that are highly standardised and their registration almost certain, or the current registration practice for a certain project type (e.g. grid-connected wind projects) shows a very low incidence of rejections. In the light of this, the omission of the validation step could still be justifiable. The project proponent might consider the efficiency gain as worth taking the risk that the project will be found not to be compliant with the rules.

4.5.3 Option 3: Enhanced discretion in relation to decisions made by the secretariat

The secretariat, which is responsible for the project cycle operations, sees itself as a neutral body. The final ruling is the prerogative of the EB and the secretariat adopts only implicit decisions by applying the approved criteria. This arrangement means that the secretariat is unable to provide for final rulings in its day-to-day operations and that decisions are postponed to regular EB meetings. This option entails the allocation of certain discretionary decisions to the secretariat.

Benefits

The secretariat could provide clarification and final project appraisals in a much more timely fashion, thereby reducing timelines, considerably increasing the regulatory certainty for projects and addressing a key driver for bottlenecks.

The enhanced role of the secretariat would release the EB from project-specific ruling. In turn, the EB would be free to take on a more strategic role in the oversight of the mechanism.

Drawbacks

The institutional arrangement of the secretariat and its functioning would need to be modified. Such a step could also entail the establishment of full-time regulatory capacity that may be located in a new body. This implies that respective modalities and procedures will have to be established, as well as an accountability mechanism that ensures the control of the EB over that body.

The secretariat would have to change from being a neutral service provider to taking on a more active role. This transition would require time and a certain amount of effort.

Appraisal

The assessment of the performance of the secretariat in chapter Review of the functioning of the secretariat reveals that indeed the Sustainable Development Mechanisms (SDM) programme could well fit a more active role, since a high level of technical and decision-making capacity is in fact already present. In making the decisions of the secretariat explicit, the transparency and consistency of the rulings could be considerably increased. The establishment of full-time decision-making capacity also ties in with the

view of most stakeholders that the EB should focus more on the strategic oversight of the CDM.

4.5.4 Option 4: Digitalisation of workflow and improved clarity of rules

This option merges a series of recommendations discussed above. All of them aim at the improved performance of the mechanism. While they can be implemented individually, they benefit from strong synergies if they are combined. The measures discussed previously include:

- Digitalisation of workflow and forms, including the MoC;
- Official FAQs and an approachable helpdesk;
- An accessible repository of rules and guidelines and their integration with clarifications;
- Continuation and extension of practitioner workshops.

Benefits

Every proposed improvement reduces the risk perceived by investors and developers. As discussed in the previous chapter, the CDM is generally considered risky and investment tends to flow into those projects that are near to profitability already. While this calls into question the very concept of additionality, it also shows how much the integrity of the mechanism is interlinked with investment security. Predictable and short approval timelines will therefore add to its integrity. It could also allow for a tightening of the requirement for prior CDM notification if the approval process is fast enough.

Another benefit would be the reduced vulnerability of the secretariat to fluctuating project inflow. The automated workflow has the potential to considerably reduce the case-specific workload. This will cut the staffing costs for the project assessment workforce.

Drawbacks

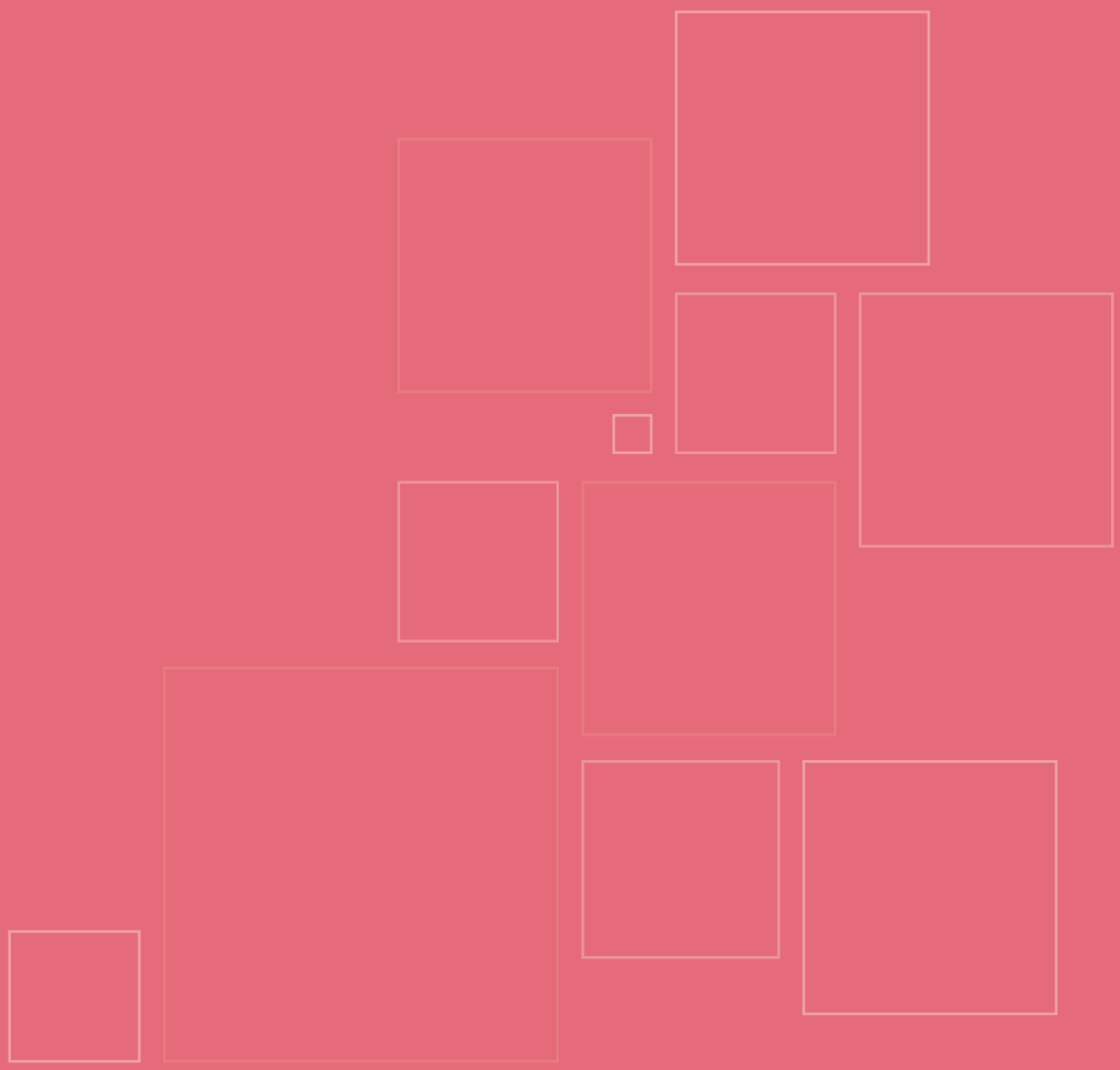
The one drawback that can be identified is the costs to the regulator. With future demand being unclear at present, any costs of measures to improve the process have to be considered carefully. While today the financial resources would be available, it remains unclear whether the expenditure can be justified against a future scenario in which the CDM gives rise to only a few projects, and therefore resources would be allocated more effectively elsewhere.

A more active role of the secretariat will require it to be given the required regulatory power to make decisions. The current approach of having the EB, through its panels, make the final ruling is proving to be too slow. Furthermore, it is not clear whether the EB should be involved at all with case-specific rulings.

Appraisal

The advantage of improving the project cycle's efficiency is apparent. The EB has already mandated the secretariat to prepare and implement a range of the proposals mentioned. The progression of that work will have to be followed. The recommendations of the High-Level Panel could contribute to ensuring that this option is given the required priority by the EB.

II – CHECKS AND BALANCE: ROLES AND ACCOUNTABILITY



5 General structure of the governance of the CDM

This chapter provides an overview of the function and roles of the different bodies involved in the governance of the mechanism. It reviews the role of the secretariat and civil society and provides a factual summary of the functions of DOEs. The concluding section highlights the interplay between private and public bodies that jointly form the face of the CDM.

The UNFCCC is an 'autonomous institutional arrangement' in that it is freestanding and distinct from both the states that are party to it and from existing intergovernmental organisations. Furthermore, the UNFCCC has its own law-making powers and compliance mechanisms.[130] The CMP is the plenary by which all Parties to the Convention are represented and it has authority over and provides guidance to the CDM. Although the UNFCCC is an 'autonomous' arrangement, it is a part of the United Nations (UN) structure, which appoints the head of the UNFCCC secretariat. The interface between instructions to the secretariat (from both the CMP and the subsidiary EB) and instructions to officials from the host organisation (the UN) obviously harbours potential for confused lines of accountability and roles.[131]

5.1 The role and functions of the EB

Article 12 of the Kyoto Protocol establishes an independent governance body, the EB, to oversee the implementation and administration of the CDM. The EB comprises 10 members and 10 alternate members from Parties to the Kyoto Protocol.

The EB[132] supervises the Kyoto Protocol's CDM under the authority and guidance of the CMP. The CDM is fully accountable to the CMP.

The EB is the ultimate point of contact for CDM PPs for the registration of projects and the issuance of CERs.

5.1.1 Functions of the EB

The Parties have given the EB a number of specific tasks and powers that have significantly influenced the development of the CDM mechanism. The role of the EB is to:

- Develop procedures for the CDM;
- Approve new methodologies;
- Accredit DOEs;
- Register projects (in accordance with specific procedures);
- Issue CER credits earned through CDM projects in accordance with specific procedures;
- Make information on proposed CDM projects in need of funding and investors seeking opportunities publicly available;
- Maintain a public database of CDM project activities, containing information on registered PDDs, comments received, verification reports, EB decisions and information on all CERs issued;
- Develop and maintain the CDM registry.[133]

130 Churchill, R. R. and Ulfstein, G. (2000). "Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law". American Journal of International Law 94(4): 625.

131 Ibid.

132 The main sources of the descriptions in this chapter are: the UNFCCC CDM website; the rules of procedure of the EB in decision 3/CMP.1, "Modalities and procedures for a clean development mechanism", available at http://unfccc.int/resource/docs/2005/cmp1/eng/08a01.pdf; Baker and McKenzie (2004); Legal Issues Guidebook to the Clean Development Mechanism, p.23; and Green, J.F. (2009). "Delegation and Accountability in the Clean Development Mechanism: The New Authority of Non-State Actors". Journal of International Law and International Relations 4(2): 33—34.

133 Further procedural detail on functions (e.g. public consultation on draft methodologies) is defined in decision 3/CMP.1.

5.1.2 Decision-making by the EB

The EB can take three types of decision:[134]

Regulatory – adopting or revising CDM rules and requirements.

Rulings – decisions on whether projects comply with the CDM rules and requirements.

Operational – decisions on the functioning of the Board and its supporting structure (the secretariat).

Decisions of the Board are taken by consensus, whenever possible. If all efforts at reaching a consensus have been exhausted and no agreement has been reached, decisions shall be taken by a three-quarter majority of the members present and voting at the meeting.

5.1.3 Support structures of the EB

The EB may establish committees, panels or working groups to assist it in the performance of its functions. It may draw upon the expertise necessary to perform its functions, including from the UNFCCC roster of experts.

The EB's current assistance structures and their functions are as follows (see also **Error! Reference source not found.**):

- The Methodologies Panel (MP): Established to develop recommendations for the Board on guidelines for methodologies for baseline and monitoring plans and to prepare recommendations on submitted proposals for new baseline and monitoring methodologies.
- The Accreditation Panel (AP): Established to prepare the decisions of the Board in accordance with the procedure for accrediting operational entities.
- The Registration and Issuance Team (RIT): Assists the EB in its appraisals of project applications. The team is chaired by a member of the Board on a rotating basis.
- The Small-Scale Working Group (SSC WG): Established to prepare recommendations on submitted proposals for new baseline and monitoring methodologies for CDM small-scale project activities.
- The Afforestation and Reforestation Working Group (A/R WG): Established to prepare recommendations (in co-operation with the MP) on submitted proposals for new baseline and monitoring methodologies for CDM afforestation/reforestation project activities.
- The UNFCCC secretariat: Supports cooperative action by states to combat climate change and its impacts on humanity and ecosystems. A description of its specific functions in relation to the CDM is provided in section 5.2.

5.2 The role and functions of the secretariat

The UNFCCC secretariat is the implementation arm of the CDM, a role which it performs in combination with its broader role of supporting the Convention and the Kyoto Protocol. Within the secretariat, the SDM programme manages the work of the CDM and JI, although the support provided to the JI mechanism is on a smaller scale.

The overall purpose of the SDM programme is to help and support Parties (to the Convention) in developing and implementing collaborative mechanisms (such as the CDM) that mitigate climate change and that promote the wider goal of sustainable development. To do this, the SDM primarily supports the regulatory bodies constituted to supervise the implementation of project-based mechanisms under the Kyoto Protocol. These regulatory bodies are the EB and the Joint Implementation Supervisory Committee (JISC).[135] The secretariat and its programmes function in a complex legal arrangement involving several parties. Chapter Review of the functioning of the secretariat explains the legal position of the secretariat in more detail.

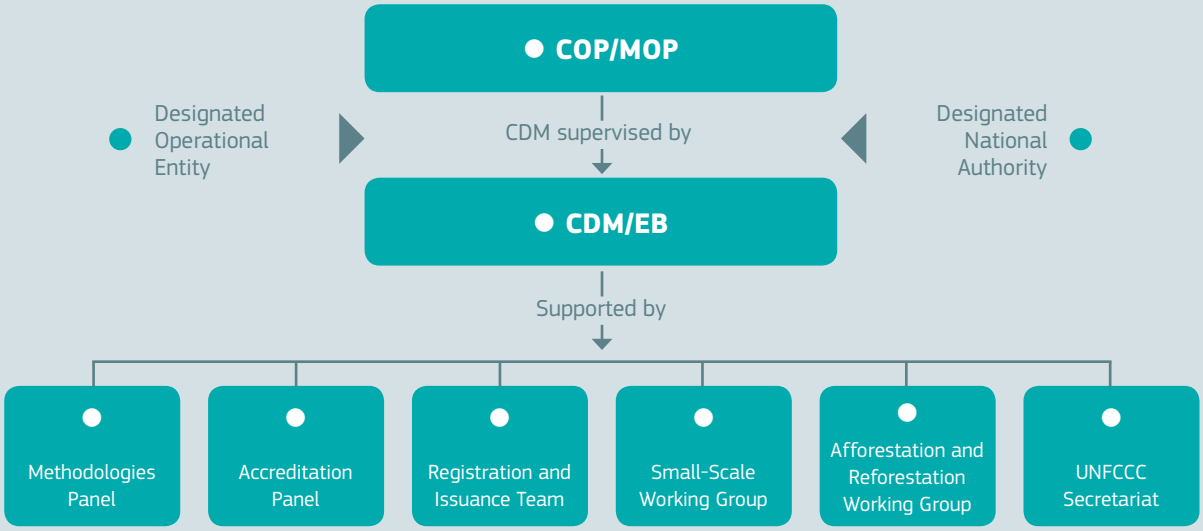
The Kyoto Protocol mandated the secretariat to be a support structure for the Kyoto Protocol and the EB. The secretariat is accountable to the CMP for its service to the EB in accordance with decisions of the CMP and the EB.

The secretariat has the legal attributes of an international organisation. It is an autonomous treaty body institutionally linked to the UN, but not one of its subsidiary organs.

134 EB 67 report, annex 4: CDM Executive Board decision and documentation framework.

135 See the work programme for the secretariat for the biennium 2012–2013, in document FCCC/SBI/2011/2/Add.1.

Figure 18. Governance and support structures of the EB



Source: UNFCCC.

Note: COP/CMP = CMP.

The Executive Secretary of the secretariat reports to the UN Secretary-General on administrative matters through the Under-Secretary-General for Management and on other matters through the Under-Secretary-General for Economic and Social Affairs.

The Executive Secretary of the secretariat is required, by decision 4/CMP.1, to provide the staff and services required for supporting the EB from within available resources.[136] That decision, along with other subsequent decisions,[137] also spells out the functions to be provided by the secretariat, which are summarised below. Decision 4/CMP.1 allows the EB to define the services, administrative support functions and financial resources that it needs.[138]

In terms of the regulatory operation of the CDM, the secretariat principally supports the EB and its substructures,[139] as well as the Designated National Authorities Forum (DNA Forum). The EB 'supervises' the CDM, including setting the rules, interpreting what the rules mean and deciding whether cases comply with the rules. This combines legislative, executive and judicial functions. Although the EB relies heavily on its support structures (including the secretariat) to assess registration, issuance and accreditation cases, it remains the ultimate decision maker.[140]

The functions of the EB and the secretariat were set out in the modalities and procedures for a CDM agreed at the first session of the CMP.[141] The EB has subsequently developed terms of reference (ToR) for the support structures of the CDM, including the secretariat.[142, 143]

In the following sections we first show the SDM's organisational structure and then describe the functions of the secretariat. The description concentrates on the secretariat's core regulatory functions of standard-setting, assessment against standards (which includes both entity assessment (accreditation) and project assessment (registration and issuance)) and process management. We also describe its supporting functions of communication, stakeholder development and strategy and policy development.[144]

136 Annex to decision 4/CMP.1, in document FCCC/KP/CMP/2005/8/Add.1.

137 Further functions are stipulated in decisions 4/CMP.1 and 7/CMP.1. Further specific requests are covered in each of the decisions of the CMP related to the CDM.

138 Decision 4/CMP.1 in document FCCC/KP/CMP/2005/8/Add.1.

139 The substructures consist of the MP, the SSC WG, the A/R WG, the Carbon Capture and Storage Working Group (CCS WG), the RIT and the AP.

140 Written replies to questions posed to the secretariat by the High-Level Panel on the CDM Policy Dialogue, May 29, 2012.

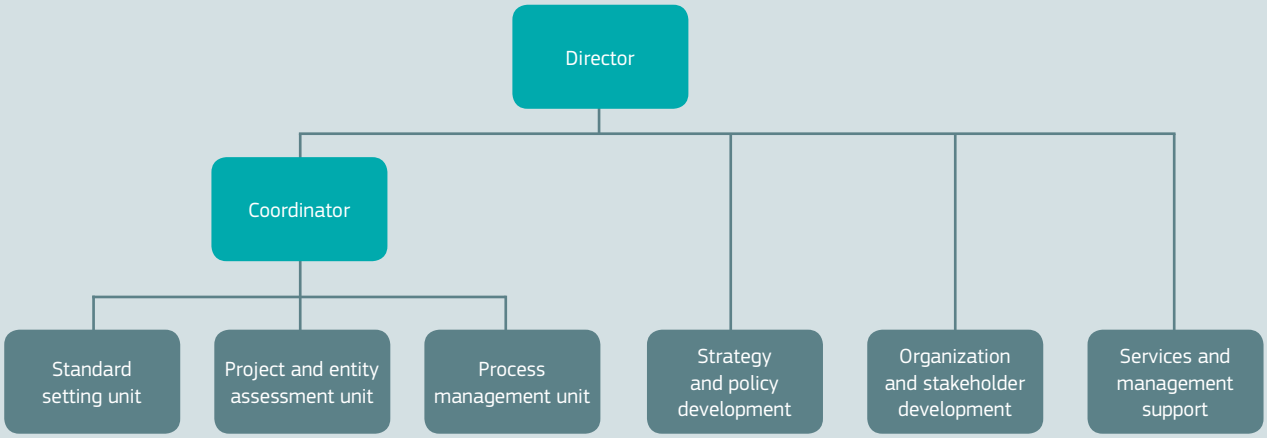
141 Decision 3/CMP.1.

142 EB 67 report, annex 3: Terms of Reference of the Support Structure of the CDM Executive Board.

143 Note also the guidance on the decision and document framework, available at http://cdm.unfccc.int/Reference/Notes/gov/info_note02.pdf.

144 We omit internal management functions, such as financial and human resources management.

Figure 19. Organogram of the SDM programme



Source: UNFCCC secretariat, personal communication, June 21, 2012.

5.2.1 SDM organogram

For completeness, we show the SDM's organisational structure here and then briefly mention the business units' functions. A more detailed description of the structure of the SDM and its roles and functions is contained in appendix 1. The SDM underwent a fundamental restructuring as part of the 2010–2011 work programme (see Figure 19) and its structure is now tightly aligned to the support required for the CDM and JI.[145]

The business units have the following tasks:

- The Standard-Setting Unit (SSU) provides technical advice to the regulatory bodies and their panels and working groups with regard to the setting of standards, including methodologies, methodological tools, policy-related standards and associated guidelines. It consists of methodology and accreditation standards teams.

- The Project and Entity Assessment (PEA) unit provides technical advice to the regulatory bodies with regard to the compliance of project activities and DOEs/accredited independent entities (AIEs) with applicable standards. PEA has both project and entity assessment teams.

- The Process Management Unit (PMU) manages the processes for the operation of the CDM and JI, including the direct support provided to their regulatory bodies (the EB and the JISC) and their panels and working groups. The manager of PMU is also the secretary to the EB and the JISC. There are four teams in PMU, dealing with EB support, accreditation and methodologies process management, regulation and knowledge management, and registry and database support.

- Strategy and Policy Development (SPD) supports activities to further develop current and future market-based mechanisms.

- Organisation and Stakeholder Development (OSD) engages with stakeholders to improve the quality of inputs to the regulatory processes and facilitate their inputs to the policy-setting of the regulatory bodies, and collaborates internally to improve the working practices of the programme.

- Services and Management Support (SMS) handles media communication, skills development, finance management and human resources management.

The following sections elaborate on the roles and functions of the secretariat, as performed by the above-listed organisational units.

5.2.2 Standard-setting

The secretariat's SSU provides technical advice to the EB (and its panels and working groups[146]) with regard to the

145 See the work programme for the secretariat for the biennium 2012–2013, in document FCCC/SBI/2011/2/Add.1.

146 These are the MP, the SSC WG, the A/R WG and the CCS WG.

setting of standards. Standards include methodologies,[147] methodological tools, policy standards (such as accreditation standards and the VVS) and associated guidelines.[148] The secretariat develops policy standards and procedures in consultation with panels and working groups, and recommends them to the EB.[149]

The ToR require the secretariat to make recommendations regarding the establishment, revision or withdrawal of standards, procedures and guidelines. A separate business unit uses these standards, procedures and guidelines to evaluate CDM projects and accredit the DOEs that validate them. Detailed definitions of standards and procedures can be found in the official CDM EB document and decision framework document.[150] All rules, procedures, methodologies and standards are available in a public repository.[151]

Within the SSU, the Methodology Teams support the methodological bodies (i.e. the MP, the SSC WG, the A/R WG and the Carbon Capture and Storage Working Group), while the Accreditation Standards Team prepares recommendations for new and revised accreditation and other policy-related standards. Panels and working groups consider submissions of new methodologies, revisions and clarifications, and recommend these directly to the EB. The secretariat supports the panels and working groups in this work, including with technical advice.

The EB has in recent years developed methodologies in a 'top-down' manner, in contrast to the typical bottom-up preparation/submission by stakeholders. This was done primarily to fill gaps. For this work, the EB generally asked the secretariat to develop the methodologies in consultation with panels and working groups. This work has now been extended also to the top-down development of SBLs.[152]

The Methodology Teams also support the SBSTA with regard to technical CDM issues.[153]

147 Methodologies include baselines, monitoring plans and project boundaries.

148 Secretariat, personal communication, June 21, 2012.

149 Ibid.

150 EB 67 report, annex 4, available at http://cdm.unfccc.int/Reference/Notes/gov/info_note02.pdf.

151 EB 67 report, annex 3: Terms of Reference of the Support Structure of the CDM Executive Board.

152 Secretariat, personal communication, June 25, 2012.

153 Ibid.

5.2.3 Project and entity assessment

Project assessment involves processing requests relating to project activities, including requests for registration, issuance, revisions of monitoring plans, renewals of crediting periods and post-registration changes. The secretariat assesses requests for registration and issuance for projects in the review process. For project assessments (registration and issuance), the secretariat does completeness and reporting and information checks. The secretariat formally identifies projects which are not considered to meet requirements. It posts such projects on the Internet and writes a summary note.[154] In doing so, the secretariat interacts with PPs. It also monitors and assesses the performance of DOEs in undertaking their roles in the project cycle.

The secretariat's role in entity assessment is to coordinate the assessment by qualified assessors of the compliance by applicant entities with accreditation standards. The secretariat reports on assessment activities and conducts quality control. Through the AP the EB implements the approved standards and procedures to accredit the DOEs that validate and verify projects. Assessment teams consisting of qualified experts assess DOEs. The AP considers these assessments (which may be for accreditations or re-accreditations) as well as the results of regular performance assessments and surveillance. The AP considers whether suspension or withdrawal is warranted if non-conformities are found. The AP makes recommendations on all these things directly to the EB. The secretariat supports the AP in this work, including by coordinating assessment teams and giving technical advice.[155] On the basis of the EB's decisions, the secretariat prepares recommendations for the CMP in relation to designating operational entities.[156]

5.2.4 Process management

The secretariat provides institutional support to the Board and its panels and working groups, which includes administering their meetings, providing strategic and legal advice and administering the implementation of CDM processes.[157] Such functions are defined as process management or support and they enable the EB to function effectively. The secretariat prepares draft decisions for the EB and drafts recommendations for its panels and working groups,

154 Ibid.

155 Ibid.

156 Ibid.

157 EB 67 report, annex 3: Terms of Reference of the Support Structure of the CDM Executive Board.

including the development of options and proposals.[158] It provides advice on request and, where necessary, will procure external expert advice for the EB and its panels and working groups.[159]

A number of the secretariat's administrative functions relate to EB meetings. These include managing documents for EB meetings, translating decisions into all six official UN languages[160] and making publicly available the full texts of all decisions of the EB, including the recommendations of the panels and working groups. [161] The secretariat also prepares and monitors the work programmes of the regulatory bodies.[162]

Lastly, the secretariat assists the EB in reporting on its activities to the CMP at each of its sessions and helps to formulate recommendations for the CMP on amendments to the rules of the EB.[163] The Regulation and Knowledge Management Team prepares recommendations for new and revised operational procedures within the CDM process. It also provides records management and ensures clear and transparent access to decisions.

The Registry and Database Support Team administers the operations of the CDM registry, including the issuance of CERs, and manages the database support with regard to the CDM project cycle. When the EB decides to register a CDM project (based on the secretariat's recommendation), the SDM's PMU enters these projects into the CDM registry. This database includes projects' CER issuances.[164] When the secretariat issues CERs, it transfers 2% to the Adaptation Fund account to cover the share of proceeds for adaptation, and distributes the remainder to the accounts of the PPs, in accordance with their agreement.[165]

The secretariat ensures that any relevant information on CDM project activities is made publicly available, in order to assist with arranging funding for CDM project activities. It must also maintain publicly accessible lists of non-Annex I Parties and Annex I Parties that do not meet the CDM requirements or have been suspended.[166]

5.2.5 Organisation and stakeholder development

The Stakeholder Collaboration Team coordinates the communication between stakeholders and the EB, and engages with external stakeholders through public calls for input and by supporting information exchange, workshops, forums and training events. It coordinates measures to promote the regional distribution of projects and capacity-building. The CMP has requested the secretariat to enhance the support that it provides to countries currently underrepresented within the CDM, and is exploring the use of more targeted methods of providing support than those used in the past, for example by working directly with partners on the ground in such regions.[167] The secretariat also maintains the DOE performance management system and provides systematic feedback to the EB, AP and DOEs. Secretariat staff have to respond to project proponents according to institutionalised rules.[168] These functions provide extensive support to stakeholders.

This unit also includes the Business Analysis and Process Development Team, which conducts systems analysis of SDM business processes to improve efficiency and provides technical expertise to the programme to support improvement activities. The team develops and maintains quality management systems.

5.2.6 Services and management support

SMS coordinates communication, skills development and financial and human resources issues. The Public Information and Communication Team communicates with and reaches out to external audiences. The secretariat maintains the CDM website with up-to-date information about CDM project activities, including registered PDDs, comments received, verification reports, its decisions and information on all CERs issued. The Public Information and Communication Team provides media support to the regulatory bodies and serves as press office for the secretariat.

158 Ibid.

159 Ibid.

160 This is done by translating summaries of EB meeting reports (secretariat, personal communication, June 25, 2012.)

161 Annex to decision 4/CMP.1, rule 36, in document FCCC/KP/CMP/2005/8/Add.1. The full repository of documents is available at http://cdm.infccc.int/Reference/catalogue/search.

162 Secretariat, personal communication, June 21, 2012.

163 Ibid.

164 Ibid.

165 Annex to decision 3/CMP.1 in document FCCC/KP/CMP/2005/8/Add.1.

166 Ibid.

167 Decision 8/CMP.1, para. 31.

168 EB 62 report, annex 15: Modalities and procedures for direct communication with stakeholders.

The Skills Development Team conducts skills needs assessments for SDM staff and for external stakeholders, and prepares and implements skills development strategies and activities. The Finance and Human Resources component supports financial and human resources management for the SDM programme.

5.2.7 Strategy and policy development

Within its broader role of supervising the CDM process, the secretariat helps the EB to strategically position itself by keeping it informed of developments in the global carbon market. To that end, it analyses developments in markets and government policies, helps the regulatory bodies to respond to such developments and supports international negotiations. The project information team analyses and reports on developments and trends in CDM and JI projects. It also coordinates partnerships with external information providers who report on the CDM and JI.[169] SPD helps to further develop current and future market-based mechanisms. It also supports interaction with national and regional policy development.[170]

Strategy and policy development is a comparatively recent function (one-year old) of the secretariat, since previously some EB members had difficulty with the EB and the secretariat straying into this type of strategic positioning.[171]

5.2.8 Conclusion

The above description of the secretariat's functions clearly shows that the secretariat ventures into roles beyond mere administration at times. It makes the recommendations for all three types of decisions that the EB makes (see chapter Current criticism of the constitution and conduct). Its assessment function requires it to make recommendations that verge on making rulings and policy decisions; while the recommendations that the secretariat needs to make on standards and policies require technical assessments. It is important to note the trend towards decision-making by default in the latest review procedures, whereby a decision will automatically follow the recommendation made by the secretariat and RIT if a Board member does not recall the decision.[172] So, while the decision is formally the EB's, by implicit delegation it is actually the RIT's and secretariat's.

Secretariat staff have the technical capability to perform their functions, but no power to make any final decisions or rulings. If the secretariat were to have some decision-making powers, it would tremendously speed up some processes that are now referred to EB meetings. These meetings are only held every three months and such delays cause much frustration among external stakeholders, such as project developers. As a starting point, formalising the new review procedures will improve the situation and is a trend that is broadly supported. At the same time, a system for accountability and transparency that exposes decisions, often made by secretariat staff implicitly, to public scrutiny is necessary.

5.3 The functions of the DOEs

A DOE is an independent auditor accredited by the EB to validate project proposals and verify whether implemented projects have achieved their planned GHG emission reductions. Sometimes DOEs are referred to as the 'extended arms' of the EB. The work of the DOEs is conducted through desk reviews as well as visits to the project sites.

In accordance with the CDM M&P, the EB accredits operational entities that meet the CDM accreditation requirements and recommends the designation of such entities to the CMP. A detailed description of the accreditation process is contained in the "Procedure for accrediting operational entities by the Board of the clean development mechanism" [173] and the "Procedure on performance monitoring of designated operational entities".[174] The accreditation requirements are contained in the "CDM accreditation standard for operational entities".[175]

DOEs are accountable to the CMP through the EB and must comply with the CDM M&P, the CDM accreditation requirements and relevant decisions relating to the CDM and of the EB, specifically with the CDM VVS.[176]

169 Secretariat, personal communication, June 21, 2012.

170 Ibid.

171 Personal communication with former EB member, June 21, 2012.

172 In all but one case, that is what has happened since the new procedures were put in place. Personal communication with former EB member, June 21, 2012.

173 See http://cdm.unfccc.int/Reference/Procedures/accr_proc01.pdf.

174 See http://cdm.unfccc.int/DOE/Reference/Standards/accr_stan01.pdf.

175 See http://cdm.unfccc.int/Reference/Manuals/accr_stan01.pdf.

176 See http://cdm.unfccc.int/Reference/Standards/accr_stan02.pdf.

A DOE, as outlined in the CDM M&P, is responsible for performing the following activities:

a) Validating proposed CDM project activities;

b) Verifying and certifying reductions in anthropogenic emissions by sources of GHGs;

c) Complying with the applicable laws of the Parties hosting CDM project activities when carrying out its functions referred to in subparagraph (e) below;

d) Demonstrating that it, and its subcontractors, have no real or potential conflict of interest with the participants in the CDM project activities for which it has been selected to carry out validation or verification and certification functions;

e) Performing one of the following functions relating to a given CDM project activity: validation, or verification and certification. Upon request, the EB may, however, allow a single DOE to perform all of these functions for a single CDM project activity;

f) Maintaining a publicly available list of all CDM project activities for which it has carried out validation, verification and certification;

g) Submitting an annual activity report to the EB;[177]

h) Making information obtained from CDM PPs publicly available, as required by the EB. Information marked as proprietary or confidential is not disclosed without the written consent of the provider of the information, except as required by national law. Information used to determine additionality, to describe the baseline methodology and its application, or to support an environmental impact assessment (EIA) is not considered as proprietary or confidential.

DOEs are also responsible for communicating with the EB on issues raised in the project review process, as outlined in the CDM PCP.[178]

DOEs are further responsible for carrying out completeness checks and communicating with the EB on proposed new methodologies, in accordance with the procedures for the submission and consideration of proposed new baseline and monitoring methodologies.[179]

Contracting a DOE

Current CDM requirements do not prescribe specific regulations for the contractual arrangements between PPs and the DOE. However, the CDM accreditation standard requires the DOE to be "a legal entity under applicable national and/or international law so that it can function legally, enter into contracts, make decisions independently and may be sued".

The following essential information must be provided to the DOE before entering into a contract:

a) The PDD, which defines project boundaries and sites included in the assessment, the nature of the data needed for validation/verification and the methodology used;

b) Information about the CDM PPs, the host Party and its DNA;

c) Information about persons or organisations engaged in the identification, development and consultancy and financing of the project activity;

d) The scope of the validation/verification;

e) The contract period and liability conditions.

The DOE will enter into a contract only if:

a) There are no impartiality issues that contravene the CDM accreditation requirements;

b) It has the necessary human resources with the required competence to perform the validation/verification function in question;

c) It has been granted CDM accreditation in the sectoral scope of the proposed project activity;

d) Considerations such as location(s) of the applicant organisation's operations, time required to complete the project and any other issues influencing the validation/verification, such as language, safety conditions, etc., have been taken into account.

Only DOEs may conclude contracts with CDM PPs for validation or verification/certification activities; any other entity

177 The latest summary of the annual activity reports is available at http://cdm.unfccc.int/UserManagement/FileStorage/U8FXZO6YLR7IDJB1VT4MH29GP5WK0S.

178 See http://cdm.unfccc.int/Reference/Procedures/pc_proc01.pdf.

179 See http://cdm.unfccc.int/Reference/Procedures/meth_proc05.pdf.

may not conclude such contracts. Contracts with CDM PPs for validation and/or verification/certification activities may be signed, under a power of attorney, by persons not employed by the DOE, but such contracts will be in the name of the DOE.

5.4 The role of civil society

The CDM project cycle defines 'stakeholders' as the public, including individuals, groups or communities, affected, or likely to be affected, by the proposed CDM project activity.[180] Civil society is included in the set of CDM stakeholders and this section considers the specific role that civil society plays in the CDM. In addition to those civil-society entities concerned with environmental and community issues in general and those which have been involved in the CDM project cycle, the CDM has prompted the establishment of a number of civil-society entities that concern themselves, primarily, with the CDM. This means that there is a considerable body of expert CDM knowledge to be found within the various civil-society entities that operate in the CDM arena. For these reasons, among others, civil society is key among the set of CDM stakeholders. Various stages of the CDM project cycle allow for stakeholder engagement, including that of civil society, and this engagement, in essence, permits stakeholders to fulfil a 'check and balance' function. For the purpose of this section, inputs received from various stakeholders pursuant to the CDM Policy Dialogue were considered, in order to illustrate civil society's role as well as the importance of its control function.

The CDM project cycle makes provision for consultation with stakeholders, including civil society, at specific times during the process of project developments, currently limited to the pre-registration period. These instances of stakeholder consultation are discussed in more detail in chapters 1 and Concerns voiced about current stakeholder participation of this report but, for the purposes of this chapter, it should be noted that stakeholder consultation during the CDM project cycle currently occurs at two levels, namely at the global and at the national level. This dual consultation may be augmented by the domestic legal regimes of some CDM host countries, which require other instances of consultation (e.g. the requirement for public participation in the EIA processes prescribed by South African domestic legislation).[181] While EIA is not a foregone conclusion under the CDM, the CDM rules provide that national laws should be applied in making the call as to whether EIA should apply. Where such national laws require EIA, the role of civil society can be thought of as deriving from a process that is ancillary to the CDM project cycle but which may also be implicitly required in the project cycle. A report compiled by the National Forum of Forest People and Forest Workers (NFFPFW), the North Eastern Society for Preservation of Nature and Wild Life (NESPON) and the Society for Direct Initiative for Social and Health Action (DISHA)[182] includes case studies of allegations of EIA procedures improperly applied to the assessment of CDM project activities. Nationally driven EIA processes provide civil society with an important, although not the only, opportunity to engage in the CDM process. In such instances, capacity-building, often provided by civil-society organisations, serves as an important tool to ensure awareness of national EIA laws and standards as well as of the CDM consultation process.

Thus, a perceived limitation of the current CDM rules is that the input of stakeholders is temporally limited to a circumscribed time frame after project design and before registration. This time frame commences with a call for global stakeholder consultation at the point that the PDD is already in a state of near-completion and occurs during the validation phase. Essentially, therefore, the current rules provide for this 'window' of consultation after project design and before project registration. Input to the CDM Policy Dialogue has indicated that it has become "common practice that civil society impacted by CDM projects is not informed about the 30-day public commenting period that is only outlined and is not translated into the local language".[183] Consequently, there is some support for the suggestion that, notwithstanding that stakeholder consultation is provided for in the CDM rules, such consultation suffers, inter alia, from a lack of proper implementation and from occurring at only a single point in the lifetime of a project.

180 Decision 3/CMP.1.

181 The CDM rules provide that a proposed CDM project activity must be subject to environmental assessment and, if the PPs or the host country deem it necessary, the proposed activity must be subject to EIA. In South Africa the question of whether a proposed activity should be subject to EIA is determined by referring to a list of activities which trigger this requirement. If the requirement is triggered, there is a concomitant requirement for public participation in the EIA process. Consequently, in the event that a proposed CDM project activity triggers the requirement for EIA in South Africa, further instances of public participation/stakeholder consultation are prescribed by the domestic legal regime. This is further augmented by the South African DNA's requirement for stakeholder consultation, which is a separate requirement from those in relation to the CDM project cycle and the law pertaining to EIA.

182 NFFPFW (2011), p.175.

183 Input received from CDM Watch in response to the call for public input to the CDM Policy Dialogue, dated January 16, 2012, p.5.

A proposed way of dealing with this issue is for host countries to include robust stakeholder consultation processes in the domestic legal provisions which prescribe how applications are made for the host country's LoA. Such robust stakeholder consultation processes might be linked to the role currently played by DNAs, which, to some extent, already amounts to an interrogation of the project and its intended implementation. This is likely to enhance the role of the DNA beyond that of merely assessing the proposed project's contribution to sustainable development, in that the DNA could be empowered to intervene at an early stage of the project design. Civil society might use this sort of opportunity as a platform from which to provide commentary on the project.[184]

A summary of the call for public input from June to July 2011 on co-benefits and negative impacts of CDM project activities, seeking comments on, inter alia, the role of the different actors and stakeholders in the CDM process, concludes that: "in order to improve the project design and increase local ownership or involvement in the project, stakeholder comments should be invited during the design phase of the project, at a time when project proponents are open to making changes to the project".[185] An overview of the submissions received from stakeholders during the call for public input for the CDM Policy Dialogue further indicates similar calls: "the guidelines contained in the current VVM do not ensure that such consultation occurs early on in the process, when the project proponents are still genuinely open to making changes to the project, i.e. during the design phase of the project. The first round of stakeholder consultation should be conducted before the PDD is submitted for validation, at a stage when the project developer is still open to adapting the project design, and should include at least one physical meeting".[186] While the input of civil society during pre-registration activities can serve as an important tool for strengthening local oversight and involvement in the project, stakeholder inputs are not sought out later in the project cycle (e.g. in the post-registration period); yet it is in the post-registration period that the project has an impact on local communities and the environment. Bear in the mind that this lack of a formal, CDM rule driven, opportunity for stakeholder consultation in the post-registration period should not and does not hinder civil society from intervening in, and providing comments in respect of, CDM projects in their post-registration phases. Indeed, it is likely to be partially for this reason, namely the need for the civil-society vigil to be sustained into the post-registration period, that CDM-specific civil society has arisen. These organisations have developed expertise in assessing the implementation of CDM projects and the impacts that such implementation may be having on communities and the environment, and then in providing either commentary (at the national and international levels) that highlights such issues beyond the realm of the project, or capacity-building to local communities aimed at strengthening the community's ability to assess and respond to the impacts that the project activity is having. CDM Watch is a prime, although not the only, example of such a civil-society entity.

As one input to the CDM Policy Dialogue points out, "there is no opportunity for civil society to raise concerns while a project is operational". However, this input suggests that civil society can play a greater role during the pre-issuance phase, namely by lobbying for a review of the request for issuance to avoid issuance of CERs from projects shown not to be in compliance with the objectives established in their registered PDDs. The broad sentiment expressed in a number of the civil-society inputs to the CDM Policy Dialogue is that stakeholders should have opportunities to raise concerns throughout the design and implementation of the CDM project (i.e. in the pre- and post-registration phases) and that these opportunities should be driven by an amended form of the CDM rules. It is proposed that "multiple meaningful opportunities"[187] need to be created in order to ensure that information reaches local communities.[188]

Other inputs to the CDM Policy Dialogue have indicated that a longer-term engagement with civil-society actors in host countries should be considered during the CDM process, including engagement during monitoring and verification; and that independent, third-party stakeholders could enable local monitoring of the CDM process, thus increasing the role of civil society in post-registration activities. Various non-governmental organisations (NGOs) are working with communities and citizens to monitor the design, contracting and implementation of CDM projects. The transparency, accountability and integrity of projects are complemented and strengthened by independent, third-party

184 The South African DNA runs its own in-country stakeholder consultation, which consists of posting the project documents on the DNA's website at the validation stage and providing a period of 30 days for public input. This in-country period is in addition to the global and local stakeholder consultation periods provided for in the CDM rules and is also in addition to any periods of public participation that might be required by the domestic legal regime (e.g. the legal regime that triggers EIA).

185 EB 65 report, annex 17: Report on sustainable development co-benefits and negative impacts of CDM project activities, p.3.

186 Input received from CDM Watch in response to the call for public input to the validation process, dated August 15, 2011; similar inputs were also received from, inter alia, Climate Action Network (CAN) International, the Global Alliance for Incinerator Alternatives (GAIA), the Wuppertal Institute and International Rivers.

187 Civil-society letter to the High-Level Panel on the CDM Policy Dialogue, May 21, 2012, submitted by 84 civil-society organisations, p.3.

188 Although there is opportunity for comments, it is not always clear whether information thereon reaches local communities. See Castro and Michaelowa (2008), p.53.

public oversight throughout the project cycle. The likelihood of greater benefits was also listed as a possible result of this increased level of scrutiny: "a fairer and more transparent business environment, better quality projects at better value for money, greater climate change mitigation potential and goals reached, and more sustainable development benefits".[189] In addition, it can be argued that local governments can support civil society in the verification and monitoring processes, thus further enhancing the role of stakeholders in these project phases.[190]

Pressure from civil society against issuances of CERs from project types regarded as having a negative impact on the environment and communities might also be an important tool for promoting better project implementation, for the reason, inter alia, that this can promote increased buyer-side responsibility. In at least one case buyers have stepped down from a project as a result of pressure from civil society that imposed a supplementary standard on the CDM.[191]

Concerns raised by CDM Watch had a considerable impact on the EB's decision to apply a revised methodology for HFC-23 abatement projects, serving as an important illustration of the 'check and balance' function fulfilled by civil society. CDM Watch continues to play a role in this regard by voicing the following concern: "although the revised methodology is more stringent, it is still not rigorous enough".[192] The Environmental Investigation Agency takes this further in stating that it "rejects claims that the CDM Executive Board's recent decision to apply a revised methodology for new crediting periods of HFC-23 abatement projects combined with current depressed CER prices have adequately addressed the perverse incentives contained in the current methodology AM 0001".[193]

The aforesaid clearly illustrates that civil society can play an important role throughout the project cycle. Civil society can often act as an empowering tool in ensuring that CDM project activities achieve the sustainable development goals originally contemplated in Article 12 of the Kyoto Protocol.

5.5 The governance of the CDM and its functions

Although there has been a considerable amount of research on the various aspects of the CDM, little work has been done on the subject of the governance of the mechanism. The following section is based in large parts on the work of Emma Lund and Charlotte Streck.[194]

The framework of 'hybrid governance' used by Lund proves to be particularly suited to understanding the functioning of the CDM. 'Hybrid governance' is a governance arrangement whereby public and private sectors establish joint transnational networks with a set of governance objectives, merging the realms of public and private authority in global governance (Andonova et al., 2009).

This hybrid set-up is, arguably, key to the success of the CDM in creating momentum. Private actors are able to act quickly on opportunities and deploy investments, while the regulator provides for a certain regulatory stability and is able to put a safeguard on the integrity of the produced offsets.

Indeed, its hybrid form of governance is characteristic to the CDM; it is characterised by its high degree of delegation of tasks to private agents. The CDM is not the only example of a transnational and hybrid governance structure, but maybe the most distinct. Other examples include the World Summit on Sustainable Development partnership, the Chicago Climate Exchange and the Global Environment Facility.

189 Input received from Transparency International in response to the call for public input to the validation process, dated August 15, 2011, p.2.

190 Local governments can, taking their and the local context into account, take on varied roles in CDM activities, including as regulatory framework provider (active and passive), project facilitator and information provider, and PP (with/without partnership). Local governments can be key stakeholders to encourage and support urban CDM activities. Local governments as facilitators and information providers could involve numerous functions. Local governments can act, as the examples illustrate, as stakeholders in consultations, but can also provide crucial information and data on the city (input received from ICLEI in response to the call for public input to the CDM Policy Dialogue, dated January 16, 2012, pp.5 and 6).

191 Information on the registered CDM projects "Aguan biogas recovery from Palm Oil Mill Effluent (POME) ponds and biogas utilisation – Exportadora del Atlántico, Aguan/Honduras" in Honduras (Ref. 3197) and "Guizhou Taijiang Yanzhai Hydropower Station" in China (Ref. 1953) for example, suggests that they have been linked to human rights violations. The risk of incidences like these could possibly have been prevented by an adequately conducted, meaningful stakeholder consultation process, as stakeholder consultations can significantly enhance a project's contribution to sustainable development in the host country and reduce the risk of negative impacts of CDM projects on local populations. However, a study conducted by the Wuppertal Institute has found that the stakeholder consultation is often only rudimentary, completely unregulated and badly documented (input received from the Wuppertal Institute in response to the call for public input to the validation process, dated August 15, 2011, p.2).

192 Input received from CDM Watch in response to the call for public input to the CDM Policy Dialogue, dated January 16, 2012, p.3. See http://www.cdm-watch.org/wordpress/wp-content/uploads/2010/06/hfc-23_press-release_gaming-and-abuse-of-cdm1.pdf.

193 Input received from the Environmental Investigation Agency in response to the call for public input to the CDM Policy Dialogue, dated January 16, 2012, p.1.

194 Lund (2012) and Streck (2004).

Hence, CDM governance combines the agency of private and public actors. Next to the question of who is entrusted with what governance function is the question of the source of legitimacy. In the context of the CDM, the source of legitimacy is also shared between public and private actors:

- The public actors draw their legitimacy from their institution by the CMP (CDM elements of public regulation). This means that the legitimacy is determined by input.

- The private actors (project proponents and DOEs) carry out the implementation of the mitigation activities and their supervision, and both participate voluntarily in the mechanism. Based on the Marrakesh Accords, states can authorise PPs to participate in the mechanism. This authorisation forms both the legal basis for the voluntary participation of PPs in the CDM and technically also the foundation of the EU member States allowing for imported CERs to be used for offsetting under the EU ETS. Those non-State actors draw their legitimacy formally through authorisation (PPs) and delegation (DOEs), but maybe more importantly by recognition of their agency in implementing credible mitigation actions under the CDM. In other words, legitimacy is also drawn from the practical success of the CDM. Importantly, the CDM being a market-based mechanism, the creation of markets for CERs thus forms another important source of legitimacy of the CDM.

Within this framework, the functions of the CDM may be characterised by their entrustment to public or private agents. The following is an overview of the work-sharing between private and public actors (see also Table 7):

Standard-setting. The EB makes sure that standards are set that are suitable for ensuring the integrity of resulting offsets.

Methodology development. Project proponents provide key input to standard-setting by suggesting methodologies for approval. Only lately the regulator has also engaged in top-down methodology development.

Surveillance. The CDM ensures that the projects and accordingly the resulting offsets comply with the standards of the CDM. The EB and its support structure (the secretariat) share the surveillance task with private actors, the DOEs who carry out validation and verification. The EB and its support structure execute surveillance of the DOEs' results and decide upon the registration of CDM projects.

Operation. The secretariat is in charge of the daily operations of the CDM.

Project implementation. The private-sector agents carry out the implementation of projects, which ultimately result in additional emission reductions.

Monitoring. Emission reductions are monitored by project owners and this forms the basis for claiming offsets.

Issuance. The EB has the sole right to issue offsets and forward them to the owner of the claim according to the MoC.

Public scrutiny, lobbying and consultation. The impact of the mechanism is critically judged by NGOs, research institutions and the national regulators that depend on the integrity of offsets (EU ETS regulators). Users of standards (PPs and DOEs) are consulted by the regulator on new regulations. These stakeholders therefore interact with the regulator in standard-setting.

The above overview demonstrates that, while there is a clear division of work between the public and private actors, still some of the core functions are exercised jointly, such as surveillance. Also, in particular with respect to standard-setting, the regulator's oversight of the development of standards has evolved into an interactive public–private process which involves stakeholder consultation and bottom-up developed methodologies and considers public feedback.

The framework of 'hybrid governance' and the concept of agency are likewise useful in understanding the dynamics of the CDM and what the mechanism represents today. Two lessons can be derived from considering the history of the CDM:

1) The private sector essentially shapes the impact and outreach of the CDM.

Even though private companies mainly act in the CDM process at the micro level, by making decisions on which projects to finance and implement, how to design methodologies, how to organise project supervision, etc., at the aggregate macro level these decisions shape what the mechanism becomes.

The initial idea of the CDM was that Annex I country buyers would directly invest in mitigation activities. However, very soon a secondary market emerged, where offset buyers buy on an exchange market from companies selling offsets. In contrast to the initial intention, the project buyer is not directly connected with the project development. The emergence of the secondary market as a form of division of labour between project developer and compliance buyers is due to the individual decisions of private firms on how to engage in the mechanism. At an aggregated level this has shaped the market place as we know it today, including

Table 7. Functions versus the public/private nature of the agents involved in the CDM

Function	Agent	Nature
Standard-setting	MP, SSC WG and A/R WG	Public
Operation of the mechanism	Secretariat	Public
Methodology development by project proponent	PP	Private
Validation/verification	DOE	Private
Registration of projects	EB	Public
Implementation of mitigation projects	PP	Private
Monitoring of emission reductions	PP	Private
Issuance of CERs	EB	Public
Public scrutiny, lobbying, consultation and co-option	Stakeholders	Private

the implementation of an exchange market with derivative carbon contracts traded.

Another example of the influence of the private sector is in the selection of project types and locations, which is an important aspect of what the CDM is today. The geographical distribution of CDM projects follows largely the logic of commercial decisions and looking for safe investment environments.

Civil society has shown indirect agency through the interventions of NGOs and scientists that have led to increased scrutiny, and PP groups have been successful in initiating reforms. Ultimately, the revision of the methodology for HFC-23 mitigation projects was induced by the intervention of an NGO.

2) The EB as regulator has limited influence over the impact and outreach of the CDM.

In a hybrid set-up it is not surprising that the private actors, being responsible for the decisions to implement mitigation activities, carry considerable weight in this public–private relationship. The voluntary nature of the decision of private actors to participate in the mechanism, driven by the prospect of carbon revenue or validation/verification fees, makes the regulator dependent on the 'regulatee'. It cannot be taken for granted that projects will take place and the regulator has virtually no means of influencing the decisions of private agents, other than by acting within the body of rules (e.g. by providing preferential benefits, restrictions or else the threat of project rejection or suspension of accreditation). Interventions of the EB to support equitable project distribution or to balance the representation of technologies were not entirely successful. On the other hand, decisions that affected the marketability of credits, such as the EU's post-2012 restriction on usable credits or the regional diversification criteria of the Prototype Carbon Funds of the World Bank, did have a clear impact in this respect.

6 Review of the functioning of the secretariat

This chapter reviews the UNFCCC secretariat's operation of the CDM. We draw on stakeholders' views recently submitted in the context of the CDM Policy Dialogue, which include written responses to the call for public inputs,[195] written submissions of stakeholders[196] and comments derived from global consultations as contained in meeting reports. Additionally, we use an independent review conducted by McKinsey and Company in 2009, which evaluated the secretariat in terms of quality, cost, service and people satisfaction.[197,198] Many stakeholders have observed that, subsequent to that review, the administration of the CDM has improved substantially, with positive consequences such as greater awareness of the CDM and sustainable development in general.[199, 200] But many stakeholders still believe that further reforms are necessary.

The McKinsey and Company review noted that the secretariat plays a primary role in maintaining the quality of the project submissions. However, other factors impinge on its functioning and this results in higher costs, longer lead-times and staff being overstretched.[201] Lead times had tripled over the two years prior to the review, with CDM project registration taking an average of 200 days.[202] In an effort to deal with the situation, secretariat staff were working unsustainably long hours. DOEs and PPs were complaining about registration lead-times and the clarity of methodologies.[203] These factors all had an impact on costs, which had risen 20% faster than the fees collected over the two years prior to the review.[204] Attempts to expand the staff complement were hampered by UN recruitment procedures and a lack of the necessary skills in the market.

The quality of the project submissions determines to a large extent the secretariat's workload and the McKinsey review noted that 'first-time-right' registrations of CDM projects dropped from 80% to 30% from 2005 to 2009. This resulted in excessive checking by the secretariat (on the request of the EB) and long delays for PPs.[205] The review found this to be a systemic problem and argued that the EB and secretariat's approach, namely seeking to guarantee quality through post hoc evaluations by the secretariat, was ineffective. Stakeholders consulted during the course of the CDM Policy Dialogue have raised similar concerns. While stakeholders understand the rationale for seeking quality in projects, the secretariat's double checking of the work of DOEs is seen as resource-intensive and maybe having the perverse effect of creating ambiguous accountability in relation to project verification and validation.[206] The quality assurance process should thus be redesigned to ensure 'quality from the outset' at the point at which the product is initiated. The recent publication of the VVS and other documents is an important step in providing clearer guidance that could lead the secretariat and the EB towards a more 'post hoc' surveillance role.

While the policy environment and the EB's decision-making (factors beyond the full control of the secretariat) have led to this situation, the secretariat does have control over several areas of performance and it can use this control to improve the situation:

- Unclear and incomplete documents lead to PPs applying guidelines and standards inconsistently. Multiple

195 The call was issued in October 2011 and the last submission was received on February 13, 2012.

196 Following an initial call for submissions in October 2011, further questions were prepared and circulated to stakeholders, as well as there being an extensive programme of stakeholder meetings. All of the submissions are available on the CDM Policy Dialogue website at http://www.cdmpolicydialogue.org/public_input.

197 McKinsey and Company (2009).

198 This review was a voluntary initiative of the secretariat. It was a review of the functioning of the secretariat in the first instance but also, by necessity, of the entire CDM system, in order to understand the situation of the secretariat. It was conducted because the secretariat recognised that its work methods at the time were unsustainable (secretariat, personal communication, June 25, 2012).

199 CDM Policy Dialogue: Summary of stakeholder engagement meeting with DOEs, March 24, 2012.

200 CDM Policy Dialogue: Summary of stakeholder engagement meeting with business-interest NGOs, March 25, 2012.

201 McKinsey and Company (2009).

202 Ibid.

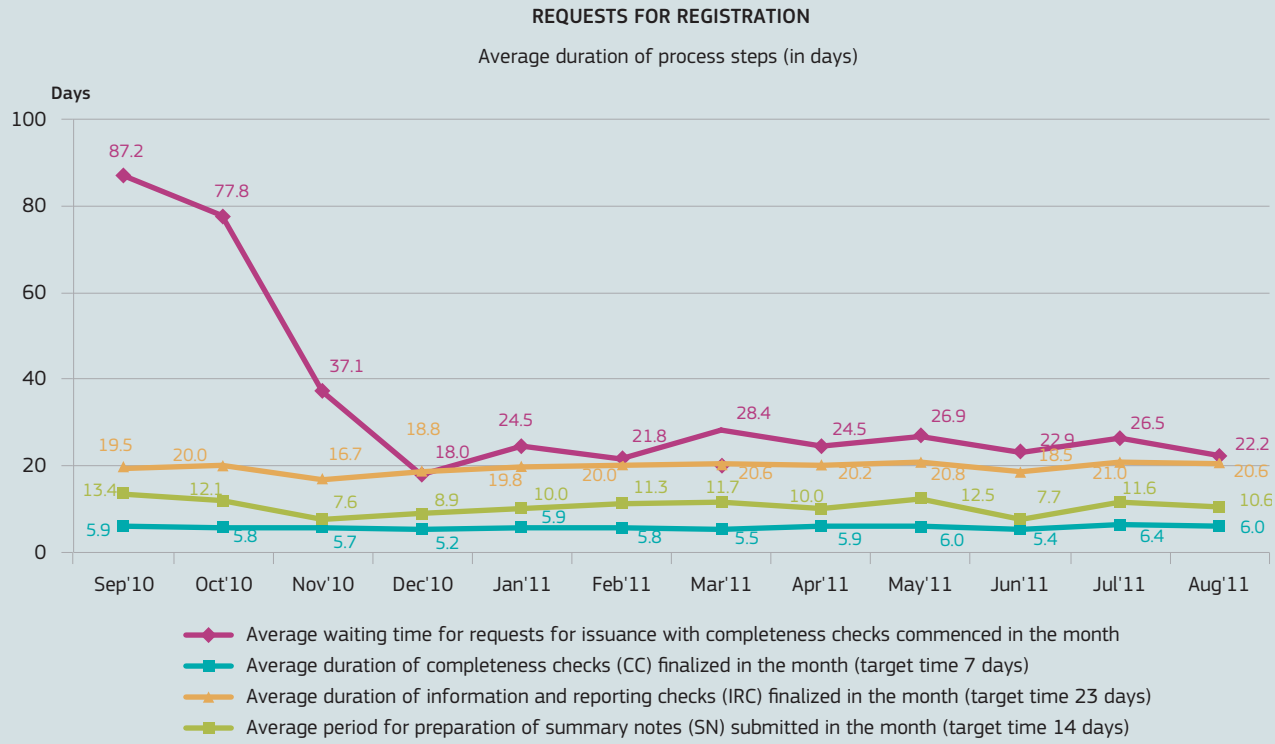
203 Ibid.

204 Ibid.

205 Ibid.

206 CDM Policy Dialogue: Summary of stakeholder engagement with MP, SSC WG, AP, A/R WG and RIT, March 25, 2012.

Figure 20. Average duration of processing of registration requests



Source: EB 63 on 25-29 Sept 2011, annotated agenda, annex 2: Compliance with indicative timelines for different processes.

and frequent changes to the guidelines and rules mean that secretariat staff struggle to stay up to date with project requirements. This ultimately leads to more work for the secretariat in reviewing cases.[207] The frequent document changes have also had an impact on DOEs and project proponents, who have to constantly relearn the rules of the game. Many stakeholders have complained about this situation, arguing that it was time to stop 'learning' in order to create stability in the system.[208] Changes that were being introduced into the system at the same time as the EU's decision to limit project eligibility to projects hosted by LDCs were seen as very unfortunate given the additional hurdles that they would present.[209]

- Poor prioritisation of the workload, with repeat submissions receiving the same amount of attention as new submissions: poor guidance from the EB about what is essential for an assessment and what elements are merely desirable to be assessed has led to 100% quality checks on all submissions, which did not necessarily improve the final outcomes.[210] The McKinsey review noted that "the process operates on the principle that one size fits all, rather than concentrating effort where it would have the most impact".[211]

In general, the compliance with timeline indicators shows that, once the processing of cases has commenced, the secretariat processes these requests within the timelines set by the EB (see Figure 20 and Figure 21 for registrations and issuances, respectively). However, the waiting time prior to the start of processing (blue line in Figure 21) is generally above the 15 days that the CMP "urged". Over the last year, the waiting time has generally hovered around 20–25 days.[212]

Nevertheless, the figures indicate a dramatic drop in waiting times since the McKinsey review in 2009. In practice, this waiting time acts as a pressure relief valve when the

207 McKinsey and Company (2009).

208 CDM Policy Dialogue: Summary of stakeholder engagement with NGOs, March 23, 2012.

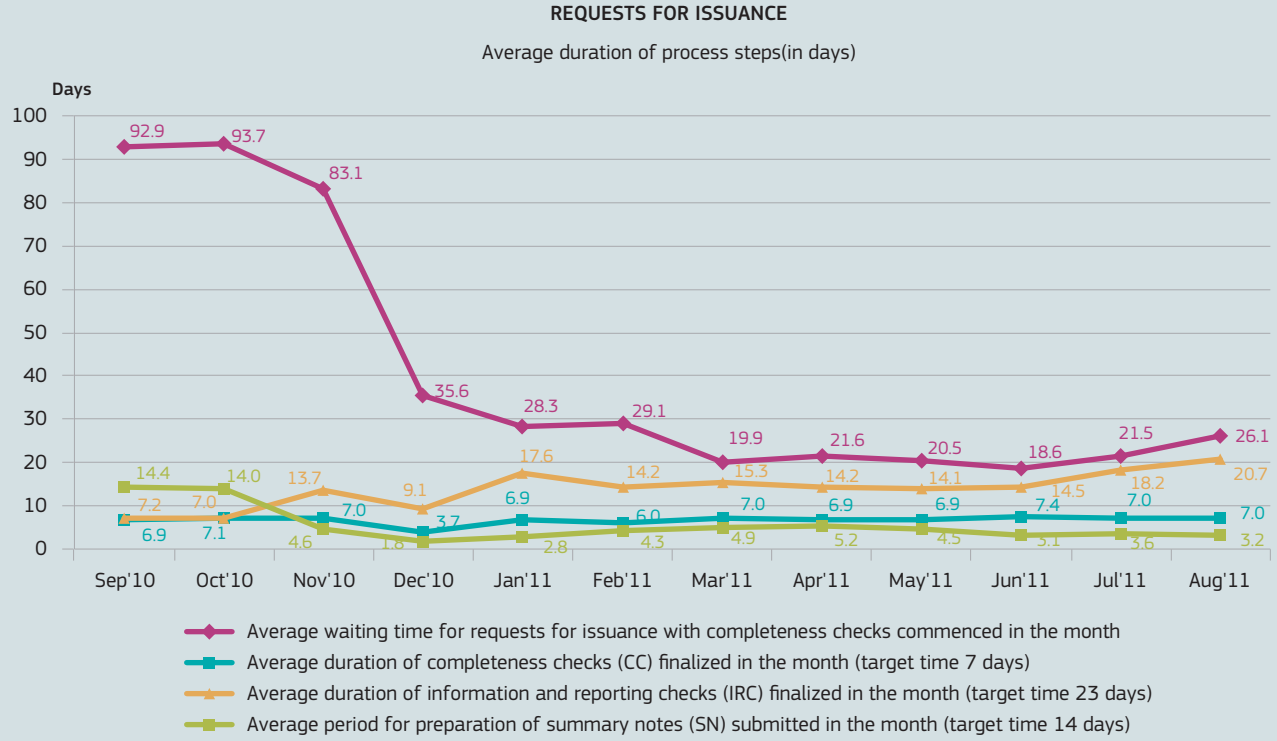
209 CDM Policy Dialogue: Summary of stakeholder engagement meeting with DOEs, March 24, 2012.

210 McKinsey and Company (2009).

211 Ibid.

212 EB 63 on 25-29 Sept 2011, annotated agenda, annex 2: Compliance with indicative timelines for different processes.

Figure 21. Average duration of processing of issuance requests



Source: EB 63 on 25-29 Sept 2011, annotated agenda, annex 2: Compliance with indicative timelines for different processes.

caseload is running high and, for this reason, neither the EB nor the CMP has mandated a specific acceptable waiting time prior to the start of processing. While the waiting time has reduced considerably over the last few years,[213] this may be due in part to the retroactive setting of the registration date. Nevertheless, the measures implemented by the secretariat are responsible for a substantial part of the reduction.[214]

Poor communication between the secretariat and DOEs was highlighted as a key problem in the McKinsey review, and communication with PPs was flagged as a key issue during the Policy Dialogue stakeholder consultations.[215] The secretariat's attempts to be impartial mean that it has neither an effective feedback loop nor a collaborative approach that will ultimately improve the quality of DOEs' submissions.[216, 217]

The McKinsey review indicated a lack of transparency surrounding the secretariat's performance, with inadequate systems of measurement of how well either the secretariat or DOEs are performing, making it difficult to judge progress and target improvements.[218] Stakeholders' comments received in the course of the CDM Policy Dialogue have also referred to lack of transparency as an issue needing to be addressed. The McKinsey review proposed to "measure and manage how well the secretariat and DOEs perform in supporting the mechanisms, in a transparent way with clear targets and consequences. For example, implement key performance indicators, targets and performance dialogues at all levels, which are then communicated to all stakeholders".

213 McKinsey and Company (2009).

214 Many of the secretariat's recent activities have been to clarify the rules and help stakeholders understand them better, and the corrections route has been removed from the registration and issuance processes. Minor problems are now fixed through direct interaction with the secretariat, while more significant problems lead directly to rejection and the resubmission of the project. In the secretariat's view these changes have significantly reduced processing times (secretariat, personal communication, June 25, 2012).

215 CDM Policy Dialogue: Summary of stakeholder engagement meeting with DOEs, March 24, 2012.

216 McKinsey and Company (2009).

217 CDM Policy Dialogue: Summary of stakeholder engagement meeting with DOEs, March 24, 2012.

218 Ibid.

The secretariat's latest biennial (2012–2013) work programme[219] does contain outcomes of and measurable performance indicators for the secretariat's work. An example of an outcome is "the registration of CDM projects and the issuance of CERs are facilitated" and one of its performance indicators is the "proportion of summary notes delivered to the CDM EB within the specified timelines". In general, the outcomes and performance indicators in the work programme show accountability to the CMP (but not necessarily to the EB) and the secretariat reports to the CMP on the achievement, or not, of the outcomes in the work programme.

The McKinsey review noted that the historical development of the secretariat led it to play the more traditional role of 'process facilitation' typical of UN secretariats, rather than seeing itself as a proactive driver of regulatory processes. This mindset had started to change by the time of the review (and continues to change) and different units within SDM have adopted different roles. The review noted that "those teams that consider themselves hands-off facilitators tend to lack a mindset of collaboration or process improvement".[220]

The secretariat has indicated that most of the proposals made in the McKinsey review, where these lie within the scope of the secretariat to enact, have now been implemented.[221] As is to be expected, most stakeholder unhappiness arises in relation to the secretariat's stewardship of the CDM project cycle.[222] Nevertheless, many concede that, even on this score, the secretariat has improved substantially, with many positive consequences, including higher project throughput and growing awareness of the CDM.[223, 224]

The secretariat plays a dual role in supporting the EB and the JISC regulatory bodies through the SDM division. The McKinsey and Company review in 2009 recommended that the work of the teams supporting the CDM and JI be aligned and reorganised so that they could take ownership of the process and drive through continuous improvements.[225] Following that review, the roles of Secretary to the EB and Secretary to the JISC have now been taken on by the same person, which has enabled the provision of a more efficient set of professional services to these bodies.

On being asked about the adequacy of the support provided by the secretariat and how it is measured by the JISC, JISC members unanimously expressed satisfaction. However, they observed that the same team in the secretariat supports both the CDM and JI and that this leads to a lot of overlap in work. Sometimes project support becomes compromised due to the excessive workload under the CDM[226] and JISC members felt that this aspect had much room for improvement. They argued for a better division of labour within the secretariat, backed up by capacity-building, as the current workload of the secretariat is excessive. Should the workload of the secretariat increase in future because of market developments, quantitative performance benchmarks would be an effective way of ensuring internal control.[227]

The 2009 McKinsey review estimated that the impact of its suggested reforms, if implemented fully and in a collaborative manner, would result in a rise in the quality of project submissions, leading to a rise in the rate of project autoregistration from 30% in 2009 to 80–90%. This would release 30–50% of the capacity in the secretariat's CDM team and allow it to deal with the current workload. It was also estimated that lead times for registration and issuance of CERs after the submission of requests to the secretariat could be reduced by up to 75% and become more consistent.[228] It appears that the full benefits of these reforms have not yet been realised and indeed, as suggested by many stakeholder, some of the nagging problems flagged in the review persist. Of course, stakeholders' views may be based in part on dated experiences, and there is widespread acknowledgement from almost all stakeholders that performance levels have dramatically improved.[229, 230]

In summary, the secretariat has clearly improved its working methods since the McKinsey review and is on its way to becoming more transparent and accountable to stakeholders, provided that the outcomes of its performance measures become publicly available. In the view of stakeholders, a number of areas requiring improvement remain, requiring further attention from the secretariat and the EB. The

219 Work programme for the secretariat for the biennium 2012—2013, in document FCCC/SBI/2011/2/Add.1.

220 McKinsey and Company (2009).

221 Written replies to questions posed to the secretariat by the High-Level Panel on the CDM Policy Dialogue, May 29, 2012.

222 We do not repeat the wide range of comments on specific problems associated with the project cycle here, but summarise the main issues emerging.

223 CDM Policy Dialogue: Summary of stakeholder engagement meeting with DOEs, March 24, 2012.

224 CDM Policy Dialogue: Summary of stakeholder engagement meeting with business-interest NGOs, March 25, 2012.

225 McKinsey and Company (2009).

226 Minutes of the meeting between the CDM Policy Dialogue team and the JISC, May 29, 2012.

227 Ibid.

228 McKinsey and Company (2009

229 CDM Policy Dialogue: Summary of stakeholder engagement meeting with DOEs, March 24, 2012.

230 CDM Policy Dialogue: Summary of stakeholder engagement meeting with business-interest NGOs, March 25, 2012.

problem of overextended staff should diminish with the expected reduction in new project registrations and the concomitant reduction in workload by 2013.

This review has flagged up a number of key issues which require further exploration:

- The relationship of accountability between the secretariat and the EB as the governing body of the CDM.
- The systems of performance management and the transparency of reporting.
- The potential for conflicts of interest as a result of the multiple roles performed by the secretariat.
- Personnel management and capacity issues.
- Communication and information-sharing with stakeholders.

These issues are explored in more detail in the following sections.

6.1 The secretariat's relationship with the EB

Consulted stakeholders pointed to the delineation of roles and responsibilities between the secretariat and other actors[231] in the CDM project cycle as an area that needs significant reform.[232] In particular the secretariat's relationship of accountability to the EB emerged as a key issue. As noted in chapter General structure of the governance, decisions of the CMP define the legal relationship between the CMP, the EB and the secretariat. The EB has an "executive and supervisory role" over the CDM, which includes the management and organisation of its work, the establishment of panels, committees and working groups, and the definition of the services and administrative support functions required by the EB and its substructures and the financial resources to support that work.[233] The EB sets the policy within which the secretariat has to operate, in the context of any guidance from the CMP.[234]

At the same time, the secretariat is an independent structure with its own internal accountability systems. Notably, the EB is not the employer organisation and has no personnel management functions or ability to reward or discipline staff.[235] This means that the relationship between the EB and the secretariat is akin to a service-provider relationship. As mentioned in chapter General structure of the governance, the interface between instructions to the SDM from the EB, instructions to the secretariat more broadly from the CMP and instructions to officials from the host organisation (UN) harbours potential for conflict.

The EB follows an annual planning cycle in which the secretariat prepares a MAP and the EB approves it. The EB also guides the secretariat with new mandates at each meeting, which are made publicly available in the official meeting report. This results in a transparent process whereby the Board instructs the secretariat what to do and the secretariat reports back to the Board on the progress made.[236] The MAPs do set out clear objectives and deliverables with time frames for each of the projects, but they do not describe an ongoing service-provision role in any detail, nor do they contain performance standards and benchmarks for these services, and therefore, as a management tool, they are only partially effective.

There have been concerns over the years about the transparency of the EB and secretariat's reporting. The management plan was introduced as a requirement at CMP 1, following concerns about the opaqueness of the CDM's operations during the prompt-start period.[237] At CMP 2 the secretariat was requested "to implement expeditiously a management plan". Parties subsequently requested the secretariat to provide a detailed breakdown of resources allocated and "an explanation of the financial reserve" at CMP 6.[238] It appears that the extent and transparency of the secretariat's reporting has improved significantly, and

231 Though we only discuss the secretariat's relationship with the EB and DOEs, stakeholders are also dissatisfied with the secretariat's relationship with panels, working groups and other entities involved in the CDM project cycle.

232 CDM Policy Dialogue: Summary of stakeholder engagement meeting with DOEs, March 24, 2012.

233 Decision 4/CMP.1: Guidance relating to the clean development mechanism — Governance.

234 Minutes of the interview by the CDM Policy Dialogue team of the secretariat, May 29, 2012.

235 Ibid.

236 Minutes of the interview by the CDM Policy Dialogue team of the secretariat, May 29, 2012.

237 Personal communication from former EB member, dated June 19, 2012.

238 Decision 2/CMP.5, para. 57.

that Parties feel better able to make informed judgements about the state of the management of the CDM.[239]

It must be noted that some performance indicators for measuring the performance of the secretariat are located in the procedural documents and the biennial work programme (the work programme and its indicators were discussed in the previous section). For example, the deadlines for process steps are in the workflow. The CMP has given the EB, and through it the secretariat, specific timelines for executing functions, such as a maximum of 15 days for processing registrations.[240]

The secretariat views the relationship that exists between itself and the EB as an open and healthy one.[241] The lines of communication between the EB and the secretariat are both formal and informal. The formal level comprises the documentation of the EB's decisions and requests (through meeting reports agreed before the end of each meeting) and the continuous work to translate these into plans, meeting agendas and substantive proposals.[242] The chair of the EB and the secretariat's process support staff have a close working relationship and form a team with the common goal of facilitating the EB's meetings and work. In the view of the secretariat, the day-to-day work generally functions well. Similar working relationships operate with the chairs of panels and working groups.

EB members and secretariat staff also engage in informal discussions inside and outside of meeting times and these interactions help to facilitate the formal engagements.[243] Informal communications also happen outside of the meeting context, including on project case specific issues, and the relevant procedures agreed by the EB regulate these communications. The secretariat's view is that the relationship and communication between itself and the EB have evolved over time and function effectively.[244]

Nevertheless, some EB members view the relationship with the secretariat as lacking transparency and accountability.[245] Some feel that the secretariat has too much day-to-day influence. As one EB member noted: "everything is run by the secretariat and the Board has only an oversight role" .[246] Some EB members, being familiar with the secretariat in the non-operational and more political environment of the negotiations, sometimes appear to struggle with the secretariat being proactive or having opinions.[247] Given the nature of the arrangements, such issues will never be fully eliminated. However, it does appear that the EB's acceptance of and trust in the secretariat has grown in recent years and that there is now more of an appreciation of its role.[248] The secretariat's view is that the issues, viewed in the wider context, are limited and that the way to address them is through the formal decision and planning mechanisms set up for the CDM.[249]

A number of stakeholders have indicated that they would like the EB to play a more strategic role and the secretariat to play a more technical and regulatory role.[250, 251] Some stakeholders have noted that in recent times there has been a greater and clearer separation of powers, with the EB becoming more policy-oriented, leaving the secretariat to operations.[252] The secretariat has echoed these views, indicating that it would operate well under such a system and stressing the importance of the EB setting clear agreements and being conscious of and clear on what strategic goals it wishes to achieve collectively.[253] A lack of common direction can create delays in completing work, detract from the quality of the work and make it difficult for the secretariat to identify how it can best support the EB. It seems clear that a properly functioning CDM requires actions and performance on the part of both the secretariat and the EB. For the EB this means operating at a more 'executive' level by focusing on providing strategic and policy guidance, while accepting the role of the secretariat and the rest of its support structure in taking care of the technical implementation details.

EB members have indicated that they have tried to delegate more work to the secretariat but were faced with what

239 Personal communication from former EB member, dated June 19, 2012.

240 Minutes of the interview by the CDM Policy Dialogue team of the secretariat, May 29, 2012.

241 Ibid.

242 Written replies to questions posed to the secretariat by the High-Level Panel on the CDM Policy Dialogue, May 29, 2012.

243 Ibid.

244 Ibid.

245 Personal communication from former EB member, dated June 19, 2012.

246 CDM Policy Dialogue stakeholder interaction with members of the EB during the Joint Coordination Workshop held at the Maritim Hotel in Bonn, Germany, March 24, 2012.

247 Written replies to questions posed to the secretariat by the High-Level Panel on the CDM Policy Dialogue, May 29, 2012

248 Ibid.

249 Ibid.

250 CDM Policy Dialogue: Meeting with current and former CDM Executive Board members, March 24, 2012.

251 CDM Policy Dialogue: Stakeholder consultations with participants during the CDM Policy Dialogue side event at the UNFCCC negotiating session in Bonn, May 17, 2012.

252 CDM Policy Dialogue: Summary of stakeholder consultations with representatives of the Alliance of Small Island States and the LDCs, May 7, 2012.

253 Written replies to questions posed to the secretariat by the High-Level Panel on the CDM Policy Dialogue, May 29, 2012.

they saw as institutional resistance. They believed that the secretariat was reluctant to take decisions and did not wish to be seen as losing its neutrality.[254] What seems clear is that both bodies are (mostly) willing to move in the same direction, but are unable to because of real or perceived obstacles put in place by the other party. It is also clear that, for the CDM to be able to function properly as a mechanism, both bodies have certain functions that need to be performed and there needs to be a relationship of mutual accountability between them. This appears to be a crucial issue in creating a more decentralised and delegated structure, and a facilitated change management approach could assist in achieving alignment on this issue.

In conclusion, the secretariat sees its role as being an active partner to the EB, including making proposals and taking care of the technical implementation of the CDM under the direction of the EB.[255] However, in section Conclusion a case was made for the secretariat to gain some technical decision-making powers so that it can improve some aspects of the CDM process. Such decision-making power would increase its ownership of the CDM.[256] However, to maintain the transparency of the CDM process, all work needs to be open to public scrutiny.

A mutual accountability framework between the secretariat and the EB should improve the interaction between these two bodies by clarifying their roles and responsibilities. This review therefore suggests conducting an investigation into the establishment of such a framework, taking into consideration the existing performance indicators in the biennial work programme.

The next section looks at the secretariat's performance monitoring and accountability in more detail and at the end we expand on the suggested mutual accountability framework.

254 Policy Dialogue stakeholder interaction with members of the EB during the Joint Coordination Workshop held at the Maritim Hotel in Bonn, Germany, March 24, 2012.

255 Ibid.

256 In reality, many organisations have a stake in the CDM, including the DOEs and the project developers, and so the ownership of the CDM is spread among these actors.

6.2 Performance monitoring and accountability

Given the nature of the relationship between the secretariat and the EB, both of these bodies need objective tools with which to assess the secretariat's responsiveness, efficiency and effectiveness. This was one of the key recommendations of the McKinsey review in 2009, which suggested that both the secretariat and DOEs should measure and manage how well they perform in supporting the CDM, in a transparent way with clear targets and consequences. Specific proposals included implementing key performance indicators, targets and performance dialogues at all levels, which are then communicated to all stakeholders.[257] It also suggested a risk-based approach to prioritising work and the streamlining of processes through more-effective quality control.[258]

The secretariat has indicated that most of the recommendations from the McKinsey review have now been implemented,[259] although the extent to which this has been done is disputed by some stakeholders. The EB does agree each year on a rolling two-year business plan, through which it sets the objectives, priorities and activities for its work over the following two years. The secretariat then considers how such objectives, priorities and activities can be implemented and proposes a one-year MAP for the EB to consider and approve. As indicated earlier, the MAP was introduced at CMP 1, as a result of concerns about the opaqueness of the secretariat and the EB's operations. As noted earlier, the MAPs are an imperfect performance management tool, lacking the type of performance measures that would typically be used to hold institutions to account.

An innovation this year has been to reflect the specific planning of the EB's work for the coming year in an EB work programme.[260] The work programme is updated and made public after each meeting to reflect new decisions. The documents provide the basis for the EB to set clear expectations for its own work and that of the secretariat and for transparently reporting on progress. The quarterly reporting system, as it is currently being introduced, is also expected to provide more information on the secretariat's activities and an improved structure for making performance indicators

257 McKinsey and Company (2009

258 Ibid.

259 Written replies to questions posed to the secretariat by the High-Level Panel on the CDM Policy Dialogue, May 29, 2012.

260 Ibid.

available to the EB and the general public. As mentioned in the previous section, the secretariat has its own biennial work programme, which contains objectives for each area of its work (including the CDM and JI) and indicators to measure performance. However, the secretariat reports to the CMP on the indicators in its work programme, and not to the EB. This confused relationship of accountability does not assist the EB in exercising authority over services that are essential for the functioning of the CDM.

The EB has set measures for the secretariat's compliance with timelines. The key timelines are those for the processing of registration and issuance requests, which are set in the PCP.[261] The secretariat has indicated that its performance with regard to compliance with timelines is reported regularly to the EB. Up until now, it was reported at each EB meeting by means of public annexes to the annotated meeting agendas. As the secretariat is now transitioning to public quarterly reporting in a broad set of areas, quarterly information on the secretariat's compliance with timelines will be available as of July 2012 to both the EB and the public on the CDM website.

Internally the secretariat measures its performance in processing registration and issuance requests on a weekly basis. Capacity in this area has been built up to handle sudden influxes of projects, including a pool of trained external experts to use when required. The secretariat also has internal mechanisms in place for gathering and implementing ideas to improve the way in which it works. These are channelled for implementation at the team level or for the consideration of the management team. Secretariat teams map and optimise their processes, which are documented via the quality management system, and this leads to a more focused improvement process.

A number of other initiatives are under way in relation to planning and transparency. The secretariat is currently undertaking a significant revamp of its project governance structure, which will allow for better assurance of deliverables being completed on time and fuller reporting to the EB. In line with the MAP, the secretariat will shortly be making proposals for a more conscious management of the CDM's regulatory framework, aiming to stabilise the rules of the CDM and shift to a more structured and planned approach to its evolution.

Despite the existing measures for monitoring performance described in this section, this review has found a sufficient number of gaps in the system to indicate that the system of accountability for performance on the part of both the secretariat and the EB is not fully institutionalised or regularised. The UK's Chartered Institute of Personnel and Development suggests that performance management consists of at least the following elements:

- Performance standards;
- Performance measurement;
- Progress reporting;
- Quality improvement.

Setting performance standards requires measurable indicators with expected targets and the communication of these standards. As a starting point for the secretariat, such indicators could be the existing ones in the biennial work programme. For the EB, this could take the form of a self-assessment tool to measure the extent to which it performs in terms of accepted corporate governance standards, complemented by an annual external review of its performance, with recommendations for improvement. Importantly, performance management extends beyond simply collecting the data necessary to report on the indicators. During the performance management cycle, the EB and the secretariat need to analyse their collected data and engage with their respective stakeholders, including each other, regarding their performance. Finally, they need to use the reported data to improve their policies and outcomes. In this way they can continuously improve the service that they provide to each other and to external stakeholders. Importantly, the accountability framework should include sanctions for failing to achieve the set targets for indicators and a system of reward for exceeding targets.

A review of the minutes of EB meetings indicates that such a system of performance management has not been institutionalised. This review has indicated that there are areas in which the EB needs to perform in order for the secretariat to be able to do its work effectively, and a fully functioning performance management system would require the EB and the secretariat to enter into a *mutual* accountability framework to monitor *both* of their performances.

261 EB 65 report, annex 6: Implementation Plan for the Clean Development Mechanism Project Standard, Validation and Verification Standard and Project Cycle Procedure (version 01.0).

6.3 Multiple roles and conflicts of interest

The clarity and separation of roles within regulatory bodies is essential to their proper and independent functioning. Division of labour prevents the blurring of responsibilities and the undue influence of one function on another. Regulatory bodies typically distinguish between the roles of standard-setting, assessment against standards and enforcement, and it is generally accepted that certification by the standard-setting body itself does create problems of conflict of interest.[262] In a review of certification and verification schemes for forest management, for example, the authors noted that freedom from conflict of interest is achieved through provisions such as using independent certification bodies and separating standard-setting, accreditation, conformity assessment and issuance of certificates.[263] International best practice in standard-setting has been to separate these functions.

As indicated in section The role and functions of the secretariat, the secretariat's current provision of support for the operation of the CDM is split into separate functions: standard-setting, assessment against standards and process support. The SDM programme has different business units that perform these three functions (see figure 19 in section The role and functions of the secretariat).[264] This distinguishing of roles promotes neutrality and independence with regard to the different aspects of the secretariat's provision of support to the EB. There may be value, as seen in other systems, in more strictly separating standard-setting from assessment against standards. For example, one entity could support the development of regulations, while another body could determine whether the regulation has been complied with.[265] However, this would only make sense if a similar separation were made at the EB level.

Conflicts of interest within the CDM process are limited, owing to the involvement of a number of different actors. Because of this, it has a number of in-built checks and balances, and this does limit the extent to which any one person or team can manipulate it to their advantage. The role of the secretariat is to facilitate the decision-making process, so that the owners of the process can reach a conclusion. For example, both the registration and issuance processes include at least four or five checks. This allows the system to function effectively and, in the secretariat's view, the checks and balances are sufficient and functioning well.[266]

The ultimate safeguard, in theory, is that secretariat staff do not take decisions, they merely implement them. However, some people call this into question, claiming that the secretariat does indeed effectively take decisions through its role of supporting the EB (such as preparing draft decisions, as discussed previously).[267] One suggestion is to separate the staff who scrutinise compliance with standards from those involved in standard-setting and support, and to create an independent body within the secretariat that can answer technical queries and decide on technical issues. At the very least, institutional ring-fencing of the functional units, with a clear code of conduct regarding operational practices and management of conflicts of interest, is required.

The secretariat plays a dual role, supporting the CMP, it being the policymaking body, in addition to supporting the EB and the JISC. This dual role does potentially pose a conflict of interest, since the secretariat is involved at each level of the decision-making process. For example, it supports negotiators in their review of EB reports that the secretariat has itself drafted. In the policymaking process the secretariat helps the EB to prepare the guidance, but the starting point of such a process is usually a call for submissions.[268] In theory this means that the policy derives from outside stakeholders and acts as a safeguard to prevent the secretariat from unilaterally setting its own policies.[269] But stakeholders have found it problematic that technical negotiations are supported by the respective SDM units and, in some cases, these experts have distinct views which have been expressed in meetings.[270] Also, some stakeholders see

262 Dankers, C. with contributions from Liu, P. (2003). "Environmental and Social Standards, Certification and Labelling for Cash Crops", chapter 8.

263 Bass, S. and Simula, M. (1999). "Independent Certification/Verification of Forest Management". Background paper for the World Bank/WWF Alliance Workshop, Washington D.C., November 9—10, 1999.

264 Minutes of the interview by the CDM Policy Dialogue team of the secretariat, May 29, 2012.

265 Written replies to questions posed to the secretariat by the High-Level Panel on the CDM Policy Dialogue, May 29, 2012.

266 Minutes of the interview by the CDM Policy Dialogue team of the secretariat, May 29, 2012.

267 CDM Policy Dialogue: Summary of stakeholder engagement with NGOs, March 23, 2012.

268 Importantly, this is not so in the case of the annual report of the EB to the CMP. Instead, Parties are urged to read the document and make their points at the first subsequent negotiating session of the CMP. The co-chairs then collate these views into a draft proposal for a decision of the CMP.

269 Minutes of the interview by the CDM Policy Dialogue team of the secretariat, May 29, 2012.

270 Personal communication with former EB member, June 21, 2012.

the CDM process (including policymaking) as opaque and lacking in stakeholder engagement.[271]

In a structured system of accountability, from the secretariat to the EB to the CMP, the presence of the same technical support agency at each level of the process is open to manipulation and does pose a potential conflict of interest. The secretariat acknowledges that "the person holding the pen potentially wields a lot of power",[272] but feels that checks and balances are in place and that these generally function well.[273] The McKinsey review also recognised this issue and recommended that the traditional functions of the secretariat be clearly distinguished from the operational responsibility that the secretariat has under the CDM and JI.[274]

The secretariat is aware that the potential for partiality exists in all areas of the negotiations and of the need to ensure independence between its roles of supporting the operation of the CDM and supporting intergovernmental negotiations on CDM issues. The secretariat has indicated that it is its process team that is involved in the intergovernmental negotiations on the CDM, rather than its substantive experts, who may have a specific interest in the substantive issues that the CMP needs to decide on.[275] Negotiations on the further development and use of market approaches are supported by staff who are not involved in the regulatory operation of the CDM.[276]

This situation is not usual within the UN system and UN secretariats have a history of being impartial, for example preparing draft proposals that are politically sensitive, and understanding how different policy decisions can work at a technical level. Moreover, the secretariat staff are full-time professionals that regularly play this type of dual role and see themselves as a neutral group of people that can support the policymaking body in performing its functions.[277]

It must also be noted that the roles of policy and regulatory support are often complementary. Policy needs to be informed by the experience of implementation and secretariat staff who are involved in regulatory support can better advise the CMP on the soundness of proposed policy. Additionally, when secretariat staff are supporting the EB in implementing decisions of the CMP, they can provide context for the decision and what its implications are.[278]

The ethic promoted in the secretariat is one of neutrality and distance from decisions ultimately taken by the responsible bodies. The secretariat makes recommendations to the EB, and is prepared to justify why specific recommendations have been made, but the staff also accept that final decisions are not theirs to make. In supporting the negotiations, staff accept that it is the Parties that decide which text to adopt.[279] It must be noted that UN staff members are required to swear to an oath that commits them to the principles of integrity (honesty, truthfulness, incorruptibility and accountability) and impartiality (fairness, independence, respect and equal treatment)[280] and "staff shall not seek or receive instructions from any government or from any other authority".

However, this has not been translated into more detailed practical guidance relating to conflicts of interest between potentially competing functions or the operation of a regulatory mechanism such as the CDM. Given the importance of this issue in preserving neutrality, there may be merit in exploring this further. This ethic may also need to be adjusted if the secretariat takes on other roles within the regulation of the CDM.

A key question is: who really owns the CDM process? The secretariat does not see itself as the owner of the CDM and it has made efforts to get other CDM participants to take on ownership of the mechanism.[281] This has been only partly successful and, as is argued in section The communication of and with the secretariat, the process of outreach around and co-ownership of the CDM needs to be further developed.

In conclusion, there is a well-established international precedent for a clearer separation of the roles of standard-setting, assessment against standards and issuance. In turn, these functions need to be clearly separated from the

271 CDM Policy Dialogue stakeholder meetings (March—May 2012).

272 Minutes of the interview by the CDM Policy Dialogue team of the secretariat, May 29, 2012.

273 Secretariat, personal communication, June 25, 2012.

274 McKinsey and Company (2009). "Helping the UNFCCC secretariat improve its support to the Clean Development Mechanism and Joint Implementation — An independent technical review".

275 Written replies to questions posed to the secretariat by the High-Level Panel on the CDM Policy Dialogue, May 29, 2012.

276 Ibid.

277 Minutes of the interview by the CDM Policy Dialogue team of thesecretariat, May 29, 2012.

278 Ibid.

279 Written replies to questions posed to the secretariat by the High-Level Panel on the CDM Policy Dialogue, May 29, 2012.

280 Status, basic rights and duties of UN staff members (ST/SGB/2002/13). UN staff are also bound by the UN Charter, Staff Regulations of the UN and Staff Rules (ST/SGB/2009/7), Standards of Conduct for International Civil Servants (ref in UN GA resolution 56/244) and Financial Disclosure and Declaration of Interest statements (ST/SGB/2006/6).

281 Written replies to questions posed to the secretariat by the High-Level Panel on the CDM Policy Dialogue, May 29, 2012.

support function of the secretariat. The long-term trajectory for a regulatory mechanism such as the CDM should be to create separate structures for these functions. There are interim measures that can address some of these concerns, such as a clearer ring-fencing of the secretariat's units, reinforced by a code of conduct for staff involved with the mechanism, and an independent oversight and complaints mechanism, for example through the office of an ombudsman. It is recommended that these interim measures be implemented in the case of the CDM, at the same time as investigating the appropriate long-term institutional arrangements in the context of the regulatory requirements of other market mechanisms.

6.4 Future location of the CDM

As part of the research for the CDM Policy Dialogue the future location of the CDM was investigated.[282] It was noted that very few stakeholders are advocating the removal of the CDM from the UN or the UNFCCC, and this is not a commonly heard suggestion. When directly asked about the idea, most stakeholders indicated that the CDM should remain within the UN/UNFCCC. In the minority of instances in which stakeholders responded that the CDM should be removed from the UN, even those stakeholders did not consider this a high priority.

It has been pointed out that the CDM and the international community stand to benefit from it remaining within the UN system, since this maximises legitimacy and global representation, as noted, for example, by US carbon businesses,[283] the Designated Operational Entities and Independent Entities Association (DIA)[284] and others. It also keeps the CDM in step with global climate negotiations. In addition, it ensures access to the significant institutional knowledge and experience of the UN Secretariat as noted by the Africa Carbon Forum.[285] There are also important crossover benefits from the UN operating both the CDM and JI, as noted by the secretariat.[286]

In addition, Parties to the Convention would probably not support removing the CDM from the UN, raising questions about the political feasibility of that idea. Outreach suggests that Parties wish to continue providing policy guidance on and political oversight of the CDM. Developing countries in particular wish to maintain some oversight of the CDM, given the significant impact of the CDM on their countries. Parties might also be concerned about how removing the CDM from the UN/UNFCCC might change the quality and integrity of the emission offsets. Parties might be concerned that an independent CDM would establish its own sustainable development criteria, rather than deferring to those of national and local authorities.[287]

Many of the perceived improvements that could be achieved by removing the CDM from the UN/UNFCCC (i.e. greater efficiency and technical competence) could be accomplished through more modest reforms within the current UN/UNFCCC structure. Such reforms include:

- Streamlining the project cycle;
- Improving the quality of the submissions of DOEs/DNAs to the EB, in order to reduce the workloads of the EB and the secretariat;
- Reforming the verification and validation systems;
- Expanding outreach to underrepresented regions;
- Improving the approach to additionality;
- Implementing SBLs and methodologies;
- Professionalising the EB or ensuring that the EB focuses on strategic issues;
- Experimenting with new types of credits, including sectoral and PoA approaches;
- Creating an appeals process;
- Strengthening stakeholder consultation.

The conclusion reached as a result of this research was that the CDM should remain within the UN system, and more specifically within the UNFCCC.[288] Accordingly, the focus of

282 See chapter "3.5 Future governance options for the CDM" in the CDM Policy Dialogue's research report on the Future Context of the CDM (Vivid Economics, 2012).

283 US carbon business community stakeholder engagement, May 18, 2012.

284 The DIA's "Response to DOE questionnaire", June 13, 2012.

285 Summary of stakeholder engagement meetings at the Africa Carbon Forum in Addis Ababa, Ethiopia, April 18—20, 2012.

286 "Summary of views of the UNFCCC secretariat", May 29, 2012.

287 See chapter "3.5 Future governance options for the CDM" in the CDM Policy Dialogue's research report on the Future Context of the CDM (Vivid Economics, 2012).

288 See chapter "3.5 Future governance options for the CDM" in the CDM Policy Dialogue's research report on the Future Context of the CDM (Vivid Economics, 2012).

this paper has been on making incremental adjustments within the context of the current location of the CDM and the secretariat.

6.5 Personnel management and capacity issues

As noted earlier, the secretariat functions as an independent organisation within the UN system and the EB does not have any control over personnel matters, such as the hiring and firing of staff. Staff are accountable to the Executive Secretary of the UNFCCC in terms of organisational matters, although they have a high degree of freedom in the nature of the support that they provide to bodies such as the EB.

Standards of service and income of UNFCCC staff are determined by the International Civil Service Commission (ICSC), an independent expert body established by the UN General Assembly, which is mandated to regulate and coordinate the conditions of service of staff in the UN common system. The ICSC establishes job classification standards for all categories of staff in fields of work common to several of the organisations. It also advises UN organisations on the development of consistent job classification plans in various fields of work.[289]

The ICSC's guiding principles provide for the fair and equitable remuneration of staff by applying the internal values of the organisations uniformly and consistently over time. They also link the objectives of the organisation to the work performed to reach those objectives; in other words, the relationship between salaries paid and services rendered.[290] However, unlike the private sector, neither the UN nor the UNFCCC uses financial incentives to motivate or recognise performance.[291] Since there is no provision for performance bonuses or rewards, the relationship between remuneration and performance is weak.

Performance management within the UNFCCC is based on the electronic Performance Appraisal System, in which all staff play complementary roles. It is designed to improve organisational performance through increased staff participation in the planning and delivery of work, the alignment of individual and organisational workplans and the promotion of communication and ongoing feedback between staff members and supervisors.[292] The secretariat insists on full compliance with the use of this performance management tool.[293]

As indicated, the secretariat staff do not get allocated bonuses and no mechanisms exist for rewarding good performance. Their short-term contracts give secretariat staff who support the CDM limited security of tenure. These factors place high pressure on staff and, in general, the staff that work in this environment do so because they are passionate about their work.[294] It is noteworthy that the UNFCCC still attracts a high degree of interest, particularly from the technical support field, where highly qualified candidates often express interest in posts at a junior level.

The CDM is a particularly complex technical area and the secretariat needs skillsets across a wide range of different sectors.[295] Staff selection at the UNFCCC is carried out using the principles outlined in the Charter of the UN and the UN Staff Regulations. The secretariat seeks gender and geographical balances for all posts in professional and managerial categories, aiming for a 50/50 gender distribution, a target which is set by the UN General Assembly.[296] Various commentators have indicated that staff recruitment is exceedingly slow and ineffective, given the very high requirements being put on candidates.[297] That, in turn, means that the projected number of staff at year-end does not match the requirements set out in the MAP. The concern about this state of affairs was expressed in the request from the CMP to the secretariat "to apply a flexible recruitment process to fill vacant positions".[298]

289 Written communication from the secretariat entitled "PD Staff Document", June 1, 2012.

290 Ibid.

291 Ibid.

292 Supervisors are required to develop annual workplans linked to the overall work of the secretariat for their subordinates. In turn, staff members develop and agree on individual annual workplans and discuss these with their supervisors to establish goals and performance expectations. Supervisors are required to consistently monitor staff performance and to provide feedback throughout the performance periods, particularly on the progress made towards goals and on general work performance issues. At the mid-year mark, supervisors and staff members discuss work progress. At the end of the annual performance cycle, staff members undertake a self-evaluation and discuss their performance with their supervisors, who then appraise their performance against the established goals and expectations.

293 Ibid.

294 Minutes of the interview by the CDM Policy Dialogue team of the Secretariat, May 29, 2012.

295 Ibid.

296 Ibid.

297 Personal communication from former EB member, dated June 19, 2012.

298 Decision 2/CMP.5, para. 58.

The majority of the requirement for staff results from the enlargement of the project entity and assessment teams, which are involved with project review and accreditation of DOEs. It has been pointed out by some stakeholders that a better, more automated review process (such as digitisation of workflows) and a more balanced approach between assessing the performance of DOEs and conducting reviews could considerably lower the requirement for staff and, therefore, costs.[299]

While it is expected that demand for the CDM might fluctuate in the future, there is currently a temporary peak in requests[300] for registration in advance of the end-2012 deadline set by the EU for CDM projects from non-LDC countries to be able to supply CERs to the EU ETS.[301] To process the current increased caseload and to be prepared for future fluctuations in registration and issuance requests, the secretariat has built up and trained a large pool of external experts who contribute to technical work under the supervision of internal staff. The experience gained has been very positive, has brought processing times under control and has now been mainstreamed into the day-to-day working of the secretariat. In addition, staff resources may be moved to match workload and changing priorities, on either a short- or a long-term basis.[302]

The secretariat has indicated that, given its current roles and the availability of suitable external experts, the overall number of staff is sufficient to cope with the current peak in workload. It has taken a long time to build up the current body of staff and expertise and the secretariat thinks that it is suitable for current needs.[303]

In order to better anticipate and manage the workload, an effort has been made since 2010 to reconcile the short-term forecasts of DOEs, PPs and the secretariat. Because of the low number of submissions from DOEs, at EB 66 in February 2012 it was decided to request all DOEs, at the beginning of the second and fourth quarters of each year, to submit all requests for registration and issuance for the following six months. The EB also requested DOEs to improve the accuracy of their forecasts and the secretariat to regularly report on DOEs' compliance with these requests. The latest submissions are still coming in and it is not yet clear whether the new system has improved compliance and the accuracy of forecasts.[304] While this might be less relevant from 2013 once the number of registrations decreases, it has been a useful mechanism that should be continued as part of a reformed and more effective CDM.[305]

Many stakeholders have indicated that the secretariat is deficient in skills relating to some areas of the project cycle, such as evaluating the financial additionality of projects and regulation.[306] The secretariat now employs many younger technical staff, in particular in the assessment areas. Further expertise, in particular industry experience, is drawn upon through panels and external experts. In future more senior expertise may be necessary within the secretariat, in particular to develop strategic or policy approaches to resolving technical issues.[307] In terms of the future capacity requirements that need to be developed within the secretariat, this review has indicated that the following areas will require particular attention:

- Communication capacity: the new modalities and procedures for communication with stakeholders that are now in place will make the secretariat much more approachable and therefore there will be a need to increase the number and skills of the staff available to deal with communications.

- Capacity to support standard-setting: from the CDM Policy Dialogue research into additionality it appears that standard-setting capabilities may need to be extended. While this could be done by developing the MP, such technical panels are not well suited to designing new policy standards. It therefore seems advisable for this capacity to be developed internally.[308]

- Decision capacity: this is related to the earlier points made about the need to locate more decision-making with the secretariat, or even establish a permanent body that can rule efficiently and consistently on specific cases and resolve technical issues that do not need to go before the EB. While some of these skills might be covered by the current institutional arrangement with the SSC WG and the MP, from experience the system may be too rigid to provide for quick and consistent responses on regulatory matters.

299 Personal communication from former EB member, dated June 19, 2012.

300 UNEP Risoe CDM Pipeline newsletter for May: "After the peak of 317 new CDM projects in April, the number of new submissions went down to 178 in May".

301 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.

302 Written replies to questions posed to the secretariat by the High-Level Panel on the CDM Policy Dialogue, May 29, 2012.

303 Ibid.

304 Secretariat, personal communication, June 25, 2012.

305 Personal communication with Mischa Classen, June 21, 2012.

306 CDM Policy Dialogue: Summary of stakeholder engagement with NGOs, March 23, 2012.

307 Ibid.

308 Secretariat, personal communication, June 25, 2012.

The historical challenge for the secretariat has been to keep up with the continuous growth in the use of the CDM.[309] During the CDM Policy Dialogue consultations, quite a number of stakeholders agreed with the McKinsey and Company review, saying that even though existing staff are highly motivated, they are overworked and overstretched in managing both the CDM and the JI mechanism.[310] This review has highlighted a number of factors that contribute to a sub-optimal human resources environment within the secretariat. Some of these factors are germane to the UN institutional environment and beyond the control of either the EB or the secretariat to resolve. But there are changing skill requirements as the system evolves and matures and the secretariat needs to be able to respond to these requirements in a flexible manner.

6.6 The communication of and with the secretariat

Stakeholders have consistently raised communication as a key issue when reviewing the success of the CDM. Many express a desire for prompt,[311] responsive[312] and direct[313] communication with the secretariat, especially with regard to the processing of project case submissions. The scope of stakeholders that the secretariat engages with is thought to be deficient and civil-society organisations are especially aggrieved.[314] The systems and techniques used for communicating with stakeholders are also in need of reform. Some complain that deadlines for project submissions are at times not clear, that guidelines provided are not sufficient and, moreover, that the system is prejudiced against languages other than English.[315, 316, 317] Quite a number called for the UNFCCC CDM website, a primary source of information for many actors, to be improved and simplified.[318]

Similar issues were also raised in the 2009 McKinsey review, which focused on communication between the secretariat and DOEs, indicating that it should be improved in order to build a collaborative approach. The review suggested establishing dedicated DOE managers, phone hotlines,[319] joint improvement workshops and training on tools and guidelines.[320] Another proposal was to improve the clarity of guidelines and tools and make them more user-friendly. This would reduce the number of queries that the secretariat has to answer.[321]

Stakeholder interaction has changed in recent years. For example, joint workshops with DOEs and the RIT, DNA Forum meetings and training engage stakeholders with the CDM rules and increase their compliance with them. To increase stakeholder engagement in the development of CDM policies and rules, the secretariat holds stakeholder roundtables and puts out public calls for input. The focus is mostly on DNAs, DOEs and PPs. Some stakeholders, such as civil-society organisations (as indicated above), believe that the secretariat should also reach out to them. Given the influence that this constituency commands as well as their ready access to the locations in which CDM projects operate, this makes sense. The secretariat has indicated that it would like more dialogue and partnership with stakeholders in improving the CDM and a greater sense of shared ownership of the mechanism.[322]

Stakeholders such as the PD-Forum have been calling for direct communication between the secretariat and stakeholders, in particular with PPs and DOEs with regard to their registration and issuance requests.[323] Project devel-

309 Personal communication with Mischa Classen, June 21, 2012.

310 CDM Policy Dialogue: Summary of stakeholder meeting with the UNFCCC secretariat, May 29, 2012.

311 CDM Policy Dialogue: Summary of stakeholder engagement meeting with DOEs, March 24, 2012.

312 CDM Policy Dialogue: Summary of stakeholder engagement meeting with business-interest NGOs, March 25, 2012.

313 CDM Policy Dialogue: Summary of stakeholder engagement at the Joint Implementation Mechanism Workshop, March 24, 2012.

314 CDM Policy Dialogue: Summary of stakeholder engagement with NGOs, March 23, 2012.

315 CDM Policy Dialogue: Summary of stakeholder engagement meeting with DNAs, March 22, 2012.

316 CDM Policy Dialogue: Summary of stakeholder engagement at the Joint Implementation Mechanism Workshop, March 24, 2012.

317 Ibid.

318 CDM Policy Dialogue: Summary of stakeholder engagement meetings at the Africa Carbon Forum, April 18—20, 2012.

319 The new ‚direct communication' process has been in place since May 1, 2012; although the communications are structured — participants cannot call in at any time (secretariat, personal communication, June 25, 2012).

320 McKinsey and Company (2009). "Helping the UNFCCC secretariat improve its support to the Clean Development Mechanism and Joint Implementation — An independent technical review".

321 Ibid.

322 Written replies to questions posed to the secretariat by the High-Level Panel on the CDM Policy Dialogue, May 29, 2012.

323 Personal communication with Mischa Classen, June 13, 2012.

opers in particular feel that they need direct access to the EB, whereas currently they can only communicate through DOEs.[324] Many observers have criticised the inability to raise complaints if the project is placed under review or pushed back to the DOE because of misunderstandings by the regulator. Often such issues can be clarified through a brief exchange of views.[325] Stakeholders also feel that there is a lack of communication within the CDM process due to the absence of a procedure for general interventions, grievances and appeals.

Major work is under way to consolidate, clarify and simplify the CDM rules and this forms an essential basis for more effective stakeholder engagement. At EB 65 the PS, the VVS and the PCP were adopted. These documents were the result of a year's work to bring together a wide set of previously separated rules. These new rules have only been effective since May 2012. Under them the secretariat consults with PPs and DOEs to clarify issues that may previously have led to the rejection of projects on the basis of easily resolvable issues. The PPs and DOEs can also call the secretariat directly to clarify review questions posed by the secretariat so that they can submit appropriate responses.[326] These changes will go a long way to addressing stakeholders' concerns. The same process is under way this year for procedures for the development of methodologies.[327]

The EB's communication and outreach strategy guides the secretariat's communication activities. Outreach activities include: training African radio journalists; photo and video contests; encouraging communication with DNAs; using electronic media (newsletters, emails, Facebook and Twitter); participating in industry events; partnering with NGOs, etc. Media outreach is conducted through regular press releases, regular engagement and relationships with media representatives, media monitoring and media training.[328]

Other ongoing work aims to improve the use of the secretariat's own information sources and use the interest and capacity of research and academic communities to conduct analysis. The secretariat plans to launch a project information portal on the UNFCCC website and is working with other agencies to collaborate on data collection and analysis. The recent technology transfer and sustainable development studies have digitised and analysed data that were previously unusable and further digitisation of such data is under way. The secretariat is also implementing new information and business intelligence systems and plans to establish web interfaces so that project documentation can be submitted directly in digital format.[329]

Despite this, there has been negative industry press regarding the CDM and its efficiency. A number of stakeholders complain that the secretariat has been very poor at communicating the positive impacts of the CDM[330] and, as a result, the mechanism has been weighed down by criticism in the press. Communicating positive stories about the CDM is a challenge, since the press typically focuses on negative stories. It does appear that the negative press has declined somewhat in the last year, largely because the CDM procedures have improved.[331] Also, industry appears to have realised that the negative publicity backfired by undermining policymakers' confidence in the system.

The secretariat is of the view that it and the EB have communicated well with the public and CDM stakeholders, but recognises that it has neglected the policymakers.[332] Nevertheless, it acknowledges that communications have not been sufficiently prioritised to date.[333]

The focus of communication activities has traditionally been on transmitting factual information (e.g. EB decisions, CDM rules, growth of the CDM, etc.) to existing and potential CDM stakeholders. The EB and the secretariat have been wary of being too engaged in advocating the CDM. In particular, some EB members consider their role to be one of safeguarding the environmental integrity of the CDM, not promoting more use of the CDM, although this mindset has shifted over the last four years.[334] The problem is that nobody takes on such an advocacy role and negative perceptions of the CDM have too often been left unchallenged.[335]

An improved information base is essential for communicating the success and impact of the CDM, in particular on sustainable development. The implementation of the

324 CDM Policy Dialogue stakeholder meetings (March—May 2012).

325 EB 62 report, annex 15: Modalities and Procedures for Direct Communication with Stakeholders (version 01).

326 Written replies to questions posed to the secretariat by the High-Level Panel on the CDM Policy Dialogue, May 29, 2012.

327 Ibid.

328 Written replies to questions posed to the secretariat by the High-Level Panel on the CDM Policy Dialogue, May 29, 2012.

329 Ibid.

330 CDM Policy Dialogue: Summary of stakeholder engagement meeting with business-interest NGOs, March 25, 2012.

331 Minutes of the interview by the CDM Policy Dialogue team of the secretariat, May 29, 2012.

332 Ibid.

333 Ibid.

334 Personal communication with former EB member, June 21, 2012.

335 Written replies to questions posed to the secretariat by High-Level Panel on the CDM Policy Dialogue, May 29, 2012.

sustainable development tool is expected to help considerably.[336] The communication activities of the secretariat and the EB need to evolve further to have a greater impact on the external perceptions of the CDM. The focus should be more on negotiators and national policymakers, as well as on those that can influence others' opinions, such as NGOs, academics and the media. This involves a transition from simply transmitting facts to championing messages, influencing opinion and anticipating the news cycle.[337] This shift is what some stakeholders have described as necessary to allow the system to adapt and respond to key strategic challenges,[338] such as the impact of policy and market developments on the system.

That concludes our review of the secretariat's role and functioning in its provision of support to the CDM. In general, we conclude that the secretariat's performance has improved greatly over time. Some of the very recent changes discussed above are likely to correct some current problems. Nevertheless, there is still room for growth. Importantly, there are strategic shifts needed, in terms of accountability, decision-making, outreach and the development of internal capacity, that require serious attention going forward. We therefore recommend some changes, which are detailed in section Recommendations.

6.7 Recommendations

On the basis of the assumption that the CDM should remain within the UN and the UNFCCC, the recommendations that arise from this review are focused on accountability and internal structuring issues in the context of its current location of the UNFCCC secretariat. The key recommendations arising from this analysis are the following:

1. The remarkable improvements in the functioning of the CDM following the 2009 McKinsey review have been acknowledged by a wide range of stakeholders and the secretariat deserves recognition and congratulation for this. Nevertheless, a sufficient level of concerns and issues remain that should leave no room for complacency. Most importantly, while carbon markets are in a state of flux and evolution, the overall mindset of the EB and the secretariat needs to shift towards a more accountable but delegated system of operation, and a more open and communicative approach which seeks to share the lessons learned from the CDM.

2. The international literature on regulatory bodies makes a clear case for a separation of the roles of standard-setting, assessment against standards and issuance. In turn, these functions need to be clearly separated from the support function performed by the secretariat. Over the long term the management of the CDM should evolve into separate structures for these functions. In the interim, measures should be instituted to deal with potential conflicts of interest and address stakeholder concerns. It is recommended that such interim measures be implemented, at the same time as investigating the appropriate long-term institutional arrangements in the context of the regulatory requirements of other market mechanisms.

3. A clearer ring-fencing of the units responsible for the different regulatory functions of the secretariat is required, reinforced by a code of conduct for staff involved with the mechanism, and an independent oversight and complaints mechanism, for example through the office of an ombudsman. The code of conduct for secretariat staff involved with the CDM should codify the implicit ethics that they have to follow so as to ensure neutrality and distance from decisions taken by the responsible bodies. This should be aligned with and build on the current oath that UN staff are required to take. The code should specify the ring-fencing of separate regulatory functions and the independence of supporting the operation of the CDM from supporting intergovernmental negotiations on CDM issues. Provision should also be made for an independent ombudsman to investigate suspected transgressions of the code. Such a code will do more to assure outside stakeholders that the secretariat adheres to these important boundaries.

4. The communications function of the secretariat remains undercapacitated and underresourced despite repeated criticisms of this function. Related to communications is the need for a framework for managing the concerns and interventions of stakeholders and project developers in the CDM system. Current reforms within the system will go a long way to achieving this, but much higher priority needs to be assigned to the communications function in terms of management time, staff and resources. There needs to be a mindset shift within the secretariat in order to achieve this. The secretariat should more actively disseminate knowledge and lessons learned from the

336 Ibid.

337 Ibid.

338 CDM Policy Dialogue: Summary of stakeholder engagement meetings at the Africa Carbon Forum, April18—20, 2012.

CDM and promote the broader role of carbon markets in climate mitigation and sustainable development.

5. In terms of the EB playing a more strategic role, the perceived resistance from the secretariat to taking on more decision-making functions (especially on technical matters) needs to be addressed. Such decision-making functions need to be available permanently and not be dependent on periodic meetings. However, such functions require a system for accountability and transparency that exposes these decisions to public scrutiny. A more decentralised and delegated system for the CDM will inevitably result in shifts in responsibility and the allocation of functions, and the process of changeover to the new system needs to be properly managed by the secretariat.

6. The relationship between the EB and the secretariat needs to be strengthened by means of a mutual accountability framework. This can take the form of an annual performance contract, which documents the services to be provided by the secretariat to the EB (with performance indicators and targets) and the corresponding performance criteria that the EB itself needs to meet for the effective functioning of the system. Reporting on performance should occur at each EB meeting, and the performance contract itself needs to be reviewed annually at the highest level (involving the Executive Secretary of the UNFCCC as the overall manager of the secretariat and the EB). Since minutes of EB meetings are public documents, external stakeholders will have better information on the performance of both the secretariat and the EB.

7. The secretariat will require new skillsets in a number of areas. The fluctuating levels of demand for the CDM and the resultant changes in the secretariat's workload will require careful and structured management; the pool of external experts who can contribute to technical work under the supervision of internal staff will play an important role in this regard. It will be important to consider how to both retain valuable skills during low levels of demand and rapidly build up capacity when demand increases again.

7 Current criticism of the constitution and conduct of the EB

With regard to the role of the EB in the governance of the CDM, the CDM Policy Dialogue aims to answer the questions: should the EB be professionalised in terms of composition and conduct and, if so, how? To this end, the following research questions were identified:

Q1: What is the current system for nominating EB members and alternate members and what rules govern their conduct?

Q2: What criteria have national governments used to appoint EB members and alternate members?

Q3: What are the major criticisms of the EB as a body, including the system for nominating members, the members' roles and conduct and the impact of the EB being a part-time body?

Q4: What measures have been proposed to address any weaknesses in the current set-up of the EB and what are the advantages/disadvantages of the proposed measures?

This chapter first provides a description and analysis of the current procedure for nominating EB members, in response to questions 1 and 2. For the analysis, specific input was sought from previous and current members of the EB with regard to nomination criteria and conduct. The absence of inputs from Parties on the topic of the nomination of EB members has been noted.

In response to questions 3 and 4, factors limiting the appropriate functioning of the EB and options put forward for addressing the weaknesses in the EB set-up are then discussed, on the basis of the inputs from a wide range of CDM stakeholders.

7.1 Procedure for nominating EB members

The EB comprises 10 members and 10 alternate members from Parties to the Kyoto Protocol. In accordance with rules 3 and 32 of the rules of procedure of the EB, regional balance must be considered in the composition of the EB and its panels. Seats of members (including their alternates) are distributed between the following groups/constituencies (see Table 8).[339]

Members and alternate members of the EB are nominated by their relevant groups/constituencies and elected by the CMP. Each year the CMP elects five members and their alternate members for a term of two years. Members and their alternates are eligible to serve a maximum of two consecutive terms. Terms as alternate members do not count.[340] This means that members and alternate members can exchange their seats after the two consecutive terms.

Each year the secretariat sends out an information note to Parties informing them of upcoming elections and encouraging the chairs and coordinators of the regional groups/constituencies to reach agreement and submit nominations.

Groups/constituencies are invited to submit nominations bearing in mind the adopted ToR,[341] including the skills and expertise and expected time commitment required of members and alternates sitting on the EB, and in particular that all members and alternate members should:

339 See http://unfccc.int/6558.php.

340 See paragraph 8(a) and (b) of the annex to decision 3/CMP.1.

341 See decision 3/CMP.6, annex I, "Terms of reference in relation to the membership of the Executive Board of the clean development mechanism", available at http://unfccc.int/resource/docs/2010/cmp6/eng/12a02.pdf#page=10.

Table 8. Members of the EB

Group/constituency	No. of members	No. of alternates
Five UN regional groups (one member/alternate from each) ▸ Latin America and the Caribbean Group ▸ African Group ▸ Asian Group ▸ Western European and Other Group ▸ Eastern European Group	5	5
Annex I Parties	2	2
Non-Annex I Parties	2	2
Small island developing States	1	1
Total	**10**	**10**

Source: UNFCCC.

a) Have experience and be competent in developing policy and strategy frameworks within regulatory processes, preferably but not necessarily in an international environment;

b) Have an understanding of business perspectives regarding investment in the environmental field;

c) Have knowledge on and an understanding of the intergovernmental process in relation to climate change or other environmental agreements, as well as an appreciation of the nexus of actions to combat climate change and promote sustainable development;

d) Be prepared to obtain further knowledge on and understanding of decisions of the CMP relevant to the CDM and guidance previously established by the Board;

e) Exhibit the highest levels of professionalism and competence and a commitment to act in their individual capacities and in a manner consistent with the Board's code of conduct;

f) Show commitment to the effective management of the CDM and to working as a team with other members and alternate members, including in relation to reaching consensus;

g) Be competent in English (written and oral).[342]

Parties are also encouraged to review the annual report of the EB to the CMP at its fourth session, in which the EB reiterated that "its members must collectively provide the professional and regulatory competence needed to supervise the CDM, which is a mechanism of substantial size, global spread and sectoral diversity" and that members and alternate members "need to invest a considerable amount of time to provide their professional services".[343]

However, there is no formalised process for how the candidates have to meet the criteria in the ToR. The selection process is under the responsibility of the respective groups/constituencies. Neither is there any formal coordination among constituencies on nominations. Nominees are only submitted for election by the CMP.

Elections of members and/or alternate members occur during the annual session of the CMP. When a member/alternate member is unable to complete his/her term, the Board can appoint another member/alternate member from the same constituency for the remainder of the term.

Members and alternate members act in their own personal capacity and do not represent any region or country. Members/alternate members of the Board take a written oath of service before assuming their duties[344] and make publicly available their curricula vitae, statements on conflicts of interest and details of any past and current professional affiliations on the UNFCCC CDM website.[345] In addition, the

342 See annex I to decision 3/CMP.6.

343 See paragraph 95 of document FCCC/KP/CMP/2008/4.

344 See rule 10 of the rules of Procedures of the EB, decision 4/CMP.1, available at http://unfccc.int/resource/docs/2005/cmp1/eng/08a01.pdf#page=31.

345 See paragraph 15 of decision 2/CMP.5.

Board has approved a code of conduct for members and alternate members of the Board.[346]

The above analysis suggests that compliance with nomination criteria is transparent only as far as it concerns the regional composition of the Board. The level of insight available into the application of nomination criteria does not allow for a full and coherent analysis of the criteria used by national governments to appoint EB members and their alternates. Based on the available inputs, which are predominantly from former and current EB members, it is suggested that the process may be lacking in transparency, and in certain cases may even be obscure. The inputs indicate that the application of nomination criteria in fact varies across constituencies. Inputs suggest that there is more focus on political positioning and ease/speed of appointment than on knowledge and personal merit, observing that specific knowledge on the CDM can be both advantageous and disadvantageous and that past or current involvement in the CDM process is not an excluding factor. The recruitment pool is largely considered too small to satisfy the requirements of an effective EB and it is considered that a more substantial spectrum of candidates could address this. Concerns communicated in the above-mentioned inputs centre on the shortcomings of the EB in terms of the skills and characteristics necessary for it to function as an 'executive' body, rather than on issues of conflict of interest.

7.2 Factors limiting the appropriate functioning of the Board

This section includes a list of the major criticisms put forward by stakeholders with regard to the functioning of the EB. The main lines of argument have been extracted and presented in a condensed manner. The last two topics are not directly related to factors limiting the appropriate functioning of the EB. Since stakeholders perceive the EB as being responsible for the operations of the CDM and the overall transparency of the relevant decision-making, no clear delineation is made between the EB and the secretariat.

346 See annex 62 to the EB 47 report.

Through public and invited calls for input, engagement activities and informal meetings, the governance issues of the EB were explored. Although there was broad consensus that the governance and operations of the EB have improved significantly over the past few years, most stakeholders did not feel that this improvement was adequate. In particular, they identified a number of weaknesses in the governance and operations of the EB, as summarised below.

Role and capability of the EB

The most frequently raised concern was that the EB is currently responsible for both policymaking and the implementation of the CDM process. This not only leads to failure of governance but also makes the EB ineffective in its assigned role, as it has been focusing on technical issues (e.g. project approvals) instead of providing strategic and policy guidance on the CDM process as a whole.

The EB was widely criticised by various stakeholder groups as highly politicised. Nominees for EB membership are often drawn from the pool of negotiators, which raises concerns about the fairness of the CDM process and the competencies of the EB members. Nonetheless, a few stakeholders stated that the regional balance of the EB membership should be maintained.

Another common criticism of the EB was the uncertainty of the capability of EB members. As most EB members are politically elected, the Board is often seen as lacking the expertise required to perform its functions and duties.

Conflict of interest

Conflict of interest is another major concern regarding the governance of the EB. This includes political conflict of interest, when EB members have multiple roles, such as also being negotiators or working for DNAs. In particular, a few stakeholders cited that research had suggested that a project's chance of approval increases when there is a Board member from the respective host country.

The concern was also raised by some stakeholders that although currently there is a policy on direct financial interests, the effectiveness of that policy is in doubt, since it is up to individual EB members to judge and declare their own conflicts of interest and there are no accountability procedures in place to ensure the integrity of EB members.

Insufficient communication channels

Communication with the EB and the secretariat was repeatedly raised as a major concern by key CDM players,

including PPs, DOEs, DNAs, business groups and civil society. Stakeholders complained that there was either no formal communications mechanism or that the existing procedures were insufficient and inefficient. In particular, a few stakeholders reported that their queries were not responded to. Inconsistencies in the answers provided by different respondents were also detected.

Lack of an appeals mechanism

There was a strong call for the establishment of an appeals system from various stakeholder groups, including country representatives, DNAs, EB members, the business community, PPs, DOEs and NGOs.

Inadequate transparency

Some stakeholders complained that much of the decision-making process of the EB and its associated panels and working groups is of a closed nature. Others criticised the fact that the reasons for rejecting projects and CER issuances are not elaborated on, and that the information on the UNFCCC website regarding CDM projects is not understandable to local communities.

Operational barriers

A significant number of stakeholders raised concerns about the unilateral and frequent changes in the CDM rules, procedures and methodologies. Some affected stakeholders complained that the changes were unfair and did not take into account all stakeholders' opinions. Others reported that too much change in the system has hindered the development of CDM projects and eroded the credibility of the system.

A number of stakeholders also expressed their concerns regarding the inconsistency in decisions taken with regard to CDM projects. Decisions seem arbitrary, involving a high level of subjective assessment by EB members.

In addition, some stakeholders stated that the use of English as the sole official language of the CDM has imposed barriers to establishing and promoting the mechanism, as well as developing CDM projects, in non English speaking countries. Specifically, it was pointed out that the English-language requirement has added resource demands for project development and increased transaction costs.

Inefficient administration

The administration of the CDM process was frequently criticised by various groups of stakeholders as inefficient, with high transaction costs and delays in approval and CER issuance.

A significant number of stakeholders also criticised the EB and the secretariat for being overly rigorous and stringent with regard to additionality issues in order to avoid crediting false emission reductions, at the expense of halting or unnecessarily hindering the development of CDM projects.

A number of stakeholders felt that host countries' involvement in project approval and monitoring was not optimised, merely imposing another requirement for registration without much real value.

7.3 Options put forward to address the weaknesses in the EB

Stakeholders' inputs to recommendations for improving the identified weaknesses in the EB were invaluable. The options recommended go beyond the roles of the EB. Specifically, the respondents proposed improvements to address the inefficiency of the mechanism and recommendations with respect to the proposed appeals mechanism. However, since these two areas are discussed in other chapters of this report, they have been omitted from the following assessment of the options put forward.

Role and capability of the EB

It was widely agreed amongst different groups of stakeholders that the policymaking and implementation roles within the CDM process should be separated. The EB should focus on setting high-level policy and strategic goals, as well as on supervising the CDM process, while the technical and implementation issues should be handled by the secretariat or the working groups.

A significant number of stakeholders suggested that the election of the EB members should be decoupled from the negotiation process. Instead, nomination should be based on skills, qualifications and competence and should reflect a balanced set of expertise within the Board as a whole.

Although some stakeholders suggested that EB members should work on a full-time basis, the main rationale behind this suggestion was that this could increase the efficiency of the CDM process (hence, if the implementation tasks were taken on by another full-time entity, this suggestion would no longer be valid).

Conflict of interest

Stakeholders generally agreed that a more stringent code of conduct with clear provisions relating to conflict of interest should be applied to the EB members. Specifically, one stakeholder recommended that the existing policy on conflict of interest should be made unequivocal, its remit should be broader and mechanisms should be put in place to ensure that it is strictly enforced. There must also be clear rules with regard to established procedures and penalties for cases in which conflicts of interest are detected.

Stakeholders also noted that the 'depoliticising' of the EB member nomination process would minimise political conflicts of interest. A few stakeholders recommended that political conflict of interest should be addressed, in order to guard against situations in which a Board member might simultaneously serve as a negotiator or represent a DNA.

One stakeholder suggested that the EB should have the possibility of excluding the vote of a member by a quorum of at least eight votes, in case of a disagreement on the judgement of a conflict of interest.

Insufficient communication channels

Stakeholders suggested various ways in which to enhance the communication of different players with the EB and the secretariat, such as face-to-face meetings, an information help desk, dedicated e-mail accounts, a designated person and sector/issue-specific communication portals.

Some stakeholders suggested that business experts with knowledge on related technologies should have some influence on the decisions of the EB. Taking projects within the power, steel and cement industries (which contribute a significant portion of emissions) as an example, the EB should be advised by experts on whether projects are eligible for the CDM based on energy efficiency (which access to the CDM is currently hindered due to difficulty in determining additionality), through dialogue with experts/expert groups or by having experts on the EB.

Some stakeholders suggested that the EB and the secretariat should be more proactive in communicating the changes in and the interpretation of the CDM rules and procedures.

Some stakeholders called for a more robust communication arm of the CDM, anticipating and responding to key strategic challenges. An immediate challenge would be to foster greater market certainty through a clear articulation of the CDM process, the rules of engagement and the ways in which the system is acting to reduce risks to investors.

Some DNAs felt that the secretariat should be more facilitative and keep them informed about the progress of projects after the issuance of LoAs.

One DNA suggested that the chairs of the regional groups should actively participate in the EB meetings, rather than just being observers. Another DNA voiced that the EB should take recommendations made by DNAs more seriously.

One DNA suggested that the DNA Forum could be utilised more effectively as a channel for communication between the EB, the secretariat and DNAs. EB members should participate more actively in the forums, which would help them to gain prestigious knowledge and understanding of the reasons for the biased regional distribution of CDM projects.

A few stakeholders suggested that the CDM website should be streamlined in order to enhance the flow of information, such as by improving the search box.

Inadequate transparency

A few stakeholders suggested that the EB should elaborate on its reasons for rejecting projects and CER issuances, as this would help project proponents to assess their options, design their projects and prepare submissions. This could be achieved if:

- The minutes of the EB meetings were more detailed;
- Explanations were consistently and promptly published in an easy-to-understand and accessible manner;
- Guidelines for the approval or rejection of projects were accompanied by guidance or clarity on determining additionality and setting baselines, the two most fundamental requirements of the CDM;
- The summary notes on appraisals by the secretariat of registration or issuance requests were shared with the relevant DOE.

One stakeholder suggested that the secretariat and the EB should decide on a case-by-case basis whether a part of their communication could be put on the UNFCCC website.

A number of DOEs suggested that final project review meetings should be opened up to wider participation.

7.4 Summary of recommendations

In conclusion, there was wide agreement amongst stakeholders on ways to improve the governance structure of the EB:

- The functions of the EB should be revisited, such that it would play a strategic and supervisory role in the CDM process. Technical issues should be handled separately by the secretariat, working groups reporting to the EB, or DNAs.
- The criteria for the nomination of EB members should include the expertise needed to perform the EB's tasks, instead of nominations being based solely on nominees' proximity to negotiations.
- A more comprehensive accountability mechanism should be applied to the EB.
- Current gaps in communication with various key stakeholders (PPs, DOEs, DNAs, industry/business groups and local communities) should be identified and the communication channels should be improved, in order to make the CDM process more effective and inclusive.
- An appeals mechanism should be established and it should be administered by an appeals body that is independent, impartial, transparent and competent.
- The transparency of the EB's decisions should be enhanced through the disclosure of relevant information.
- The EB should strike a balance between stringency and practicability and minimise the disruptions caused by changes in rules and procedures.
- The meetings of the EB should be public as a rule. Closed sessions would require a proper justification for being held closed (e.g. if case-specific confidential information were involved). Decisions adopted in closed sessions would have to adhere to specific modalities (e.g. the requirement for a written rationale for the decision). Provisions that manage the liability of EB members for decisions adopted would be a requisite for enabling more transparency.

Following on from the detailed recommendations provided in this chapter, conclusive discussion of the leading question as to whether the EB should be professionalised in terms of its composition and conduct is provided in section Should the EB be professionalised in terms of its composition and conduct? If so, how?.

8 CDM appeals process

The EB acts as supervisor and day-to-day regulator of the CDM. When making its decisions, the EB operates as an international administrative organ and its decisions could be qualified as international administrative decisions.[347] In this context, the EB has been characterised as a "classical administrative body in a vertical regulatory structure".[348] Private entities play a significant role in the CDM.[349] PPs include both public and private entities and actors. The decisions of the EB have a direct impact on the interests of private entities participating in the mechanism.[350]

Numerous administrative law type principles have emerged as instruments for adapting the classic international system of states and intergovernmental organisations to suit contemporary requirements, especially when private entities are involved. In this respect, accountability is a concept of crucial importance. It can be defined as a "mechanism to control power of a public body by calling it to account".[351] It should be understood as the answerability for the performance of an actor towards others and contributes to imposing a model of proper conduct on the concerned actors.

Accountability can be achieved through various steps. An institution informs the authorities that it is accountable to about its activities and decisions. Understood in this way, accountability implies transparency. Transparency is a requisite for ensuring an adequate level of accountability. The channels of transparency may vary, depending on the addressees. Most of the time transparency will be directed at the authority to which the institution is accountable, but there may be other addressees.

Accountability mechanisms on which private parties rely when dealing with administrative decisions do not currently exist within the framework of the CDM institutions.[352] For example, if the EB makes an administrative decision directly aimed at a private entity that is in violation of the CDM M&P, the private entity has no opportunity to have the decision reviewed by an independent mechanism. This lack of access to remedies for private entities could be put right by creating a mechanism for appeals in the context of the CDM.

There is also another justification for the creation of an appeals mechanism, which relates to the accountability of the CDM institutions to the CMP. Although the EB is "fully accountable" to CMP,[353] the decisions taken by the EB are not reviewed by any superior body. The delegation of 'legislative' power from the CMP to the EB raises questions with respect to the general principles of good governance. Delegated responsibility from the CMP to the EB should be backed by a mechanism of accountability. The latter is linked to the existence of an appeals mechanism that ensures good governance.[354]

Firstly this chapter will analyse the calls for the establishment of an appeals mechanism and some issues related to decision-making. It will then make a proposal to establish two distinct mechanisms (i.e. an appeals mechanism and a grievance mechanism).

8.1 The governance of the CDM and the calls for an appeals mechanism

In 2008 the CMP requested the EB to make recommendations on improving the effectiveness and efficiency of the operation of the CDM,[355] but there was no explicit mention

347 Meljer (2007), p.925.

348 Giesbert and Sarac (2010), p.262.

349 See Article 12, paragraph 9, of the Kyoto Protocol, stating explicitly the participation of the private sector in the application of the CDM.

350 Streck and Lin (2008), p.441.

351 Kanetake (2008), p.121.

352 Meljer (2007), pp.925 and 926.

353 See paragraph 20 of the annex to decision 3/CMP.1, document FCCC/KP/CMP/2005/8/Add.1.

354 Von Unger and Streck (2009), p.32.

355 See decision 2/CMP.4, para.18 (c). For example, the CMP requested "[t]o explore ways and means to enhance the effectiveness of its communication with project participants without going through designated operational entities and to report on actions taken to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at its fifth session".

of an appeals mechanism. It was only in 2009 that the idea of an appeals procedure arose.[356] The appeals mechanism is viewed as a means to improve the good governance of the CDM and is part of an overall initiative to improve the mechanism.[357] In decision 2/CMP.5, adopted in 2009, the EB was requested:

"To establish, following consultation with stakeholders, procedures for considering appeals that are brought by stakeholders directly involved, defined in a conservative manner, in the design, approval or implementation of clean development mechanism project activities or proposed clean development mechanism project activities, in relation to: (a) Situations where a designated operational entity may not have performed its duties in accordance with the rules or requirements of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol and/or the Executive Board; (b) Rulings taken by or under the authority of the Executive Board in accordance with the procedures referred to in paragraph 39 above regarding the rejection or alteration of requests for registration or issuance".

In 2010 the EB launched a specific call for input on a CDM appeals procedure.[358] Among the submissions received, one of them noted that the introduction of an appeals procedure would be "a major step forward in securing due process rights for non-State actors and in strengthening the credibility of the CDM".[359] In the same year the EB agreed to recommend procedures to the CMP at its sixth session and set out five options for the CMP to consider in relation to the choice of an appellate body, namely:

1. The designation of the enforcement branch of the Compliance Committee;

2. The creation of a new body under the authority of the CMP;

3. The delegation of the authority to an official designated by the Executive Secretary of the UNFCCC to establish ad hoc or standing appeals panels in consultation with the Bureau of the CMP;

4. The delegation of the authority to the Board to establish ad hoc or standing appeals panels;

5. The selection of any other body considered appropriate by the CMP.[360]

The issue has been under the consideration of the SBI since 2011.[361]

The 2010 EB's recommendations on the procedure for appeals[362] and the draft texts proposed by the SBI in 2011[363] and 2012[364] provide a basis for the design of a CDM appeals procedure. The secretariat has also been involved in the study of possible options for establishing an appeals procedure.[365] The resultant technical paper is strongly in favour of an independent appeals body, whose members are neither selected by, nor working under, the EB. This represents a significant step towards a highly independent appeals body.[366]

While progress has been made in relation to many features of an appeals mechanism, negotiations have stalled on some issues, including the scope of the appeals mechanism and the determination of the appellants.[367]

Various groups of stakeholders, such as States, businesses and NGOs, support the establishment of an appeals mechanism. However, each of them has different expectations of the mechanism. For example, the International Emissions Trading Association noted that the lack of an appeals mechanism would adversely affect "the willingness of key private businesses" and "increases transaction costs as potential risks have to be hedged". Parties such as Australia have noted that an appeals mechanism would improve decision-making and promote more impartial, transparent and consistent processes in relation to requests for registration and issuance.[368] On the other hand, NGOs such as International Rivers have pointed out that "project-affected peoples and civil-society groups have the right to appeal decisions by the Board". Some NGOs, like the Climate Concept Foundation and Focus on Global South, consider

356 See paragraph 42 of decision 2/CMP.5, document FCCC/KP/CMP/2009/21/Add.1.

357 Note on CDM appeals, May 23, 2012.

358 EB 53 report, para. 97.

359 The submission of Climate Focus in response to the call for input on procedures for appeals, April 22, 2010.

360 EB 57 report, para. 17.

361 In decision 3/CMP.6, the SBI was requested to make recommendations to the CMP at its seventh session on procedures, mechanisms and institutional arrangements under the CMP to allow for appeals against EB decisions based on decision 2/CMP.5, paragraph 42, taking into account the recommendations of the EB in annex 2 to its 2010 annual report.

362 See annex 2 to the 2010 annual report of the EB: "Recommendations on the procedure for appeals against rulings by the Executive Board of the clean development mechanism regarding requests for registration or issuance".

363 See annex I to document FCCC/SBI/2011/17.

364 See the annex to document FCCC/SBI/2012/L.8.

365 See document FCCC/TP/2011/3.

366 Giesbert, Sarlac and Wunderlin (2011), p.280.

367 Ibid.

368 See the submission of Australia in document FCCC/SBI/2011/MISC.2.

that "qualified NGOs should be granted the right to appeal against CDM-relevant decisions". In these submissions, the determination of potential claimants plays a significant role. A broad application of the locus standi principle would endanger the efficiency of the appeals process. It is important to guarantee the right to appeal to parties who are directly affected by the decision in relation to which review is sought, as well as to NGOs and other related entities which satisfy certain admissibility requirements.[369]

8.1.1 Issues in relation to the decision-making of the EB

The establishment of an appeals mechanism would enhance the legitimacy of the EB's decision-making process and promote more transparent processes in relation to requests for registration of projects and issuance of CERs. The EB takes decisions on methodologies and projects, as well as on mandate reviews and revisions of project applications.[370] For example, the CDM methodologies provide for the calculation of emission reductions for any CDM project.[371] However, in practice, there are examples of a lack of clear guidance from the EB, one example being the broad discussions within the EB in respect of certain wind and hydro projects in 2010. During the registration process it appeared that certain wind projects had received lower subsidies than other wind projects that had been registered earlier. At the centre of the EB's discussion was the assumption that a host country might not keep its subsidies for renewable project activities constant. This puts the approach of the EB into question and highlights the inconsistency in the interpretation of the rules.[372] Similarly, the Parties that issue an LoA[373] may seek ways to withdraw their approval in cases in which they have reasons to object to a project registration. However, there are no rules regarding this issue. This approach is problematic as there are no clear criteria, but it is currently subject to discussion.

The establishment of an appeals mechanism would ensure accountability for and promote the consistency of the decisions of the CDM institutions.

8.1.2 Proposal to establish two mechanisms: an appeals mechanism and a grievance mechanism

It is proposed to establish two different mechanisms:

1. An appeals mechanism for PPs, NGOs and other related entities to respond to claims in relation to procedural and substantive issues.

2. A grievance mechanism for local concerned stakeholders to address environmental and social concerns.

The proposed appeals and grievance mechanisms should be viewed in the context of the larger discussion on governance that concerns the legitimacy, efficiency and effectiveness of the CDM. They will contribute to enhancing the international standing of the CDM as well as to promoting the trust in the CDM of private parties that invest in CDM projects and of concerned stakeholders. The proposed mechanisms would fill the existing gap in the legal protection of these actors. They will provide a channel of communication between private parties and the CDM institutions. Moreover, they will increase the accountability of the EB in making its decisions.

The proposed mechanisms will take advantage of the experiences with the appeals processes of the enforcement branch of the Compliance Committee, the World Bank Sanctions Board, the World Bank Access to Information Appeals Board and the proposal of the United Nations Development Programme (UNDP) for Environmental and Social Compliance Review and Grievance Processes.[374]

369 Ibid.

370 Streck and Lin (2008), p.417.

371 "Synthesis Report of the Call for Input on the CDM Policy Dialogue", February 10, 2012, p.4.

372 KFW Bankengruppe (2012). "CDM Baseline Approaches for POA Upscaling and New Market Mechanisms (NMM). Building NMM on CDM Elements". Final report, p.37. In particular, the Board decided "not to continue the consideration of the treatment of national and sectoral policies in the demonstration and assessment of additionality. From now on this should be assessed on a case-by-case basis" (ibid., p.14).

373 The LoA is the authorisation by a Party of the participation of the PP in the proposed project activity. See http://cdmrulebook.org/474.

374 UNDP (2012). "Environmental and Social Compliance Review and Grievance Processes". Discussion paper.

8.2 An appeals mechanism accessible to project operators, NGOs and other related entities which satisfy certain admissibility criteria

The appeals mechanism would be accessible to PPs, the entities involved in a specific CDM project. A PP can be "(a) a Party involved, which has indicated to be a project participant, or (b) a private and/or public entity authorized by a Party involved to participate in a CDM project activity".[375] According the SBI's draft text on an appeals mechanism of May 2012, DOEs are among the potential appellants. However, in the light of their responsibilities as independent auditors, DOEs should not have the right to appeal. It should be noted in this respect that in 2010 the EB developed a procedure for complaints against DOEs as part of the new accreditation procedure.[376] Complaints from DOEs against decisions of the CDM institutions will be handled in accordance with the existing accreditation procedures. The appeals mechanism should also be open to NGOs and other related concerned entities, on the grounds that they fulfil certain integrity and sustainability criteria. A right to appeal would contribute to ensuring the compliance of projects with criteria imposed by the body of CDM rules.

Some principles drawn from international practice should guide the establishment of an appeals procedure. These principles include: the rule of law, independence and integrity, competence and expertise, and publicity. The satisfaction of these criteria is necessary to ensure that an appeals mechanism is legitimate, credible and effective.[377]

Appeals mechanisms in international law have been defined through the power of a decision maker "to entertain claims that the decision of another 'lower' decision maker, whether or not within the same bureaucratic structure, was erroneous and to correct or remand it".[378] The content of the term 'appeal' varies from mechanism to mechanism in international law. But its essential characteristic is one of a re-hearing with a view to securing a 'correct' decision.

A number of key concepts are found in international appeals mechanisms in order to satisfy the requirements of justice. The following is an overview of these key concepts (i.e. the rule of law, independence and integrity, competence and expertise, and publicity).

The rule of law

The concept of the rule of law is broad and can be found both at the national and the international level.[379] Respect for the rule of law is a necessary requirement of any appeals mechanism, which is met by setting certain minimum standards. These standards include "the right to be heard, the right to participate, the right to be represented and the right to an interpreter".[380]

Due process requirements play a crucial role in respecting the principle of the rule of law. They relate to guarantees of fair procedures by administrative or judicial bodies.[381] For example, "the right to a hearing prior to a decision provides national governments or private actors with an opportunity to present their views and protect their interests".[382]

The rule of law does not affect the scope of the review, which should be determined by the constitutive instrument of the appeals body. As an example, an appeals process is

375 See http://cdmrulebook.org/69.

376 EB 56 report, annex 2, appendix 3. Under the complaints procedure, PPs or entities who submitted comments during the global stakeholder consultation process and whose comments have not been taken into account by the DOE can complain to the CDM AP about their dissatisfaction with the performance of the DOEs (see document FCCC/TP/2011/3, p.4, para. 9).

377 The UNFCCC technical paper of 17 May 2011 (FCCC/TP/2011/3) identifies six principles with regard to an appeals mechanism: independence and impartiality; fair procedures and due process; transparency; consistency; competence and expertise; and timeliness, efficiency and cost-effectiveness. See also Giesbert, Sarlac and Wunderlin (2011), p.280.

378 Reisman (1996), p.23.

379 See McCorquodale (2010). The UN Secretary-General Kofi Annan defined the concept of the rule of law as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated" (The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary-General. Document S/2004/616, August 23, 2004, para. 6).

380 Bothe, Marauhn, Rehbinder, Böhringer and Horst (2011), p.15.

381 See document FCCC/TP/2011/3, para. 26.

382 Cassese (2006), p.54.

provided in the context of the enforcement branch of the Compliance Committee of the Kyoto Protocol. The Party in respect of which a final decision has been taken may appeal to the CMP against a decision of the enforcement branch relating to Article 3, paragraph 1, of the Protocol if that Party believes it has been denied due process.[383] Only aspects relating to a denial of due process may be appealed, which suggests that the assessment of the factual evidence, the legal interpretation applied to that evidence or the consequences applied cannot be challenged. A three-quarter majority vote of the CMP is required to override a decision of the enforcement branch and the CMP may only refer the case back to the enforcement branch. It may not make its own decision on whether non-compliance has occurred or on what the relevant consequences may be.[384]

Another example is provided by the mechanisms created under the World Bank Policy on Access to Information.[385] In the context of the application of this policy, the World Bank has created a new body, the Access to Information Committee (AI Committee). Its mandate is to advise the management on the application of the policy and to interpret the policy. It also adjudicates appeals related to the policy. In addition, an independent Appeals Board has been established. The Appeals Board has the authority to uphold or reverse the relevant decisions of the AI Committee and the Appeals Board's decisions are final.[386]

Independence and integrity

Independence is one of the major characteristics of an appellate mechanism. The UNFCCC technical paper paid particular attention to this feature, underlining that an appeals body must be free from dependence, subjection or control, and especially from political entities.[387] The appeals body must act independently from the body whose decisions are subject to the appeals process. Any lack of independence may lead to a loss of credibility and is likely to reduce the acceptability to stakeholders of the resulting decisions.[388]

Members of the proposed appeals mechanism must be independent from political organs. This is a basic requirement of the doctrine of the separation of powers and is a fundamental feature in a national and international context.[389]

The concept of independence has various facets. Given the significance of an appeals mechanism, it is important for the appellate body to be staffed with highly qualified personnel, who are impartial, neutral, unbiased and of integrity.[390] Moreover, the appellate body should consist of members appointed using clear and transparent criteria.[391]

The current version of the SBI's draft text on an appeals mechanism includes the criteria for the appointment of the appellate body's members. The independence of the members is reflected in the requirement to be "unaffiliated with [the executive branch of] any government".[392] In this respect, it is stipulated that:

"[a] member of the appeals body shall not be a member of the Executive Board, a member or employee of its support structure, designated operational entity or designated national authority, and shall not have served on the Executive Board or in its support structure for at least seven years prior to his or her appointment to the appeals body".[393]

Moreover, although being a member of the appeals body is not a full-time occupation, members must be available "at all times and at short notice to hear appeals" and must not adjudicate in any case where there would be a conflict of interest.[394] In the case of a breach of the provisions related to conflict of interest or confidentiality, the appeals body may suspend a member.[395]

Independence and impartiality are two requirements contained in the code of conduct for members of the World Bank Sanctions Board.[396] The World Bank has established a two-tiered structure in an effort to combat corruption and fraud. The first level consists of the Evaluation and Suspension Officer and the second level of a Sanctions Board. Regarding the latter mechanism, the following is required:

"[E]ach member of the Sanctions Board shall consider each case fairly, impartially and with due diligence [and] shall act

383 See section XI of the procedures and mechanisms relating to compliance under the Kyoto Protocol, document FCCC/KP/COMP/2005/8/Add.3.

384 Ulfstein and Werksman (2005), p.50.

385 Available at http://documents.worldbank.org/curated/en/2010/07/12368161/world-bank-policy-access-information.

386 World Bank, Policy on Access to Information, July 1, 2010, para. 38.

387 See document FCCC/TP/2011/3.

388 Giesberts and Sarac (2010), p.265.

389 See document FCCC/SBI/2011/MISC.2, p.7.

390 Giesberts and Sarac (2010), p.265.

391 Ibid.

392 See document FCCC/SBI/2012/L.8, appendix, para. 8(d).

393 See document FCCC/SBI/2012/L.8, appendix, para. 9.

394 See document FCCC/SBI/2012/L.8, appendix, para. 8(c).

395 See document FCCC/SBI/2012/L.8, appendix, para. 11.

396 Sanctions Board Statute, available at http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/SanctionsBoardStatute_9_15_2010.pdf.

independently and shall not answer to or take instructions from Bank management, members of the Board of Executive Directors, member governments, Respondents or any other entity".[397]

Moreover, the World Bank Policy on Access to Information provides that members of the Appeals Board must be independent and that the Board must comprise three outside experts on access to information matters. Panel members are nominated by the President of the World Bank and endorsed by the Bank's Board of Executive Directors.[398]

Competence and expertise

Members of a proposed appeals mechanism under the CDM must be persons with expertise. The necessary experience and qualifications for selection should be specified in the terms of reference. For example, members of the World Bank Sanctions Board "shall be familiar with procurement matters, law, dispute resolution mechanisms, or operations of development institutions".[399] Requirements for members to have particular competencies and expertise are common features of many mechanisms.[400]

Publicity

The publication of the decisions of the appeals body will contribute to the possibility that external actors will assess the overall functioning of the appeals procedure. There is a significant trend towards the publication of decisions. As an example, in January 2011 a decision was taken by the World Bank to publish the full text of the decisions of the Sanctions Board issued after January 1, 2011.[401] Such an evolution will have a significant impact on the sanctions process. As noted, "if the Sanctions Board makes a questionable decision, either because its reasoning or its assessment of the evidence is flawed, that will be a matter of public record and judged in the court of public opinion".[402] The publication of these decisions will contribute to the possibility that external actors will assess the overall functioning of the procedure. Discrepancies in the decisions will be scrutinised. In these circumstances, the legal certainty and predictability of the process will become more prominent.[403] Noteworthy in this context is the fact that the World Bank sanctions procedure specifies that "the Sanctions Board [shall] issue fully reasoned decisions, including both the basic facts of the case as well as the legal reasoning underpinning their decision".[404]

Another example is provided by the Access to Information Appeals Board. In the event that the Board upholds the initial decision to deny access to the information requested, the notice specifies the reasons. If the Appeals Board reverses the decision to deny access, the requester is notified of the decision and of the process for making the information available to the requester.[405]

The publicity of the proceedings before an appeals mechanism is another issue. It should be noted that, in the area of investment law for example, confidentiality may apply to the arbitration proceedings.

The following is an analysis of the controversial sticking points regarding the features of an appeals mechanism.

Topics under discussion

Taking into account the last draft text on an appeals mechanism submitted by the SBI in May 2012, four topics which are still under discussion have been identified:

- The scope of the appeal;
- The grounds for appeal;
- The decisions taken by the appellate body;

397 Code of Conduct for Members of the Sanctions Board, available at http://siteresources.worldbank.org/EXTOFFEVASUS/Resources/SanctionsBoardStatute_9_15_2010.pdf (p.6).

398 World Bank, Policy on Access to Information, July 1, 2010, para. 38, footnote 31. It should be noted that the resolution establishing the World Bank Inspection Panel also provides that members of the Panel are selected on the basis of "their independence from [the] Bank's management". The Panel members "shall be disqualified from participation in the hearing and investigation of any request related to a matter in which he/she has a personal interest or had significant involvement in any capacity", "may be removed from office only by decision of the Executive Directors" and "may not be employed by the Bank Group, following the end of their service on the Panel" (World Bank, Resolution establishing the Inspection Panel, September 22, 1993, paras. 4, 6, 8 and 10).

399 Sanctions Board Statute, Article 5.2.

400 Article 3 of the Statute of the UN Appeals Tribunal states: "To be eligible for appointment as a judge, a person shall be: (a) Be of high moral character; and (b) Possess at least 15 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions". The World Trade Organization (WTO) Dispute Settlement Understandingprovides another example. The seven members of the WTO Appellate Body are to be "persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. The Appellate Body membership shall be broadly representative of membership in the WTO" (WTO Dispute Settlement Understanding, Article17.3).

401 Article X, section 10.01 (b) of the World Bank Sanction Procedures. The decisions of the Sanction Boards have been available online since December 9, 2011. See http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:23065536~pagePK:64257043~piPK:437376~theSitePK:4607,00.html.

402 Leroy and Fariello (2011), p.65.

403 Ibid.

404 Ibid., p.64.

405 World Bank, Policy on Access to Information, July 1, 2010, para. 40.

- The potential appellants (the issue of locus standi).

The definition of the scope of the review is among the issues that still need to be determined and is linked to the determination of the appellants. According to the current version of the SBI's draft text, the scope of the review includes a CDM project activity with respect to which the EB "has [registered or] made a rejection or alteration decision relating to the registration of such a project activity or the issuance of CERs".[406] It has been noted that narrowing the scope of review of the CDM appeals procedure would be questionable, in particular "when one takes into account the fact that the CDM appeals process serves not only to protect individual rights but also to ensure environmental integrity and sustainable development".[407] It would appear that the scope of the review should include both unlawful rejections of projects and also flawed approvals of such projects.[408] There is a need for the CMP and the EB to define precise operational standards in the area of sustainable development.

Beyond the definition of the scope of the review, another issue to be determined is the grounds for appeal. According to the draft conclusions proposed by the chair of the SBI in May 2012, the appeals body should be competent:

"to decide on an appeal within the scope of its powers [...] on whether the Executive Body: (a) Exceeded its jurisdiction or competence; (b) Committed an error in procedure, such as to materially affect the decision in the case; (c) [Incorrectly] interpreted or applied one or more CDM modalities and procedures [in a way that [is unreasonable] and, if done differently, would have resulted in a materially different outcome; (d) [Clearly] erred on a question of fact available to the Executive Board at the time of reaching its decision, [in a way that [is unreasonable] [and, if done differently, would have resulted in a materially different outcome]]; (e) In reconsidering its decision on remand pursuant to paragraph 34 below, rendered a decision that is inconsistent with the judgment of the appeals body [on the same request for registration or issuance or with the previous ruling of the Executive Board with regard to that request]".[409]

Appeals could either be made to contest the fulfilment of due process requirements or to question technical issues in relation to the additionality of a project or the correct implementation of a monitoring plan.[410] The review should concern both substantive and procedural issues, since the EB's decisions contravening substantive law have the capacity to endanger the goal of environmental integrity.[411] It has been noted that:

"[t]he proposed appeals mechanism should have the authority to review whether the EB has applied the relevant decisions of the [CMP] and whether it has acted in compliance with its rules and procedures".[412]

While there are good reasons for adopting a rather broad scope of review, there may also be problems with such an approach. For example, one problem is with regard to the technical assessment of a project activity. Members of the EB have particular expertise concerning the technical issues of project application, justifying a reviewer's decision to give considerable weight to their assessment regarding the project. It is at least questionable whether an appeals body would be equally qualified in a technical sense.[413]

An appeals body can usually affirm, reverse, modify or remand a decision under review. The draft conclusions of the SBI propose that the appellate body may affirm, reverse or remand decisions under review.[414] It is important to guarantee the timeliness and efficiency of the appeals process that leads to the adoption of final decisions. Experience has shown that there can be several instances of back and forth in a review whose extent is limited to remanding a case back to the body concerned.[415] Where the EB reconsiders requests for project registration or issuance of CERs, the EB should make its reconsidered decisions expeditiously and consistent with the judgement of the appeals body. Where an appeals body has the authority to modify the decision, there will be no potential problems of misinterpretation of its rulings and, thus, consistency and coherence will be enhanced.[416] However, there is the risk that the implementation of CDM project activities would be delayed and market participants could feel a sense of uncertainty with respect to their investments.

Another aspect of the appeals mechanism that is still under debate concerns the determination of potential appellants. Parties have decided to confer a right to appeal to "stakeholders directly involved, defined in a conservative manner, in the design, approval or implementation" of a CDM project

406 See document FCCC/SBI/2012/L.8, appendix, section XII, para. 38.

407 Bothe, Marauhn, Rehbinder, Böhringer and Horst (2011), pp.15 and 16.

408 Ibid., p.16.

409 See document FCCC/SBI/2012/L.8, appendix, section IX, para. 32.

410 Von Unger and Streck (2009), p.43.

411 Bothe, Marauhn, Rehbinder, Böhringer and Horst (2011), p.16.

412 Von Unger and Streck (2009), p.43.

413 Bothe, Marauhn, Rehbinder, Böhringer and Horst (2011), p.16.

414 See document FCCC/SBI/2012/L.8, appendix, section X, para. 34.

415 See document FCCC/TP/2011/3, p.23, para. 112.

416 Ibid., p.23, para. 113.

activity.[417] The draft conclusions of the SBI include "[a]ny Party, project participant [or DOE] directly involved in [or stakeholder or organization referred to in decision 3/CMP.1, annex, paragraph 40(c), which has submitted comments with regard to] a CDM project activity".[418]

Beside PPs which are directly involved in a CDM activity, NGOs and other related entities which satisfy certain admissibility criteria should also have a right to appeal. These admissibility criteria are related to the satisfaction by a CDM activity of the integrity and sustainability criteria as framed by the Kyoto Protocol.

As independent auditors that assess whether a potential project meets all the eligibility requirements of the CDM, DOEs should not have the right to appeal; however, private parties should be able to challenge approvals and accreditations of DOEs.

It has been noted that a system in which the scope for appealing a decision is granted in too broad a manner creates the risk of the judicial body being inundated with appeals by parties who are unaffected by the decision in relation to which review is sought. By excluding DOEs and stakeholders not satisfying certain eligibility criteria, the determination of potential appellants serves as a filtering mechanism for the appeals institution, ensuring it is in a position to devote its time and resources in an appropriate manner.[419]

Regarding the membership of the appeals body, the draft conclusions of the SBI state that the CMP should elect 30 members to the appeals body roster.[420] With regard to an ad hoc panel system with a roster of experts, there are examples in international practice. A standing tribunal with part-time members would be another model. One of the main examples is the World Trade Organization's Appellate Body, which is composed of seven persons, three of whom serve on any one case.[421]

The appeals mechanism would be open to PPs,[422] NGOs and other related entities satisfying certain admissibility criteria to respond to claims regarding procedural and substantive issues and the appeals body would be able to either confirm a decision or remand the case back to the EB. The parallel creation of a grievance mechanism would complement the appeals procedure and would be subject to the same requirements of independence, integrity and publicity. The appeals and grievance mechanisms should complement each other in order to ensure the objectives of the Kyoto Protocol (i.e. sustainable development and environmental integrity). The establishment of both mechanisms would contribute to realising the aim of fundamental justice encapsulated in the principles of the rule of law, independence and integrity, competence and expertise, and publicity.

8.3 A grievance mechanism accessible to affected stakeholders

This section proposes the establishment of a grievance process in order to resolve community-based grievances that arise in the context of CDM-supported activities. This mechanism would serve to protect the interests of local stakeholders at risk of being affected by CDM project activities. While such a mechanism has the potential to channel environmental and social concerns, it should also be accompanied by a proper consultation of directly affected stakeholder groups throughout the lifespan of the project.[423]

Grievance mechanisms are an increasingly common feature of international organisations. The World Bank, the International Finance Corporation (IFC), the Inter-American Development Bank, the African Development Bank (AfDB), the Asian Development Bank (ADB) and the European Bank for Reconstruction and Development all have dispute resolution processes to address project-related grievances. Moreover, the UNDP has recently made a proposal to establish a grievance process for receiving complaints from affected communities or other stakeholders adversely affected

417 Decision 2/CMP.5, para. 42.

418 Ibid., section XII, para. 38.

419 Giesberts and Sarac (2010) p.264.

420 See document FCCC/SBI/2012/L.8, appendix, section II, para. 4.

421 WTO Dispute Settlement Understanding, Article17.1.

422 A PP includes a "private and/or public entity authorized by a Party involved to participate in a CDM project activity". See http://cdmrulebook.org/69.

423 According to the CDM Rulebook, the consultation of local stakeholders on the impacts of a CDM project in the area must be conducted and documented by PPs as a requirement for the validation of all project types. The documentation of this local stakeholder consultation forms part of the material assessed by DOEs when conducting validation. See http://cdmrulebook.org/761.

by UNDP programmes and projects.[424] The UNDP defines a 'grievance process' as a framework for accepting complaints and ensuring that those complaints are addressed by means of effective dispute resolution processes.[425]

The grievance process outlined below will receive complaints from stakeholders concerned by CDM operations. 'Stakeholders' are defined in the CDM glossary of terms as follows: "the public, including individuals, groups or communities, affected, or likely to be affected, by the proposed CDM project activity or actions leading to the implementation of such an activity".[426] Potential appellants should include not only affected stakeholders but also NGOs. Any individuals or communities affected by CDM project activities will be able to bring a claim. A local representative such as an NGO, in the case that local representation is not available, would be allowed to present claims related to CDM project activities. In this regard, it is worth mentioning that the World Bank Inspection Panel may receive requests for inspection presented:

"by an affected party in the territory of the borrower which is not a single individual (i.e. a community of persons such as an organization, association, society or other grouping of individuals), or by the local representative of such party or by another representative in the exceptional cases where the party submitting the request contends that appropriate representation is not locally available".[427]

In the cases of non-local representation, the Inspection Panel requires clear evidence that there is no adequate or appropriate representation in the country in which the project is located.[428]

The CDM grievance process needs to be shaped by the same principles as outlined above with respect to an appeals process (i.e. the principles of rule of law, independence, competence and expertise, and publicity).

Flexibility should be a feature of the proposed CDM grievance mechanism. The mechanism will address grievances through mediation, conciliation, facilitation, negotiation or other similar means. For example, the Compliance and Review Mediation Unit established at the AfDB uses different techniques of problem-solving to address grievances from affected communities, which include "independent fact-finding, mediation, conciliation, [and] dialogue facilitation" and takes into consideration "best customary practices for handling complaints".[429]

The CDM grievance mechanism should be supplemental to existing project-level grievance processes. This means that the proposed mechanism should rely, whenever possible, on existing processes at the country or project level. Grievance processes are increasingly becoming an integrated part of project management. The practice of international financial institutions is interesting in this regard. The ADB requires the borrower to establish "inclusive" and "appropriate" grievance mechanisms to overcome concerns raised with indigenous communities during the implementation of a project.[430] Similar requirements for the establishment of grievance mechanisms are enshrined in the World Bank's OP 4.10[431] and the IFC's new framework policy on environmental and social sustainability.[432]

A Party should develop domestic accessible procedures appropriate to a project to address the grievances of affected communities arising from the project's design and implementation. These project-level grievance mechanisms should be developed by Parties before the issuance of an LoA[433] for a specific CDM project. When designing these grievance procedures, the State should take into account the availability of judicial recourse and customary dispute settlement mechanisms in the local community.

424 UNDP (2012). "Environmental and Social Compliance Review and Grievance Processes". Discussion paper, p.19.

425 Ibid., p.3.

426 Section D of the CDM Programme Activity Design Document, see http://www.cdmrulebook.org/461.

427 World Bank, Resolution establishing the Inspection Panel, September 22, 1993, para. 12.

428 World Bank Inspection Panel, Operating Procedures, August 19, 1994, para. 11.

429 "Functions", Independent Review Mechanism, Revised Operating Rules and Procedures, June 16, 2010, available at http://www.afdb.org/fileadmin/uploads/afdb/Documents/Compliance-Review/IRM Operating Rules and Procedures - 16 June 2010.pdf.

430 ADB, Safeguard Policy Statement, 2009, p.18. The ADB requires "[t]he borrower/client [to] establish a mechanism to receive and facilitate resolution of the affected Indigenous Peoples communities' concerns, complaints, and grievances. The grievance mechanism will be scaled to the impacts of the project. It should address concerns and complaints promptly, using an understandable and transparent process that is culturally appropriate, gender responsive, and accessible to the affected Indigenous Peoples communities at no cost and without retribution. The mechanism should not impede access to the country's judicial or administrative remedies. The affected Indigenous Peoples communities will be appropriately informed about the mechanism" (ADB, Safeguard Policy Statement, 2009, appendix III, para. 22, available at http://www.adb.org/site/safeguards/main).

431 World Bank OP 4.10, Indigenous Peoples, annex B, para. 2(h), available at http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20564712~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html.

432 IFC, Policy on Environmental and Social Sustainability, January 1, 2012, para. 54, available at http://www1.ifc.org/wps/wcm/connect/7540778049a792dcb87efaa8c6a8312a/SP_English_2012.pdf?MOD=AJPERES.

433 The LoA is the authorisation by a Party of the participation of the PP in the proposed project activity. See http://cdmrulebook.org/474.

The CDM has an interest in addressing community-based grievances before disputes escalate or create conflict between stakeholders and PPs.[434] The UNDP's proposal underlines the corporate interest in ensuring that complaints "are addressed promptly, fairly and effectively" and recommends the adoption of policy and guidelines regarding grievance processes.[435]

The proposed grievance mechanism would focus on environmental and social concerns raised by affected stakeholders. The scope of review of the mechanism could be extended to other issues such as human rights abuses.[436]

The World Bank Inspection Panel, the Office of the Compliance Advisor/Ombudsman (CAO) for the IFC and the Multilateral Investment Guarantee Agency (MIGA) provide useful models of grievance processes.[437] In particular, the ombudsman function of the CAO was designed to respond to complaints raised by persons affected by IFC/MIGA projects by "attempting to resolve fairly the issues raised, using a flexible, problem-solving approach".[438] The ombudsman's office seeks to take a proactive and flexible approach, where the "aim is to identify problems, rather than to find fault".[439]

In the light of the practice developed by the accountability mechanisms of the international financial institutions and the UNDP's proposal, the proposed CDM grievance process should include the following steps:

1. Filing of the request. The concerned stakeholder files a request to one of the bodies established by the CDM for receiving grievances.

2. Registration and acknowledgement of the request. The proposed mechanism registers the request and sends an acknowledgement to the requester as well as a copy to the PP and host government of the project.

3. Review of eligibility of request. The proposed mechanism will inform the requester, the project sponsor, the host government and the public as to whether the request meets the eligibility criteria. Such eligibility criteria should be developed.

4. Assessing feasibility for dispute resolution. The mechanism will provide the requester, the project sponsor, the host government and the public with an assessment of the feasibility of conducting dispute resolution activities.

5. Gaining consent for dispute resolution. Efforts will be made to gain the consent of the stakeholders for dispute resolution.

6. Dispute resolution process. The process will be tailored to the needs of the stakeholders.

7. Reaching agreement or not. When the dispute resolution is complete, a report, including the settlement agreement (if any) and recommendations, will be compiled and submitted to all relevant stakeholders.

8. Termination of the consultation process. All parties to the consultation can terminate the grievance process at any time if they no longer agree to the course of action being undertaken. In some circumstances, the problem-solving exercise may end with no resolution. The final report on the consultation will be provided to the relevant stakeholders, including the public.

The grievance process will complement the appeals mechanism and will enhance the credibility and legitimacy of the CDM as well as of the EB's decisions. It will consolidate public trust in CDM project activities.

434 Submission of CDM Watch, January 16, 2012; submission of Focus on the Global South, January 16, 2012; and submission of International Rivers, January 16, 2012.

435 UNDP (2012). "Environmental and Social Compliance Review and Grievance Processes". Discussion paper, p.21.

436 Regarding a case dealing with human rights issues that has been brought before the World Bank Inspection Panel, see Chad-Cameroon Petroleum and Pipeline Project (Loan No. 4558-CD); Petroleum Sector Management Capacity Building Project (Credit No. 3373-CD); and Management of the Petroleum Economy (Credit No. 3316-CD), Investigation Report, July 17, 2002, paras. 210—217, available at http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ChadInvestigationReporFinal.pdf.

437 UNDP (2012). "Environmental and Social Compliance Review and Grievance Processes". Discussion paper, pp.29—31.

438 CAO, Operational Guidelines, p.5, available at http://www.cao-ombudsman.org/howwework/filecomplaint/documents/EnglishCAOGuidelines06.08.07Web.pdf

439 Ibid., p.11.

9 Concerns voiced about current stakeholder participation

This chapter seeks to reflect the inputs made to the CDM Policy Dialogue on the issue of stakeholder consultation. The purpose of this chapter is to consolidate the large amount of information received on this issue and to extract a series of fundamental recommendations that might inform decisions on the future management of the CDM. It is not the purpose of this chapter to provide a value judgement of the inputs to the CDM Policy Dialogue on the issue of stakeholder consultation.[440]

This chapter:

- Briefly considers the notion of 'stakeholder consultation' in the context of the CDM;
- Provides a consolidation of the views on how stakeholder consultation is currently undertaken in the CDM system;
- Provides a further extraction of the views expressed on a limited set of 'contested projects';
- Summarises suggestions, extracted from the inputs made to the CDM Policy Dialogue, as to how the current system of stakeholder consultation might be adapted to take account of the concerns expressed during the CDM Policy Dialogue;
- Provides recommendations arising from the above-mentioned suggestions.

An evolving standard for stakeholder consultation

The term 'stakeholders' is very broadly defined in the context of the CDM to mean "the public, including individuals, groups or communities, affected, or likely to be affected, by the proposed clean development mechanism project activity".[441] The original CDM M&P (decision 3/CMP.1) provided that stakeholder consultation should occur in two specific instances, namely at the local and the global level. Local stakeholder consultation is triggered by the requirement for the DOE contracted by the PPs to validate a project activity to review the PDD to ensure that "comments by local stakeholders have been invited, a summary of the comments received has been provided, and a report to the designated operational entity on how due account was taken of any comments has been received".[442] Another provision of the CDM M&P empowers the DOE to conduct on-site visits and interviews with local stakeholders.[443]

Global stakeholder consultation is triggered by the requirement for the DOE to receive "comments on the validation requirements from Parties, stakeholders and UNFCCC accredited non-governmental organizations and make them publicly available" and "(a)fter the deadline for receipt of comments, [to] make a determination as to whether, on the basis of the information provided and taking into account the comments received, the project activity should be validated".[444] In reality, this global process occurs via the posting of the proposed project activity's design documentation on the UNFCCC website for a calendar month, with the invitation to stakeholders to provide comments via this interface. While the CDM M&P do not prescribe the exact purpose of the consultation process, it is assumed that the scope of the inputs sought should be sufficiently broad as to allow for generic public scrutiny of, inter alia, methodo-

440 In particular it should be noted that this chapter does not undertake a qualitative assessment of the inputs to the CDM Policy Dialogue received. For example, and from the perspective of the stakeholder-focus of this chapter, a number of inputs were received that argue for stakeholder consultation throughout a CDM project's lifetime. It is likely that there would be cost and operational consequences for the project, in the event that this suggestion were to be incorporated into the CDM system. In such instances, this chapter reflects the input but makes no value judgement on the possible implications of seeking to implement the suggestion.

441 Decision 3/CMP.1, annex, paragraph 1(e).

442 Ibid., paragraph 37(b).

443 Ibid., paragraph 62(b).

444 Ibid., paragraph 40(c) and (d).

logical aspects of the project and the project-specific facts presented in the PDD.

There are some national-level variations to this two-pronged approach to stakeholder consultation. For example, in South Africa, in the event that the domestic legal requirement for EIA (of a proposed CDM project activity) is triggered, a concomitant and minutely prescribed public participation process, in respect of so-called 'interested and affected parties', is also triggered. The specific purpose of this process is to inform the EIA. In addition, the South African DNA for the CDM has its own, CDM-specific requirement for the posting of a proposed project activity's design documentation on the DNA's website for a calendar month prior to the DNA commencing with its assessment of the documentation. Stakeholders are invited to provide inputs using this interface.

These various processes lead to a reduction in the efficiency of stakeholder consultation/public participation for the reason, inter alia, that the processes (CDM, environmental legal and DNA-driven) are not aligned with one another, each having different requirements for gathering and reporting on stakeholder inputs. This variation can result in piecemeal and fractured stakeholder consultation/public participation, because input is requested on different occasions, in respect of different issues and using different platforms.[445] This surfeit of opportunity to engage in the implementation of a CDM project leads, quite literally, to stakeholder fatigue and to a dilution of input.

It is significant that the EB has, over time, elaborated the requirements for CDM stakeholder consultation, most importantly by providing for a particular set of actions to be undertaken by DOEs in the CDM VVM. Compare, for example, the rather cryptic requirements of the CDM M&P with the more elaborated process detailed in the CDM VVM, which includes specific interrogative actions to be undertaken and reporting requirements to be met by the DOEs.[446] The most recent innovation in the process was introduced by way of the new CDM PS, which took effect in May 2012 and further enhances the process of stakeholder consultation provided for in the CDM VVM. Given the very recent introduction of the PS, the processes provided for therein are not included in the review processes initiated by the CDM Policy Dialogue, although the PS is discussed elsewhere in this report.

Against this background, the remainder of this chapter concerns itself with the inputs to and objectives of the CDM Policy Dialogue. It should be noted that this chapter does not concern itself with attempting to assess how the implementation of the PS might address some of the concerns with respect to stakeholder consultation raised during the CDM Policy Dialogue (i.e. this chapter seeks to analyse and report on the inputs provided to the CDM Policy Dialogue and not to speculate on how the PS might have an impact on or improve project development, including with regard to stakeholder engagement, in the future).

In order to present the volume of inputs analysed for the purposes of compiling this chapter in an easily accessible form, the full set of information is presented in table format. So as not to burden this chapter, however, the set of three tables relevant to this chapter appear in appendix 2 to this report. Broadly speaking, the information presented in the remainder of this chapter follows the three-stage approach as outlined in the diagram below.

445 The various processes call for different types of input (e.g. environmental, financial, social and technical), at different times, for different reasons and using different means of communication and input (e.g. websites, public meetings, and analysis of and commentary on draft documentation).

446 In particular the following paragraphs of the CDM VVM:
Paragraph 138: "The DOE shall determine whether the project participants have completed a local stakeholder consultation process and that due steps were taken to engage stakeholders and solicit comments for the proposed project activity."
Paragraph 139: "The DOE shall, by means of document review and interviews with local stakeholders as appropriate, determine whether:
(a) Comments have been invited from local stakeholders that are relevant for the proposed project activity;
(b) The summary of the comments received as provided in the PDD is complete;
(c) The project participants have taken due account of all comments received and have described this process in the PDD."
Paragraph 140: "The DOE shall:
(a) Describe the steps taken to assess the adequacy of the local stakeholder consultation;
(b) Provide an opinion on the adequacy of the local stakeholder consultation."
Paragraph 147: "The DOE shall include the final validation opinion in the validation report. In its validation report, the DOE shall:
(a) State its conclusions regarding the proposed project activity's conformity with applicable CDM requirements;
(b) Give an overview of the validation activities carried out in order to arrive at the final validation conclusions and opinion;
(c) Include the results of the dialogue between the DOE and the project participants, as well as any adjustments made to the project design following stakeholder consultation. It shall reflect the responses to CARs [Corrective Action Requests] and CLs [Clarifications], and discussions on and revisions to project documentation."

9.1 Identification of concerns raised

Sections Identification of concerns raised and Summary of concerns raised provide a non-exhaustive summary of the comments and criticisms received as a result of various general calls for public input and stakeholder interactions in the course of the CDM Policy Dialogue, while striving to capture the essence of the concerns. This section constitutes an explanatory precursor to the information presented in section Summary of concerns raised.

Inputs received as a result of the following calls for input and interactions were considered.

- Call for public input on the validation process, following EB 62:
  - Total responses: 18.
  - Six similar inputs received from international environmental NGOs and a similar input from the Wuppertal Institute.
  - Five similar inputs received from the Gujarat Forum on CDM and individuals from Gujarat.
  - Unique inputs received from the DOE Forum, the PD-Forum, Transparency International and three individuals from China.
- Call for public input on the CDM Policy Dialogue, following EB 64:
  - Total responses: 59, from intergovernmental organisations, carbon-market participants, civil society and individuals.
  - Additional questionnaires were sent to the following stakeholders and were also taken into account: the secretariat, DOEs, past and present EB members, and project developers.
- Various interactions with stakeholders, including the civil-society letter to the High-Level Panel on the CDM Policy Dialogue, dated May 21, 2012, submitted by 84 civil-society organisations.

In order to better understand the thrust of the inputs received, common inputs have been grouped under the following series of high-level headings, which emerged organically from the consideration of the inputs received: right to be heard; scope of comments and/or criticism; actions taken; and other.[447] In certain instances the inputs under the high-level headings were further subdivided into inputs received in respect of local stakeholder consultations and of global stakeholder consultations.

The range of inputs analysed for the purposes of compiling section Summary of concerns raised derives from a variety of sources and, for this reason, reflects a range of positions. For clarity, inputs analysed are not, exclusively, from stakeholders being critical of the system and how it is implemented. For illustration, inputs include those of CDM project owners and CDM consultants whose comments might allege misuse of the system by stakeholders (e.g. a misuse whereby, in response to calls for stakeholder consultation, stakeholders direct huge volumes of correspondence that is generically critical of the CDM but light on the specifics of the particular project, with the alleged intention of overburdening the project developer and/or the DOE, circumventing the consultation process and jeopardising the activity's chance of being registered). In short, section Summary of concerns raised seeks to reflect the views expressed on the issue of stakeholder consultation during the CDM Policy Dialogue, which views were received from across the spectrum of the parties interested in the implementation of CDM project activities and which views display a variety of concerns and perspectives.

Section Summary of concerns raised provides a summary of the more detailed information contained in table 1 in appendix 2 to this report.

447 These high-level headings emerged from the empirical research conducted for the purposes of compiling section Summary of concerns raised and do not reflect generally accepted categories of issues arising within the framework of CDM stakeholder consultation or of the CDM Policy Dialogue.

9.2 Summary of concerns raised

9.2.1 Concerns regarding the right to be heard

Comments that addressed the stakeholder consultation process, and that questioned whether the process for raising issues is effectively and appropriately structured, are grouped under this category.

Inputs received in respect of local stakeholder consultations:

a) The need to reconsider the timing of consultation – the appropriate timing of consultation may create synergies with other compulsory consultation processes (e.g. the consultation process associated with legislated EIA).

b) Language is a barrier in the stakeholder consultation system.

c) Public participation by all stakeholders needs to be ensured and there is a need for a more transparent and inclusive participatory process.

d) Rules and guidance are necessary for the local stakeholder consultation process.

e) There is a need for capacity-building and technical assistance.

f) In order to achieve their full participation, stakeholders need to be clearly identified.

Inputs received in respect of global stakeholder consultations:

a) There is insufficient public notice provided of global stakeholder consultation.

b) The period for comments is too short.

c) There is insufficient access to information about projects.

d) Communication with the UNFCCC needs to improve.

9.2.2 Scope of comments and/or criticism

Highlighted issues are grouped under this category.

a) Sustainability: improved stakeholder involvement is seen as an important means of enhancing reporting on sustainable development co-benefits.

b) Human rights: a strong call was made for the CDM not to support projects that cause human rights violations. A stronger stakeholder consultation process is necessary to ensure that projects causing human harm are ineligible for registration.

c) Environmental integrity: a stronger stakeholder consultation process could contribute to ensuring the environmental integrity of projects from the outset.

d) Monetary decisions need to be transparent.

9.2.3 Concerns regarding the actions taken

In respect of local stakeholder consultations, project-relevant comments received during the consultation process need to be taken into consideration.

Inputs received in respect of global stakeholder consultations:

a) Irrelevant and generic comments delay the process and increase costs.

b) Clear guidelines should be provided to DOEs on how to address comments received.

c) Stakeholders who provided inputs in the consultation process should be informed of the outcome of the validation process.

9.2.4 Other aspects highlighted

In general here are divergent views on the need for a double consultation process.

Inputs received in respect of local stakeholder consultations:

a) It is important to keep in mind that the consultation process is a country-specific activity and that, at COP 17, Parties strongly opposed any form of guidelines

which would intervene in their own stakeholder consultation processes.

b) There is a need to define the range and population of stakeholders for survey and to identify the structure of local stakeholders.

9.3 Contested projects

The question now arises as to what constitutes an appropriate reaction to stakeholder inputs received in respect of a proposed CDM project activity. The notion of responding appropriately to stakeholder comments might imply that, where such comments are sufficiently incisive, such input should be reflected in (a) modification(s) to the relevant element(s) of the proposed project, which should be evidenced in an evolution of the design documentation. In reality, many stakeholder consultation processes simply capture and report upon the input received without such input being reflected in amendments to the project design.[448]

In an ideal research situation a researcher would be in a position to observe how stakeholder input has, for example, caused such an evolution in project design. In order to do so, however, it would be necessary to have access to, and to analyse, successive iterations of the project documentation up to and including the documentation on the basis of which the project was registered. This level of research has not been possible for the present purposes. However, taking a deliberately contrary approach, in order to derive a sense of the instances in which stakeholder inputs may not have been properly dealt with, this section presents a sample of such instances. The objective of this approach is to extract information from these (negative) instances in order to better inform processes that might lead to positive instances in the future (i.e. instances in which stakeholder inputs will be properly taken account of).

In order to derive the information presented in this section, a sample-set of projects was obtained by combining:

- 26 projects that were identified in the IGES CDM Review and Rejected Project Database (May 2012 update)[449] as having been subject to a CDM review for reasons, inter alia, relating to stakeholder consultation;
- 12 projects identified by civil society, as input to the CDM Policy Dialogue, as examples of where stakeholder consultation was improperly conducted.[450]

The above-mentioned sample is referred to as the set of "contested projects" for the purposes of this section. The contested projects were then subject to the following analyses:

- The PDDs and validation reports were obtained for each project.
- The portions of these documents dealing with environmental matters and stakeholder consultation were analysed. The environmental portions of the documents were analysed for the reason that information relating to stakeholder consultation is often included in these sections.
- An internet search was then conducted using the search terms [name of project], implementation, stakeholder consultation, comments and environment, and the 'hits' obtained were reviewed to identify any further comments, in addition to those captured from the PDDs.

The set of contested projects was then refined and pared down to extract the most concentrated information possible on particular instances of contestation. The information on the pared down set of contested projects is presented in table 2 in appendix 2 to this report, which presents the information derived from the above-mentioned process of analysis and refinement without subjecting such information to qualitative analysis. Some of the information has informed the final section of this chapter, which seeks to

448 "In many cases, projects are validated without any feedback from local stakeholders and affected communities due to the limited time frame, language restrictions, and limited access to a computer and Internet" (submission of Focus on the Global South, January 16, 2012, p.2). "Although it is a key requirement in the CDM process cycle, the stakeholder consultation process is only a formality. It is hardly ever properly implemented by project developers and validated by DOEs" (submission of CDM Watch, January 16, pp.4 and 5; verbatim quote: submission of International Rivers, January 16, 2012, p.3). Note that it is likely that project developers would resist the notion that stakeholder input should have any significant impact on project design, as this would be seen as a requirement to relinquish, to some extent, the developer's control over its own project, in respect of which it assumes the concomitant risks and rewards.

449 See http://www.iges.or.jp/en/cdm/report_cdm.html.

450 The inputs to the CDM Policy Dialogue were used for the specific reason that these submissions listed a number of actual projects for which, it was alleged, stakeholder consultation was improperly undertaken. Consequently, these inputs provided an easily accessible database of such projects. The two inputs in question were from: GAIA, which describes itself as a worldwide alliance of more than 650 grassroots groups, non-governmental organisations and individuals in over 90 countries whose ultimate vision is a just, toxic-free world without incineration (see http://www.no-burn.org/about); and International Rivers, which describes itself as an organisation dedicated to halting destructive river-based projects (see www.internationalrivers.org).

Table 9. Contested CDM projects assessed

CDM ref.	Reg. date	Project	Host country	Type
0862	17 May 07	Allain Duhangan Hydroelectric Project	India	Large hydro
3237	26 Jan 11	Barro Blanco Hydroelectric Power Plant Project	Panama	Large hydro
1326	28 Feb 08	Jorethang Loop Hydroelectric Project	India	Large hydro
1749	19 Dec 08	Xiaoxi Hydropower Project	China	Large hydro
5359	25 Oct 11	The Chengdu Jiujiang Municipal Solid Waste Incineration Power Plant Project	China	Solid waste incineration
3837	17 Dec 10	Chengdu Luodai Municipal Solid Waste Incineration Project	China	Solid waste incineration
0550	27 Oct 06	Project for HFC-23 Decomposition at Limin	China	Industrial gas (HFC)
3135	27 Sep 10	24 MW Waste Heat Recovery for Power Generation Project at Ningxia Saima	China	Waste heat power generation
1442	22 Mar 08	AESA Misiones (Proactiva Group) Sanitary Landfill Gas capture and flaring project	Argentina	Landfill gas
0426	17 Jul 06	González Catán Landfill Gas Project	Argentina	Landfill gas
0069	28 Nov 05	Nubarashen Landfill Gas Capture and Power Generation Project in Yerevan	Armenia	Landfill gas
0140	06 Jan 06	Olavarría Landfill Gas Recovery Project	Argentina	Landfill gas
5791	30 Mar 12	CGN Yunnan Mouding Wind Power Project	China	Wind power

provide options for strengthening CDM stakeholder consultation in the future.

Information on the following set of 13 contested projects listed in Table 9 can be found in table 2 in appendix 2 to this report.

Of the 13 projects, none were started earlier than 2005, eight started between 2005 and 2008 and six after 2008.[451] The high-level findings with regard to the contested projects are as follows:

1. The numbers of people consulted in the process was found to be unsatisfactory and therefore the results were unreliable.

2. Neighbouring countries were not involved in a project which clearly had a cross-boundary impact.

3. Inadequate compensation was offered in instances where such payments were required.

4. Project documentation was not made available.

451 Projects could well have commenced and/or been operational for a period of time before formal registration.

9.4 Options for strengthening stakeholder consultations

This section provides options and recommendations for strengthening CDM stakeholder consultations in the future. These options and recommendations emerged from the inputs to the CDM Policy Dialogue.

The options are reflected in table 3 in appendix 2 to this report, which uses the high-level headings from table 1 in appendix 2 to categorise the proposed options for improvement.

The content of table 3 (see appendix 2) was drawn from the research undertaken to compile this chapter as well as from a review of certain other items of research work and analysis conducted on the issue of strengthening CDM stakeholder engagement. So as not to burden this chapter, the detail of such other work is not described here; however, for completeness sake, such other work includes:

- The EB 62 report, annex 4.
- The EB 65 report, annex 17.
- The report on the first SDM Coordination Workshop.
- Portions of the synthesis report of the call for input on the CDM Policy Dialogue, particularly pages 19, 20 and 21.

The following summary supports table 3 (see appendix 2) and reflects convergent developments, within the UNFCCC, that have identified options for strengthening stakeholder consultation processes for future integration into the CDM system:

Options suggested in respect of local stakeholder consultations:

- Reconsider timing of consultation: in order to improve the project design and increase local ownership or involvement in the project, stakeholder comments should be invited during the design phase of the project, at a time when project proponents are open to making changes to the project; however, conflict of interest and additional costs should be considered.
- Develop clear rules on how to conduct local stakeholder consultations: there is the potential to align with national regulations, while respecting the local language of relevant groups.
- Provide guidelines for DOEs on how to validate local stakeholder consultations.
- Improve the automated notification systems for all public participation procedures that are time-sensitive.
- Require the participation of civil-society representatives at all stakeholder meetings, including at meetings of the DNA Forum.
- Provide notice of projects hosted to allow for timely consideration.

Options suggested in respect of global stakeholder consultations:

- Provide better public notice of global stakeholder consultation: notices and other communications regarding commenting periods should be posted online in a clear and detailed fashion. This includes the establishment of an e-mail notification system and/or RSS feed, which would provide specific information about requests for registration and renewal of crediting periods, and start/end dates and times of periods for public comment on projects and methodologies, with applicable time zones.
- Increase the period for commenting on projects and new methodologies to 60 days.
- Ensure that all supporting documents to the PDD are uploaded prior to the start of the public commenting period.
- Improve communication with the UNFCCC: improve the user-friendliness of the UNFCCC CDM website, including the translation of documents related to public participation into all official UN languages.
- Enhance guidelines for global stakeholder consultations/comments.
- Provide guidance for DOEs on the treatment of non project specific/non-substantiated comments.
- Ensure that key CDM bodies have representation in all UN languages. Should this recommendation be implemented, this would require the use of all UN languages for the work of, for example, the MP and AP and would obviate translation requirements.
- Establish a grievance mechanism for affected stakeholders: given that a potential conflict of laws might arise in this instance, a distinction might be made between effects that stem from the CDM and effects that originate from the project owner and that may be pursued through legal means in the host country.

9.5 Conclusions and recommendations

From the information reviewed for the purpose of compiling this chapter, it is apparent that there are elements of the stakeholder consultation process, at both the local and global levels, that would benefit from strengthening. The information reviewed included a number of innovations suggested by stakeholders, received, inter alia, as inputs to the CDM Policy Dialogue. Improved stakeholder involvement at both the local and global levels was highlighted as "an important means to enhance reporting on sustainable development co-benefits, ensure fairness and transparency

and fulfil the right of individuals to public participation as laid down in Principle 10 of the 1992 Rio Declaration on Environment and Development as well as the human rights regime".[452] Consequently, it is proposed that the strengthening of the stakeholder consultation process will contribute not only towards improving the effectiveness of the CDM but will also towards ensuring its environmental integrity.

The following are recommendations arising from the content of this chapter:

1. The consultation process does not need to be reinvented but the implementation thereof needs to be improved and enhanced.

2. Inclusivity is vital – this requires all affected persons to be informed of the consultation process and to be provided the opportunity to understand and digest the implications of all relevant information.

3. Technical reports should be made more accessible and user-friendly so as to improve stakeholders' understanding of their content.

4. Capacity-building of all stakeholders involved remains a very important element.

5. Although project types and local conditions differ from country to country, there is a general request that the EB provide for more guidance on and structure for stakeholder consultations.

6. Non project related comments that are merely submitted with the intention of delaying the stakeholder consultation process are often received. Therefore, guidance also needs to be given in terms of the type and scope of comments received, in order to ensure that only project-relevant comments are taken into consideration.

7. The possibility of applying assessment tools to integrate other criteria, such as gender,[453] human rights and sustainable development, into planning, implementation and monitoring should be explored.

8. The role of DOEs offers a number of avenues for enhancing the stakeholder consultation process. These avenues might include:

   a) Requiring stricter oversight of stakeholder consultation, and concomitant reporting, from DOEs when they are involved in both the validation and verification processes.

   b) Including stakeholder consultation in the verification phase. To contextualise this suggestion: during the validation process DOEs are required to assess a number of variables, to report on these variables via the validation report and to make a recommendation on whether the proposed activity should be registered. These variables include technical, financial, environmental and social issues as provided for in the PDD. The variables to be assessed during verification, however, tend to be limited to technical issues associated with the generation of emission reductions. Requiring stakeholder consultation during verification would necessitate an extension of the requirement for stakeholder consultation to that phase of a CDM project. The verification phase, out of necessity, is repeated at the end of each monitoring period. Consequently, in order to extend stakeholder consultation to the verification phase, it would be necessary for the CDM rules to require stakeholder consultation to be undertaken at each periodic verification. For clarity, the suggestion is not to require DOEs to conduct stakeholder consultation during verification but, rather, that this obligation be imposed upon project developers (in a manner similar to the imposition of this obligation during validation in the current iteration of the CDM rules). The DOE's role would be to assess the adequacy of the stakeholder consultation conducted for the purposes of verification, as is currently the case for validation.

   c) Following on from the above, requiring, at the domestic level, material compliance with the sustainable development objectives established in the PDD to be a condition sine quo non for the project's continuing to enjoy host-country approval. This would be an innovation to the CDM rules and is likely to be unpopular with project developers, who will argue that such a requirement would jeopardise the financial integrity of projects.

452 EB 65 report, annex 17, on sustainable development co-benefits and negative impacts of CDM project activities, p.3.

453 Input received from the Finnish DNA: undated gender impact assessment tools, such as the "Gender Spectacles Tool", could assist CDM stakeholders and national CDM authorities in integrating gender considerations into planning, implementation and monitoring.

9. The role of DNAs offers a number of avenues for enhancing the stakeholder consultation process. These avenues might include:

    a) Greater scrutiny of the issue of sustainable development in the currently prescribed periods of stakeholder consultation, namely those in the pre-registration phase.

    b) In conjunction with the recommendations made under point 8 above, in the post-registration phases:

        i) Linking the role of the DNA with the role of the DOE (recommended above) by permitting the DNA to review the sustainable development performance of projects, either on an annual basis or at each verification.

        b) Requiring the DOE to take the DNA's report into account when assessing whether to verify the full volume of emission reductions generated by the project in the crediting period or to penalise the project for non-compliance with its sustainable development objectives (e.g. by withholding verification of a portion or all of such emission reductions).

    c) By way of illustration of the enhanced role that a DNA might fulfil: the South African DNA requires a very detailed account to be given of how the proposed CDM project activity will assist South Africa in achieving sustainable development, as measured against the DNA's set of sustainable development criteria. These criteria are based squarely upon the definition of sustainable development contained in the country's foundational environmental statute, namely the National Environmental Management Act No. 107 of 1998. In addition, the DNA requires, in order to commence with its internal processing of an application for host-country approval, the suite of documentation accompanying such an application to include a signed draft validation report and copies of all domestic environmental authorisations required to commence and operate the proposed project activity. The analysis of this suite of documentation informs the DNA's decision on whether to provide the South African host-country approval. While it is not current practice for this analysis to be used for any purpose in the post-registration phases of the project, there is clearly an opportunity for this analysis (and the supporting documentation) to be revisited in the post-registration phases, in order to determine, inter alia, whether the project is in material compliance with the sustainable development objectives established as part of the application for the LoA. The South African DNA has previously considered its role in the post-registration phases, including whether its role might be to be far more interrogative of a CDM project's sustainable development performance than is currently the case. However, the DNA has not taken this consideration to an operational level (e.g. to a level at which such performance might be assessed by the DNA on an annual basis with a view to imposing some form of sanction on the project in the event that the project is found not to be in material compliance with its sustainable development objectives).

10 Current criticism of the performance of DOEs and proposed options for improvement

In the CDM process, the DOEs are entrusted with carrying out the assessment of projects against the CDM requirements. Their function therefore plays a key role in assuring the effectiveness (i.e. environmental integrity) of the mechanism but also represents one of the bottlenecks limiting the efficiency of the CDM process. This chapter therefore seeks to answer the following questions:

Q1: What concerns have been raised about the current process? In particular, what constraints exist on the ability of DOEs to discharge their functions effectively?

Q2: Are the accreditation procedures and requirements for DOEs appropriate? Are there regional imbalances in accredited DOEs? If so, what are the reasons for this? What are the remedies?

Q3: How could the current verification model be improved to make it more efficient without reducing trust in the issuance of CERs? Is there currently a duplication of effort in the system between the DOEs and the EB?

To set the background, the chapter first presents a brief history of concerns regarding the validation and verification process. It then presents a compact overview of the relevant stakeholder inputs received and provides related discussion and recommendations.

10.1 A brief history of concerns with respect to DOEs' performance

The institutional arrangement for project assessment has been subject to debate since the early days of the CDM. While the provisions in the CDM M&P for assigning the validation and verification of projects to independent and private entities made the mechanism a prototype for hybrid governance,[454] the decision was probably driven by more practical considerations.[455] Firstly, the Parties were aware of the risk that the impartiality of the secretariat, whose main task is to support the UN in a neutral manner, may have been jeopardised by its direct involvement in project assessment. Also, the future number of project submissions could not be anticipated at the outset of the mechanism, which was a strong argument for the externalisation of project assessment. Furthermore, many of the Parties had a preference for private service providers over public bureaucracy, forged by their own experiences with bureaucracies and private auditing companies. These considerations can be seen as drivers for the modalities for DOEs provided for in the Marrakesh Accords.

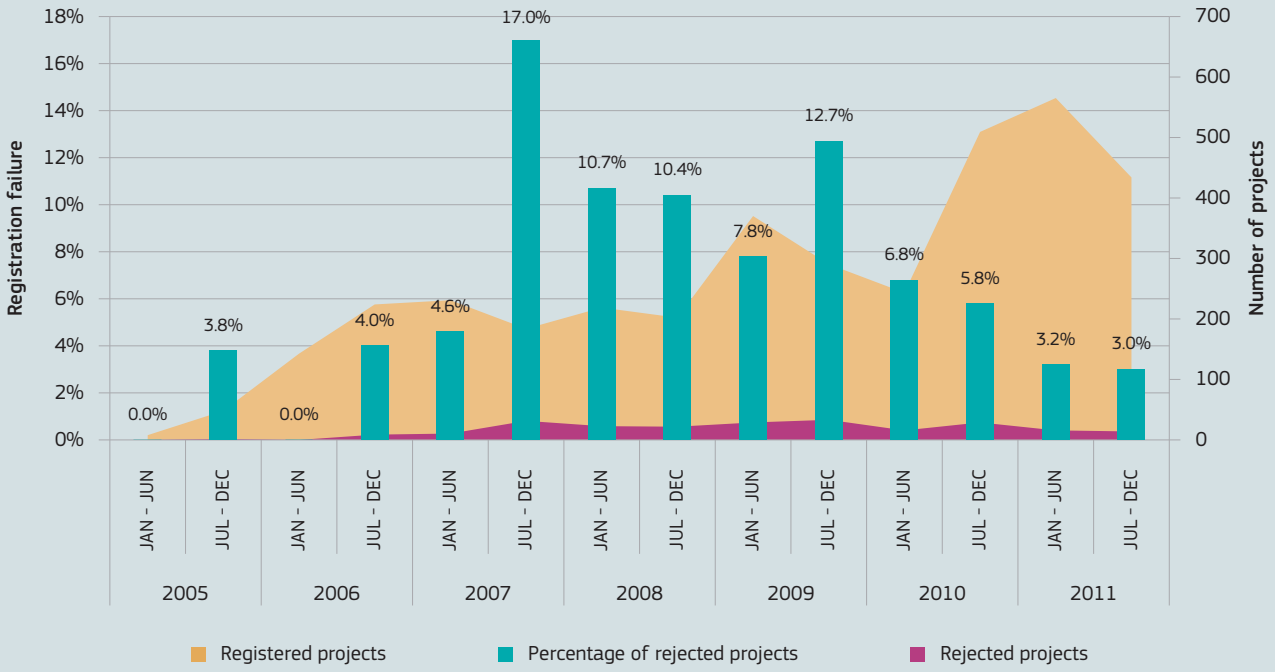
While initially, around 2004, little or no concerns were raised with regard to DOEs' performance,[456] in the course

454 See specifically Lund (2012), which discusses the interaction of public and private actors in the CDM, highlighting the role of other private actors, such as project developers and intermediaries, in shaping the current face of the CDM.

455 Personal communication by Pedro Barata, dated June 13, 2012.

456 Streck (2004), for example, discussed the role of DOEs without criticising it and the potential for systemic flaws in DOEs' assessments.

Figure 22. Development of rejection rates and registered versus rejected projects



Source: World Bank (2012).

of the first 'take-off' in registrations from 2007 some started questioning the quality of the surveillance and the impartiality of the DOEs. Most prominent are the reports commissioned by the NGOs International Rivers[457] and World Wildlife Fund (WWF) in 2007, in which a full range of criticisms with respect to additionality, sustainable development benefits and the questionable performance of DOEs was presented.

While the reports of those two groups may be considered the most prominent, there were also other groups that were dissatisfied with the developments in project assessment. At that time, the concerns related to three aspects, which today still constitute the core of the debate surrounding the modalities for the independent third-party assessment of projects:

Impartiality of the assessment. As the DOE is contracted by the developer, there is inherent potential for conflict of interest. The concern was that DOEs would be inclined to be more loyal to the direct principal – the project proponent client – than to the EB.

Effectiveness of the assessment. Both the EB and civil society stakeholder groups attested that DOEs submitted applications that did not always comply with the CDM requirements. Project documentation was alleged to be incomplete and the assessment itself flawed and only satisfying the needs of the project proponent.

Efficiency of the assessment. At the same time, there were in the business community and amongst project developers growing concerns about the high transaction costs induced by validation, the long time lag until registration and the subjectivity of the regulatory decision-making process.

While the criticism of the CDM grew increasingly louder, simultaneously the EB was countering this by tightening the scrutiny of project submissions and providing improved guidance to the DOEs, aiming to enhance the **effectiveness of the project assessments**.

The introduction of the contribution to the share of proceeds from CER issuances in early 2007 and the increased volumes of CERs issued made the CDM self-financing. This facilitated the extension of the support structure to assist with scrutinising the project applications to ensure the quality of the assessments, inter alia, through the AP and the RIT.[458] The RIT, whose main responsibility is to help with

457 Haya (2007).

458 Stehr (2008) and Lund (2010) give a comprehensive account of the actions undertaken.

assessing requests for registration, had grown to 34 members by 2008. The increased level of control led to a corresponding increase in the number of project rejections (from the year 2007, see Figure 22). Additionally, in that time, the share of the projects reviewed by the EB rose sharply.

In parallel with the increased 'back-end' scrutiny applied by the EB in assessing requests for registration, the employment of technical staff at the secretariat enabled the regulator to simultaneously address quality concerns at the 'front end' by tightening and specifying the CDM rule framework. This process was typically characterised by the EB introducing an increasingly complex set of new rules, aiming to reject 'bad-quality' project cases with more certainty and to provide further definition of the, initially very vague, registration criteria and acceptable means of proof of compliance with the CDM requirements.[459] The CDM has thus evolved from its early often claim-based applications to today's complex regulatory framework and largely documentary evidence based validations.

In this process of rule-making, the adoption of the VVM in November 2008[460] constituted a landmark, to the extent that a standard was adopted to ensure the quality of the validation and verification assessments. This step had been long requested by DOEs and project developers. The adoption of the VVM was preceded by the establishment of a voluntary industry standard for DOEs as early as 2003.[461]

Besides the EB tightening its control over the assessment of project cases, on a more structural level the EB/secretariat also enhanced their quality control of the assessment entities themselves (the DOEs), as documented by, for example, the increasing stringency of the accreditation rules and the introduction of spot-checks on and sanctions for DOEs. A landmark in this respect was the first temporary suspension of a DOE (the auditing firm DNV) in December 2008.[462] Having first been proposed in 2007, in 2010 an early warning system based on key performance indicators was adopted, to trigger spot-checks on and suspensions of DOEs. Information on DOEs' performance is now regularly published, albeit with a time lag of around six months.

This first phase of the CDM can thus be characterised as a **regulatory build-up** phase, aiming at improving the accuracy of the results of the third-party assessor (i.e. the effectiveness of the project assessment). As knowledge on relevant general and technology-specific issues in relation to project assessment could only be gained via practical experience, the first phase can also be characterised by a constant learning process[463] of both the EB and the DOEs, which led to an increasingly complete overview of the issues and a related ad hoc regulatory patch-up to achieve completeness in the treatment of such issues, resulting in a complex multi-level framework of rules and guidance.

Quality, however, seems to have its price: the increased scrutiny and complexity of the rules applied to both the accreditation and project registration processes soon translated into increased workloads, processing times and transaction costs for all entities involved. Based on the understanding of relevant issues gained in the build-up phase, CDM regulation therefore moved on to a second phase, characterised by **streamlining of processes and stakeholder involvement** in order to improve the **efficiency of project assessment**.[464]

Closer collaboration between DOEs and the secretariat in the course of the development of the VVM was not sufficient to prevent a backlog in the processing of project applications. The flipside of the increased scrutiny of applications by the EB was the increased workload for EB staff. The backlog of work was an unavoidable drawback of increasing the EB's ownership of project assessment. While the secretariat followed recommendations made in the McKinsey review[465] and, at the beginning of 2009, implemented a system of a tiered completeness checks[466] to refer the poor-quality project submissions back to the DOEs, the application processing time rose to over three months.[467] The backlog was cleared only through the deployment of a temporary workforce ahead of the Copenhagen conference in December

459 Landmarks in this process were, for example, the introduction of "Guidelines on the demonstration and assessment of prior consideration of the CDM" at EB 41 in August 2008, targeting already operational projects, and guidelines on the assessment of investment analysis and on the objective demonstration of barriers in May 2008 and October 2009, respectively.

460 The VVM has been continuously improved since then and has now been consolidated with other rules into the VVS.

461 This initiative was a joint effort led by IETA, the auditing firm DNV and the World Bank Prototype Carbon Fund , which produced a guideline with the same name (VVM) released in 2006 in its second revision. However, it did not contain absolute verification requirements but rather best practices and principles for auditing. This fact was critically commented on by, for example, Schneider (2007).

462 Szabo (2008). DNV lost its accreditation temporarily after non-conformities discovered during a spot-check could not be rectified.

463 For example, one of the most recent areas of learning and regulation pertains to the treatment of project design changes observed as registered projects proceeded to verification.

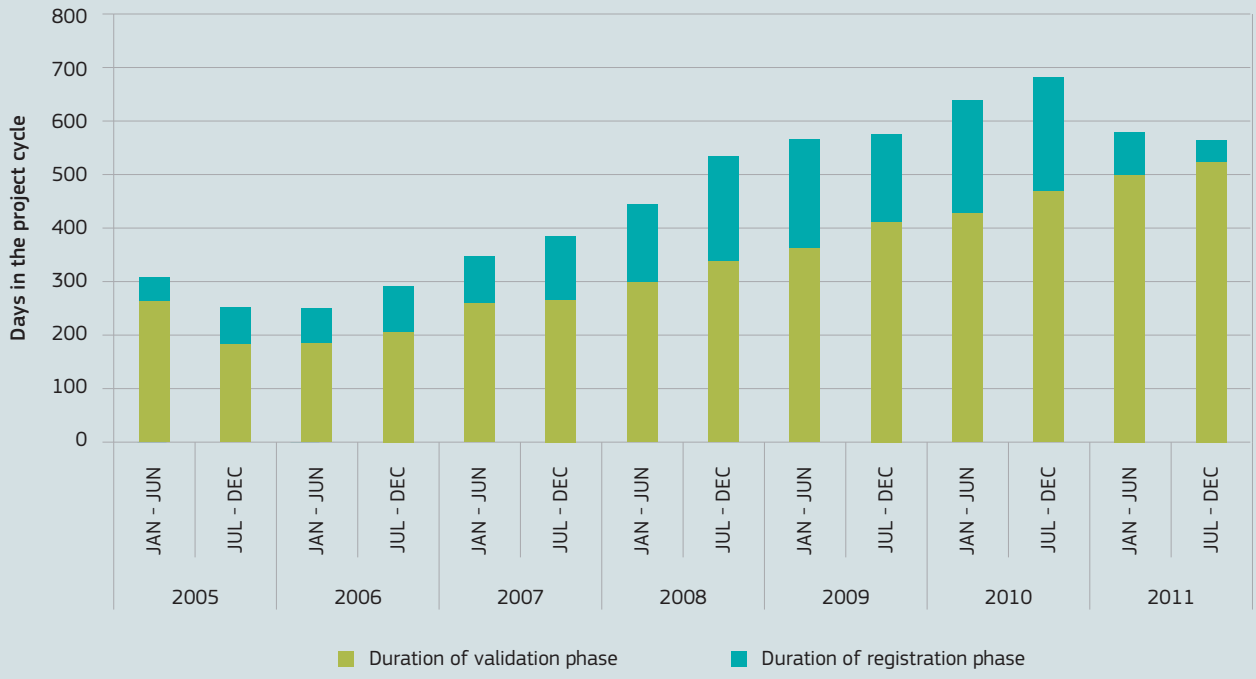
464 Similar learning-by-doing and consolidation phases have been undergone by other standards, such as the consolidation of the Voluntary Emission Reduction (VER) standard 'Gold Standard' into its version 2, or the harmonisation of allocation rules in the second phase of the EU ETS.

465 McKinsey and Company (2009).

466 The entry into force of the procedure for requests for registration (EB 54, May 2010) constituted another landmark.

467 Project developers take account of processing times in forecasting CER deliveries. The PD-Forum bemoaned, in 2010, a steep increase in processing times since the beginning of 2009 (PD-Forum, 2010a).

Figure 23. Timeline for project approval, according to approval date



Source: World Bank (2012)

2010. The introduction of the retroactive assignment of the effective registration date further decreased the pressure on the EB with respect to processing times (Figure 23).

It was not only the regulator that felt the impact of more-intensive scrutiny on its resources. Induced by tougher and more detailed requirements for applications, the timeline for validations by DOEs continued to rise, in conjunction with the tiered screening checks of project applications (completeness check and information and reporting check) introduced by the EB in 2010.

The situation was becoming unsatisfactory for all parties concerned, and as far back as in 2008 the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol was discussing various options for addressing the growing concerns.[468] At COP 14 in Poznan in December 2008 complaints about the inefficiencies in the approval procedure, the long lead-times and the unpredictable regulatory process were the dominating themes. The EB was accused of merely duplicated the checks performed by the DOEs.

Project developers were worried about ever-increasing costs, a market development that had not been anticipated. While, in the early phase, some DOEs were allegedly offering their services at unsustainably low prices, prices rose at the beginning of 2008.[469] The introduction of the VVM in 2009 not only resulted in clearer guidance but had the effect of boosting prices for auditing services[470] and had an impact on the time taken to finalise validations. Project proponents and developers started to complain about the rising fees[471] and increased transaction costs that made many smaller projects[472] commercially unattractive. The price of audits has not decreased since and the market remains characterised by a quasi-oligopoly of seasoned DOEs and little appetite for developers to go with the less experienced DOEs. Also, the temporary suspensions of DNV in December 2008 and SGSin September 2009 had a severe impact on the market and caused considerable financial damage to the clients of the affected DOEs, whose projects could not

468 See document FCCC/TP/2008/2, starting from p.7.

469 Dornau (2009) attributed this to a market consolidation that led to more realistic prices, as well as to the increased reporting requirements. It is also true that the market surge in 2008 led to a clear discrepancy between the limited capacity of DOEs and increasing demand for their services.

470 Tüv Süd's Javier Castro clarifed: "Changes to the system mean changes to the workload, which means changes to the fees" (Carbon Finance online, January 28, 2009).

471 World Bank (2009) disclosed data from its own portfolio that evidenced the rising cost of auditing services.

472 Traditionally, a project worth less than 20,000 CERs per year is perceived by project developers as being at the brink of being unattractive.

proceed to registration during the respective suspension periods of several months.

In reaction to the increasing concerns about the efficiency of the mechanism, the recent 'streamlining/ reform' phase of CDM regulation focuses on the monitoring of timelines (such as the secretariat setting itself timelines for the completion of steps and providing public account of its compliance with them), efforts to revise and streamline existing procedures and methodologies, and the increasing use of public consultation with stakeholders to inform the rule-making process. Examples include the publication of a hierarchy of the regulatory documents (guidelines, methodologies, etc.) to clarify which documents among the 'rank growth' of regulations take precedence over others, and the recent development of the CDM PS and VVS, which aim at bundling and referencing all existing regulations in one format.

Moreover, the regulator has begun to explore new structural and methodological approaches which promise efficiency gains and a greater regional outreach of the CDM to underrepresented countries, notably the PoA procedures and standards, and recent initiatives for the ex ante standardisation of certain project-specific parameters to reduce the workload for individual project activities. Under the PoA concept, for the first time a major focus was put by the regulator on holding DOEs liable for wrongly including activities in PoAs. It is a much publicised matter of fact that, over a long period of time, these, initially vaguely worded, liability provisions have deterred DOEs from accepting mandates for validating PoAs, owing to the associated potentially high financial risk.

Both the regulatory build-up and streamlining phases of the CDM have overlaped with a continuing build-up of new regulations to further increase the stringency of the mechanism, which is, in turn,being increasingly informed by considerations of efficiency and practical feasibility. An example is the ongoing consultations between the secretariat and DOEs on how to operationalise the liability of DOEs for excess issuance of CERs in the case of significant deficiencies in validation and verification reports.

Below is a summary of the historical achievements[473] in terms of the efficiency and effectiveness of project assessment by DOEs at the time of launching the CDM Policy Dialogue.

Regarding the **efficiency of the assessment**, despite recognition of the improvements in the efficiency of the project registration stage, the general dissatisfaction with DOEs' performance in terms of costs and the duration of their assessments persists. There seems to be a trade-off between the stringency of quality requirements and transaction costs. However, it would be too narrow to attribute inefficiencies only to an increase in stringency and controls: many relevant CDM requirements continue to be vaguely defined and in parts inconsistent, require interpretation and cannot be applied correctly and efficiently without prior experience with similar CDM project activities. In addition, frequent rules changes (sometimes introduced retroactively) have been quoted as a major cause of inefficiencies.

Regarding the **effectiveness of the assessment**, it is likely that the pressure on DOEs to deliver near-perfect applications has increased the share of 'first-time-right' submissions of projects for registration. CDM Pipeline data[474] can be interpreted as indicating that almost 30% of projects that enter the project cycle are sorted out by the DOEs. While it is not possible to adduce the reasons, this number suggests that DOEs effectively reject many bad projects. It has also to be borne in mind that project developers reject projects at an early stage, with there traditionally being around nine discarded projects for every one brought to validation. On the other hand, despite the great efforts invested in the validation of individual projects, concerns of market observers about the truthfulness of validation outcomes persist, leading to the question of where the remaining weaknesses in the system are that may prevent greater efforts from leading to greater certainty.

To summarise in a simplified manner the **positions of the CDM actors**, which have been shaped by the history of the CDM, DOEs see their performance as being hindered by the high level of stringency and complexity of the EB's requirements. The EB does not trust the DOEs to live up to the requirements of the CDM. Project developers complain about the lack of regulatory stability and predictability of the assessments conducted by both the DOEs and the EB. While NGOs strongly question the truthfulness of validation results.

Against this background, stakeholder inputs to the CDM Policy Dialogue on the appropriateness of the current validation/verification model and practices are presented in section 10.2.

473 Valuable analysis of CDM lessons learned is also available in EPRI (2011b and 2011d).

474 Data from UNEP Risoe.

10.2 Inputs from stakeholders on the appropriateness of the current validation/verification model

Views of stakeholders on the performance of DOEs have been obtained from the following sources:

- Submissions received in response to an open call for input on the scope of the CDM Policy Dialogue, from October 2011 to January 2012, and the related synthesis report prepared by the secretariat. A total of 59 submissions were received, of which more than 20 were found to include content regarding the performance of DOEs.

- Written reports on individual stakeholder engagement meetings, from March to May 2012,[475] and the related summary report prepared by the High-Level Panel.

- Reponses to specific questionnaires given to PPs, DOEs and DNAs, which included questions regarding the performance of DOEs; however, relevant input was also derived from other sections of the questionnaires. The number of responses received was: three from PPs/project developers or their business associations; two from DOE staff; nine from DNAs (of which one from an Annex I DNA and four from LDC DNAs); and none from the public. All questionnaires[476] asked about the adequacy of or concerns about the current process for validation and verification and the quality of the communication between the various stakeholders in the CDM process. PPs[477] and DOEs were also consulted on the idea of DOEs specialising within one country. PPs were additionally consulted on the effectiveness and efficiency of and possible issues of conflict of interest in the validation/verification process, as well as on the potential liability of DOEs and PPs. DOEs, on the other hand, were asked their opinion on the assessment of DOEs' performance and on barriers to accreditation in developing countries.

- A telephone interview with Werner Betzenbichler (DIA), on June 19, 2012.

- Selected other sources (e.g. stakeholder inputs to other UNFCCC consultation processes, documents from UNFCCC panels and scientific papers).

In this section, comments on CDM stakeholder consultation with implications for the validation/verification process or on the potential duplication of tasks between validation and verification have not been considered, as they are treated in the chapters on CDM stakeholder consultations and the CDM project cycle, respectively. However, the information in this section, especially regarding the existing workload for validations/verifications, should inform recommendations made in other chapters of this report. Summary information from the summary documents prepared by the secretariat and the High-Level Panel has been considered to the extent that it was specific enough to be clear.

Based on an evaluation of the above sources, stakeholder inputs on concerns and suggested improvements regarding the performance of DOEs can be classified into:

1. Concerns about the efficiency of the mechanism. Suggested improvements mainly propose changes within the existing model of third-party validation/verification.

2. Related to the efficiency of the mechanism, concerns about access to local validation/verification capacity, in particular in the LDCs.

3. Concerns about the effectiveness of the mechanism, related, for example, to concerns about the impartiality of DOEs. To address these concerns, some stakeholders suggested structural changes to the current model of third-party verification.

Based on the above classification, the stakeholder inputs on the performance of DOEs have been summarised in sections 10.2.1–10.2.3. Options for the improvement of DOEs' performance are then presented in more detail and discussed in section Discussion of options for the improvement.

475 Short summaries of informal stakeholder meetings, from March to June 2012.

476 Apart from the responses to the general questionnaire given to the public, which did not refer to DOEs, no responses were received from the public.

477 In the following, the stakeholder category "PPs" is used to refer to both project participants and CDM project developers.

10.2.1 Inputs on the efficiency of the mechanism

Concerns

The majority of the comments received from stakeholders (DOEs, PPs and research) are concerned with the efficiency of the mechanism. High transaction costs and the time required to complete the CDM process remain a major concern and are seen as a barrier, especially for the implementation of small-scale projects and projects in the LDCs. According to input from the Thai DNA, the overall duration of the CDM process is 2–3 years. The large workload of DOEs in relation to fees is indicated by the fact that, according to a submission from DIA in November 2011, only 45% of DOEs reported making a profit. Although many stakeholders acknowledge that improvements have already been achieved through recent efforts to streamline rules and processes and the introduction of new stakeholder communication procedures, according to stakeholders there still remains much room for improvement.

Stakeholders attribute persistent inefficiencies to a range of causes, including:

- The continuing complexity and lack of clarity of the CDM rules.
- The lack of training of DOEs on the interpretation of the CDM rules.
- The lack of possibility for PPs to obtain clarifications about the interpretation of the CDM rules directly from the secretariat (clarifications can only be provided via DOEs).
- A lack of risk-based approaches and consideration of materiality (i.e. minor issues may receive the same level of attention as major ones, with incommensurate consequences for the timeline and workload). According to PPs, this also restricts the DOEs' ability to make use of their professional judgement, having to refer to the regulator for guidance even on small issues.
- The high frequency of rule changes, sometimes retroactively, leading to a duplication of work.
- The secretariat allegedly duplicating checks already conducted by DOEs, and currently unclear definitions of the roles of the DOEs versus the secretariat and the EB.
- An alleged lack of understanding by the rule-maker of the practical feasibility of the rules and the impacts of the rules made on the ground.
- The lack of local and sectoral technical knowledge of the entities (DOEs, the secretariat and the EB) involved in the assessment process, which increases the need for PPs to compile third-party documentation to prove local/technical information and, in the opinion of NGOs, also opens up room for 'gaming' by PPs.
- According to DOEs, inefficiencies in the organisation of accreditation-related checks conducted by the secretariat's assessment teams, leading to DOE staff resources being permanently bound to accreditation matters to an extent that significantly exceeds the resource requirement under other certification schemes (such as EU ETS verification).

Suggestions for improvement

Options for making improvements suggested by stakeholders are mostly practical recommendations on how to address the above issues while maintaining the existing procedures, such as through training, further clarification of rules, further improvements in communication with stakeholders and possibilities for direct clarification, and streamlining the accreditation-related checks of DOEs. Several stakeholders expect the development of SBLs and positive lists ('white lists') to play a key role in bringing down the overall resource requirement for PPs and DOEs. On a more fundamental level, stakeholders recommend an evaluation and clearer definition of the work-sharing between the secretariat and DOEs, as well as calling for the introduction of risk-based approaches and considerations of materiality in order to avoid a duplication of work between entities and to give DOEs greater leeway to apply their professional judgement when making project-related decisions.

10.2.2 Inputs on access to local validation/verification capacity

Concerns

This concern is raised mainly by DNAs, who are calling for more local DOE capacity. Both the local presence and local knowledge of DOE staff are seen as important factors in reducing the transaction costs of validations/verifications, which are quoted as a major barrier to the implementation of small-scale projects and projects in the LDCs in general.

Suggestions for improvement

To address this, some DNAs are calling for the establishment of DOEs that specialise in providing their services to one specific country.

10.2.3 Inputs on the effectiveness of the mechanism

Concerns

NGOs in particular continue to be seriously concerned about the effectiveness of the mechanism. Concerns encompass:

- Generic concerns about the impartiality of DOEs, owing to the fact that they are being paid by PPs.
- Serious concerns about the effectiveness of validation. Quoting, for example, interviews with anonymous developers or specific cases, NGOs complain about superficial work and the "overworked" status or lack of technical knowledge of DOEs, and accuse PPs of systematic gaming (e.g. faking documents). As some stakeholders may be referring to past studies (e.g. the submission from the University of Kwa-Zulu Natal referring to a 2009 report by Sovacool and Brown), it is not clear to what extent these concerns may already have been addressed by recent changes in the accreditation procedures. In this respect, recent inputs from PPs to the CDM Policy Dialogue reflect DOEs' strong awareness of the EB's performance assessment, which often leads to very conservative validation solutions in order to avoid any 'non-conformities' with regard to DOEs' performance.
- In spite of possible improvements to validation, stakeholders continue to raise serious concerns about possible gaming on the part of PPs, as evidenced by recent letters to the EB made public on the UNFCCC website.

Suggestions for improvement

As a key suggestion for addressing the alleged lack of impartiality on the part of DOEs, a number of NGOs requested that the EB, rather than PPs, should contract DOEs directly. Moreover, stakeholders suggested that assessors need more technological expertise in order to recognise cases of gaming. Other stakeholders again referred to 'positive lists' as a means of establishing the additionality of projects with greater plausibility in a objective and easily determinable way.

10.3 Discussion of options for the improvement of DOEs' performance

In this section, first an introduction to the fundamental problems in delegating surveillance is provided.

Options and recommendations for the improvement of DOEs' performance are then discussed in sections The efficiency of the mechanism to Effectiveness of the mechanism, on the basis of inputs from stakeholders, which are complemented by further suggestions.

While options relating to improving the practical efficiency of the mechanism are mostly common sense and therefore do not require in-depth discussion, a stronger focus is put, in sections 10.3.1 and Effectiveness of the mechanism, on the more fundamental issues of a possible direct contracting of DOEs by the EB and of holding DOEs liable for excess CER issuance, discussing the benefits and drawbacks of these options.

A summary of the recommendations is then provided in section Conclusions.

10.3.1 Fundamental problems in delegating surveillance

The validation model of the CDM is seen as an example of the delegation of power from international public agents to private agents, which, according to Green (2009), is a relatively recent research strand. Based on available research, factual analysis and comparison with other regulatory environments, this section introduces the fundamental benefits and challenges of delegation in the case of the CDM and sheds specific light on the relationship between the contracting of DOEs and the outcomes of DOEs' decisions.

Benefits of delegation

According to Green (2009), in the research in economics, delegation is described fundamentally in terms of a 'make-or-buy' calculus (i.e. whether it is more economically efficient to outsource a service).

The major reasons for delegation are cost reduction and problem-solving in a mutually beneficial fashion. More specifically, the following reasons have been mentioned to create benefits:[478] (i) lowering transaction costs; (ii) facilitating agreement; and (iii) creating credibility.

Those beneficial effects are mainly in the form of:[479]

- Specialisation gains, by employing an agent that is better equipped than the principal and able to improve its services;
- Efficiency gains, induced by the competitive market environment in which the agents may operate;
- Gains in the flexibility of staffing and resource planning, when the amount of work delegated is either not known or fluctuating;
- The prevention of a conflict in working culture, if the delegated tasks require a skill and mindset, which are fundamentally different from those of the principal.

As previously mentioned, the decision to delegate the surveillance (i.e. the validation of projects and the verification of emission reductions) to private actors was a pragmatic one.

With the secretariat being a pure and neutral support structure geared towards facilitating the international climate change negotiations and supporting the UNFCCC, it is understood that neither its staff nor the Parties were eager to jeopardise their working culture by not only engaging as regulator but also specialising in an increasingly complex and cross-cutting technical field. This reason may still hold today, although, in the course of the past 10 years, the secretariat – or more specifically the SDM department – has gained both exposure and experience in a quasi-regulatory role as well as a vast body of technical expertise.

Furthermore, it was simply not clear how many projects there would be under the CDM and history proves that the dynamics could not be anticipated. In the discussion of any future option for delegation, it is wise to expect the unexpected. Both a complete discontinuation of project developments from 2013 onwards or else an unlikely sudden jump in applications if a new and strong demand signal arises could be possible. It is important to keep in mind that the CDM is a market mechanism and that markets can be unpredictable.

While the benefits of delegation are clear, the concept presents a range of challenges related to the steering of delegated decision-making.

Challenges in the steering and control of delegated decision-making

As apparent from Figure 24, when delegating decisions the effectiveness of decision control is basically determined by the effectiveness of indirect steering via rules and is complemented by the direct monitoring/control of the results of the decisions.

From the above it is clear that rule-based steering forms the basis for influencing the desired outcome of decision-making by the entities to which such decision-making has been delegated. However, the influence of rule-based steering on the accuracy of the outcomes of delegated decisions is imperfect, owing to a range of challenges, namely divergence of preferences, asymmetric information[480] and the flexibility–clarity dilemma. The risk of undesired behaviour of DOEs is essentially caused by the co-action of these elements. These key challenges are addressed below, as is the matter of DOE contracting as a possible means of addressing divergence of interests (see stakeholder inputs presented in section Inputs from stakeholders).

Divergence of interests in delegation

The 'make-or-buy' calculus of gaining efficiency through delegation is somewhat colluded by a metering problem: without accurate metering of results, rewards will not correspond appropriately to delegated efforts where conflicts of interest exist. This creates an incentive for gaming. The individual would gain by exercising less effort with the hope that this behaviour will go undetected. The reward will be the same. Conflicts of interest therefore create a need for the monitoring of the results of delegation.

Regarding possible divergence of interests, stakeholders have voiced concerns about the impartiality of DOEs, suggesting that a DOE may be more loyal to its direct contractual principal (the PP) than to its overall principal (EB). However, economic considerations suggest a different root cause of divergence of interests, namely the tendency of DOEs to "shirk",[481] pursuing their own interests at the expense of adherence to the CDM standards, as DOEs are guided by the minimisation of costs. While this motivation does not mean that DOEs, in effect, exercise bad business

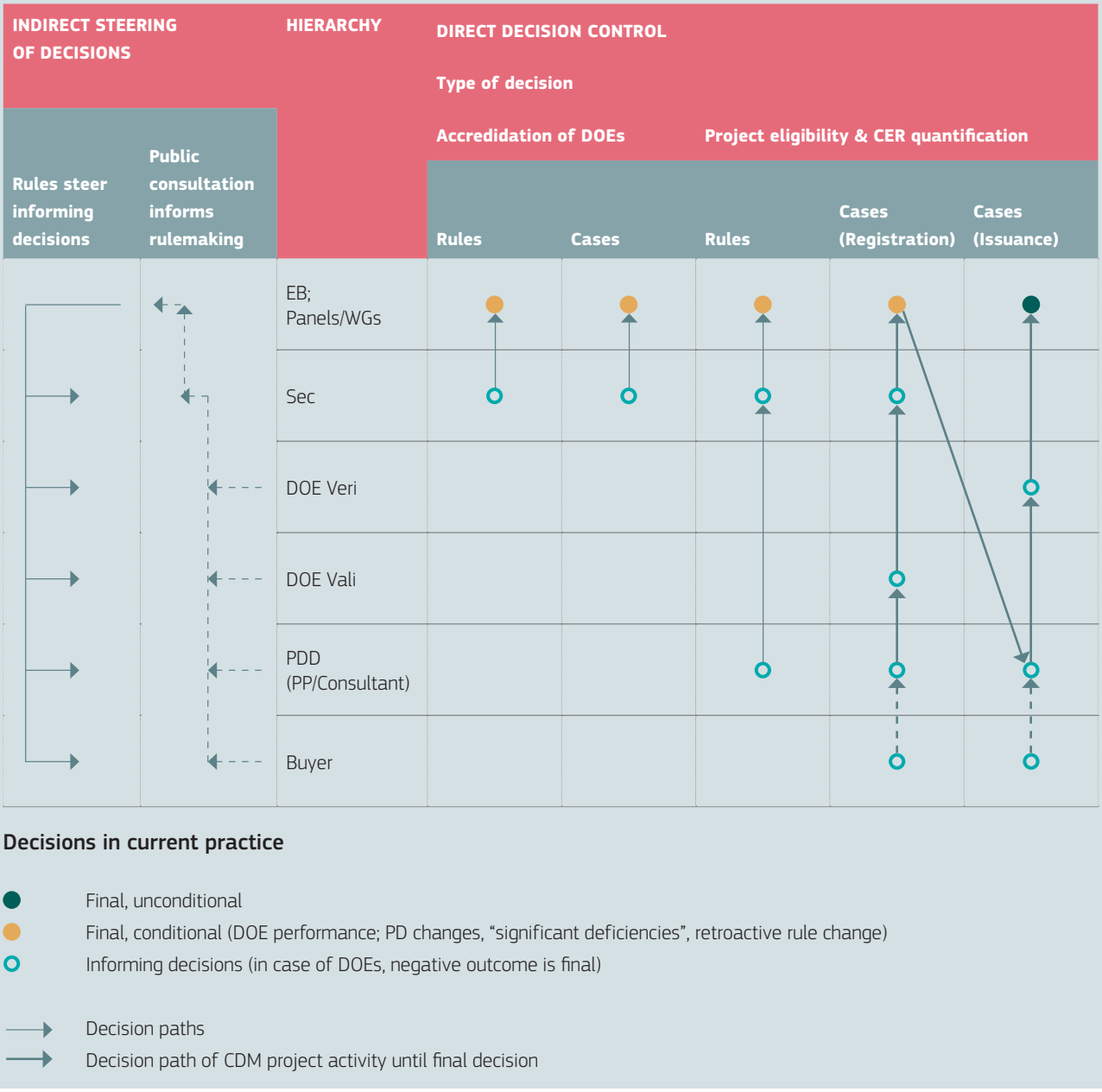
478 Green (2009) at p 26.

479 This list is drawn mainly from Lund (2012) and reasoning from common business practices.

480 See Lund (2010) for a more detailed discussion and references to principal-agent theory.

481 Green (2009) at p 25.

Figure 24. Steering and control of decision-making under the CDM. Source: First Climate.



practices, it nevertheless gives reason for concerns and warrants a sound monitoring of their performance.

Principals can usually mitigate conflicts of interest (between principals and agents) through the careful design of incentive contracts, but they can rarely control agents perfectly.[482]

This very fundamental finding constitutes the core of the concerns regarding the effectiveness of DOEs' services presented in the previous section. Both the contested impartiality of DOEs and the questioned quality of their auditing services are a reflection of the above-mentioned governance dilemma. The principal has two choices:[483] it can either apply a 'stick-style' approach with a command-and-control logic, or use a 'carrot-style' approach to align the interests of the agents with those of the principal. Of the two, the second approach is superior. However, often it proves impossible to align interests completely and therefore a balance must be struck between principal and agent, which may require iterative negotiations to find the optimal agreement.

482 Green (2009) provides a comprehensie introduction to this topic.

483 See Steer (2009).

In order to manage such divergence of interests, the delegation contract is assigned an important role. Within the CDM framework, this encompasses both the accreditation contract, project validation contracts and project assessment rules cross-referenced by these contracts. The contract may incentivise the agent to adhere to the principal's preferences by means of two approaches, presented here in their extremes:

Rule-based contract. The EB writes rules that tell the DOE exactly what to do and how standards are to be assessed and against which criteria. A real example in the context of the CDM would be the development of SBLs or the increasing specification of acceptable means of evidence in recent CDM guidelines. This option reduces the gains from delegation, in respect of the principal having to understand ex ante the task and subject of validation, almost to the extent that it is able to do the task itself. Furthermore, rules tend to fail to capture their real-life application appropriately, at the cost of requiring the regulator to provide clarifications. Also, the limited understanding of the rule-maker can lead to a divergence of the regulator's rules away from its original goals. In theory, if rules are clear and well researched ex ante by the regulator, they can make the application phase both efficient and effective.

Goal-based contract. The EB leaves it to the discretion of the agent to complete the task, as this is more efficient, and defines related assessment goals. This, however, requires the regulator to monitor more strictly the outcome of the individual project assessments (i.e. apply more control efforts ex post) (this was the initial approach taken under the CDM before rules were specified).

In the reality of the CDM today, in principle a hybrid form has been adopted, whereby surveillance is mostly rule-based, while for other parts, in the absence of clearly applicable rules, the interpretation of goals would be formulated via guidance. The VVS combines both goal- and rule-based elements, by providing both validation requirements and directions as to how requirements are to be validated[484] as well as reference to rules which interpret the goals on a concrete level with a view on their application to a project.[485] As will be demonstrated in section The efficiency of the mechanism, in practice DOEs still need to use their own interpretation in applying the VVS to concrete cases (e.g. which evidence to request from the PP).

The flexibility–clarity dilemma

However, there is an inherent dilemma connected to the decision to favour either rule-based or goal-based concepts: rule-based approaches will always have restricted applicability to specific cases; whereas goal-based approaches are less clear in their application but, on the other hand, make the rules flexibly applicable to a large number of possible individual cases and project types.

Moreover, it should be noted that the CDM regulator has not always made a clear distinction between rule- and goal-based steering: the above distinction between rule-based and goal-based steering corresponds to a distinction known from administrative law (e.g. in Germany), namely between 'discretionary decisions', where decision-makers have some flexibility in their decision determining compliance with goals, and 'bound decisions', where there are clear rules for decision-makers as to what decision to take based on defined circumstances. While the pro of discretionary decisions is of course greater flexibility to cater to individual circumstances as opposed to the rigidity of bound decisions, the con is that discretionary decision-making is also more prone to subjectivity or misuse. In administrative structures this would be balanced by the right to appeal, whereby the recipient of the decision needs to be informed of the reasons for said decision and can challenge the decision, which is not currently the case under the CDM. Notably, the key areas of CDM decision-making (additionality and baselines) are inherently subjective, but although the current CDM appears to be much more rule- than goal-based, no clear guidelines exist as to whether the type of decision-making by DOEs is discretionary (e.g. can go beyond the rules) or bound to the exact wording of the rules.[486] With this in mind, recommendations could be made for the regulator to study administrative law systems, to learn from the approaches applied there, in order to enhance the clarity of the DOEs' mandate.

Information asymmetries in delegation

In general, monitoring may be done using 'police patrols' (spot-checks and reviews) and 'fire alarms' (performance rating), both of which are applied in the accreditation procedure. While the need for monitoring is greater for elements of

484 The VVS, like the preceding VVM, details for each validation requirement the means of validation and the reporting requirements to evidence compliance. See http://cdm.unfccc.int/Reference/Guidclarif/ssc/methSSC_stan01.pdf.

485 E.g. VVS, para. 8, with regard to additionality: goal = validation requirement referred to in decision 3/CMP.1, annex, paragraph 43, "a CDM project activity is additional if anthropogenic emissions of greenhouse gases by sources are reduced below those that would have occurred in the absence of the registered CDM project activity"; rule = "the DOE shall consider tools and guidelines provided by the Board to demonstrate the additionality of proposed project activities".

486 As an example, the VVS states that the DOE shall "consider" CDM rules and tools in its decision. Also, discussions between the secretariat and DOEs (e.g. DOEs' review of VVS and PS) show that the regulator is not always aware of legal language conventions familiar to PPs and DOEs from other legal environments (such as "shall" versus "may").

goal-based contracts, the principal may also want to monitor the performance of elements of rule-based contracts.

However, the dilemma with monitoring is that, in order to correctly monitor the accuracy of delegated decisions, the regulator itself needs to possess the technical capacity to assess the accuracy of delegated decisions.

Also, on the users' side, it becomes clear that rules can only be correctly and efficiently followed if all users (DOEs and PPs) share at the same time the same knowledge about applicable rules and their interpretation. In the CDM environment, this is frequently not the case. The EB publishes the reasons for its decisions and the rationales for new regulatory documents only to a very limited extent. Reasons for project rejections are not yet published consistently, and decisions regarding the acceptability of project design changes determined at verification are not made public at all. In contrast to in other regulatory processes, such as EU legislation, the EB does not publish preambles to the regulations which it releases. In other legal environments preambles have a key function in revealing the reasons for making certain rules and thereby ensuring the correct understanding and interpretation of laws, thus mitigating the flexibility–clarity dilemma of rule-making. Relevant clarifications from the EB and its working groups, which have often had a highly significant impact on the interpretation of rules, can be located only through intensive research and thus are frequently unknown to DOEs and PPs.

Moreover, information asymmetries may exist between DOEs and the EB on the one hand and PPs on the other if PPs are 'gaming'.[487] Potential gaming restricts the ability of the assessor to arrive at a correct conclusion. There are, however, a few options for dealing with information asymmetry. First and foremost, information asymmetry can be mitigated through transparency and public scrutiny. This, however, requires an interested public and procedures for engaging with the project under consideration. Experiences with global stakeholder consultation over the past few years show a mixed picture. While outside of global stakeholder consultation serious unsolicited letters with detailed argumentation were addressed to the EB, the quality and seriousness of comments provided within the framework of global stakeholder consultation did not always help to understand if the project was attempting to game the rules. Also, possible investigations by the regulator can be hindered by the anonymity of comments.[488] Information asymmetry seems to be an issue that cannot be easily overcome. This causes issues for the regulator in achieving confidence in the quality of DOEs' work. Increased public scrutiny would help to mitigate this issue by, inter alia, increased exposure to NGOs and exchange of views and information with industry and the scientific community.

Secondly, the regulator may consider enhancing its own technological and local knowledge in order to apply its controls more efficiently and to reduce the potential for gaming (related discussion is provided in sections The efficiency of the mechanism and Access to local validation/verification capacity). To recognise cases of gaming would also require the regulator as well as DOEs to build up their own technological and local knowledge.

Thirdly, based on the VVS and other CDM guidelines, recent validation practices rely increasingly on cross-checks between information and with similar projects, and on requirements for the reliability of documents (e.g. independence). However, directions to DOEs are not very concrete in this regard. For example, although the VVS states that DOEs shall conduct "independent background investigation if necessary", it does not prescribe, for example, a mandatory Google search for contradictory public information.[489] To compare this to the example of legal prosecution and defence, the input of documentary evidence for the validation is provided mainly by the defence (i.e. the PP). A comparison with the EU directive for the prevention of money laundering and its implementation in the banking sector shows that in high-risk cases more documentation is required and also requirements for the independent certification of the authenticity of documents apply. However, obviously the CDM operates in countries with an often much less document-based business culture than in the EU and exhibits a very different relationship of transaction cost to total (CER) financial value than financial transactions in the EU, both of which put a natural limit on the amount and quality of information that can be processed during validation. However, the regulator could study these examples to determine, for example, if in a risk-based approach the

487 The possibility of gaming, such as the alleged faking of documents, omission of information or lack of representativity of information, has been implied in unsolicited letters from NGOs to the EB (see e.g. http://cdm.unfccc.int/stakeholder/submissions/2012/0118_ccf_req.pdf, http://cdm.unfccc.int/stakeholder/submissions/2011/1102_cdmwatch_req.pdf, http://cdm.unfccc.int/stakeholder/submissions/2012/0111_int_rivers_req.pdf and http://cdm.unfccc.int/stakeholder/submissions/2011/1102_cdmwatch_req3.pdf) as well as in interview-based research reports (see e.g. Haya, 2009).

488 It has been very common for stakeholders to submit comments containing allegations which are not specific to any project. Some comments were copied for multiple and unrelated projects and thus appeared more politically motivated than reliable. On the other hand, the fact that NGOs are provided with documentary information from individual anonymous sources seems understandable, owing to possible concerns about pressure on individuals revealing unwelcome information, although this simultaneously hinders the investigation of the related allegations.

489 Compare with the CDM/VER Gold Standard, which includes a 'previous announcement' check to cross-check whether the project has been publicly announced to go ahead without the CDM/VER Gold Standard.

level of documentary requirements and cross-checks could depend on project size in terms of CERs issued.

Limitations on the influence of DOE contracting on the outcome of delegated decisions

From the above discussion of challenges it becomes clear that divergence of interests is not the only challenge that may possibly cause a divergence of the achieved results of delegation away from the desired results. The possible influence of who contracts DOEs on the desired outcome would therefore be diluted and superimposed by the influence of other challenges that limit the influence of rule-based steering (DOEs' focus on cost minimisation, the flexibility–clarity dilemma and information asymmetries).

Against this background, limitations on the influence of DOE contracting on the outcome of delegated decisions are discussed in more detail below. Broadening the analysis also to already existing means to aligh the interests of DOEs with CDM requirements, it will be shown that a direct relationship between a potential contracting-related loyalty conflict and an undesirable outcome is uncertain in itself, owing to existing counter-incentives and factors of alignment of interests which also determine actions and weaken the influence of potential loyalty conflicts. It will also be shown that other problematic factors (DOEs' focus on cost minimisation, the clarity–flexibility dilemma and information asymmetries) will continue to influence outcomes and cannot be changed by shifting the responsibliity for contracting DOEs to the secretariat.

Existing factors of alignment of interests

Many observers see a fundamental issue in the fact that the project proponent itself contracts the DOE, stating that this aggravates the divergence of interests. The DOE is incentivised to comply with the interests of the client, which acts as the principal in the service contract. It could well be that the interests of the two principals (the EB in its role as the principal that delegated powers) conflict and that at the same time the interests of the project proponent are prioritised over the EB's interests.

While this arrangement is potentially problematic, there is no detailed discussion provided in the literature as to: (i) how the interests of project proponents diverge from those of the EB: and (ii) how the loyalty of DOEs in relation to their accreditation contract compares to their relationship with the client. These two aspects are, however, a decisive factor in concluding that the modalities for contracting DOEs should be changed to make the secretariat the contracting party. In the case that the interests of the parties do not diverge and the DOE in fact adheres more to the accreditation contract than to the contract with the PP, there would be no gain from making the secretariat the contractor.

Regarding how the interests of project proponents diverge from those of the EB, the risk of not achieving a first-time-right application is an important variable for the project proponent, as it directly translates into costs, induced either by delays or non-admittance. It is therefore very much in the interest of the PP to comply with the rules, and the argument that PPs' interests systematically diverge from the EB's needs to be put into perspective. However, DOEs do not have the mandate to initiate investigation and it is up to the auditors to discover fraud within the limits of the scope of the validation (e.g. by applying cross-checks). The validator however cannot rule out fraud. The secretariat would face the same situation, even if it were to contract the DOEs directly.

It is also worth noting that the project type has to be taken into consideration. Not all project types are prone to non-compliance, and where additionality and baselines are determined by standardised approaches the required level of scrutiny may be lower. In those cases the argument of divergence of interests is limited to the extent that the interests of the EB are made clear (e.g. in the case of a positive list, the PP would be unlikely to try to game the eligibility criteria).

Regarding the DOEs' valuation of contracts, here too the picture is not so clear, as the DOEs accreditation contract has much greater value for the DOEs than an individual service contract with PPs. Under the DOEs' accreditation provisions, there is already an existing system of counter-incentives in place to correct for possible impartialities (e.g. rating of DOEs' performance, spot-checks and possible suspension; the accreditation requirement that DOEs must not charge a premium for positive validations, etc.). Moreover, history has proven that the DOEs operate in a sellers' market, where the accredited DOEs can choose their clients and the experience and capacity of a DOE is much more valuable to PPs than responsiveness. The DOEs can largely dictate their terms and conditions and waive any liabilities or any attempts of PPs to put pressure on them. The argument that a DOE would be incentivised to prioritise the client's interests over those of the EB thus seems questionable. DOEs are foremost interested in retaining a good performance rating, so as to prevent costly spot-checks or even a suspension, which would inflict serious costs pertaining to running contracts. Damages from delays created will be borne by the PP alone.

The currently debated idea of holding DOEs liable for excess issuance of CERs on the grounds of flawed validation would

even further enhance the level of counter-incentives in place to balance possible conflicts of interest. This concept has been vigorously debated recently between the EB, DOEs and other stakeholders, as there is a variety of problems associated with it (see section Effectiveness of the mechanism for the related discussion). Related discussion reflects the fact that there are factors outside of the DOEs' control which may also cause a divergence from desired outcomes.

Factors causing undesired assessment outcomes unrelated to the contracting of DOEs

As mentioned earlier, the DOE itself is guided by minimisation of costs. Therefore its interest is to provide a sound validation opinion with as little resources spent as possible. This behaviour is the main driver for divergent interests, much more important than the DOE's loyalty to the client. This conflict between the objective of the DOE (to finalise the validation quickly) and the EB (that the validation is done sufficiently thoroughly) will not be changed by making the secretariat contract DOEs.

Moreover, it is not possible to tell whether the gap between the principal's expectations and the agent's behaviour was intended by the DOE or simply an accident.[490] This creates doubts about the nature of flaws in submissions: were they on purpose or were the rules not sufficiently clear? Regarding the flexibility–clarity dilemma of CDM rules as well as the asymmetry of information between EB and DOEs, there is still a lack of collaboration between DOEs and the EB to be able to ensure a thorough alignment of the regulator's and DOEs' understanding of the CDM rules and goals. The rate of review is not necessarily proof of DOEs' bad performance, but rather shows the degree to which the rules could not be made clear to DOEs.[491] This is true specifically for the performance of rule-based elements against the background that: (i) despite or even due to very specific rules, their practical application may require interpretation; and, even more importantly (ii) the rules are in many instances under development or contradictory and require interpretation, which is often inconsistent, by the EB itself. This means that increased rates of review may also be caused by a change in the interpretation of the rules by the regulator[492] and not by the attempt of a DOE to sneak in a non-compliant project. In this context, it is essential to educate DOEs and PPs alike in order to prevent DOEs from having preferential information. The absence of this has the potential to hinder PPs checking the adequacy of DOEs' audit work and anticipating DOEs' requirements. The PP has a vital interest in complying with the CDM rules and therefore well-educated PPs add an additional layer of checks and balances. Different options for increasing collaboration can be envisaged, inter alia educating DOEs and PPs alike or accepting divergence in relation to non-material aspects, which are presented in more detail in section The efficiency of the mechanism.

Related to asymmetry of information between the regulator and PPs, a possible divergence of the regulator's goals from the rules, owing to imperfect rule-making by the regulator, is another reason for the imperfect steering of decisions, which is out of the control of DOEs. For example, the decision to implement a project may be motivated not only by carbon revenue but also by factors such as stable energy supply by captive power production. In these situations, the DOE may have fully complied with the rules, but the rules do not fully reflect the intention of the regulator, in this case with regard to determining additionality (see chapter A fundamental analysis of the concept of additionality). In this context, it should also be noted that the DOEs' possibilities for assessment are limited by the availability and accessibility of data.[493]

Moreover, asymmetry of information related to gaming by PPs may distort the judgement of both DOEs and the EB. Also, asymmetry of information between DOEs and the EB is inherent to the principle of delegation. As the validation of a project's CDM eligibility requires a high degree of specific technical knowledge as well as experience in the local context, the principal may have to accept a certain degree of information asymmetry between the EB and DOEs, as otherwise the performance monitoring efforts of the regulator will jeopardise the efficiency gains of delegation to specialised entities. While a sensible balance between the two can be found through risk-based approaches to performance monitoring (see section 10.3.2), it is likely that information asymmetries will remain, as they are inherent to the principle of delegation of services, and transaction costs put a natural limit on the depth of information that can be evaluated by DOEs.

In summary, there are three main fundamental root causes of the deficiencies giving rise to criticism: firstly, the fact that the interests of DOEs, PPs and the EB are not aligned per se; secondly, the basic flexibility–clarity dilemma of

490 Green (2009), p.45.

491 In an assessment of DOEs commissioned by the WWF, Schneider (2009) acknowledged the fact that "the rules regarding how DOEs should validate projects are not yet fully clear".

492 The most prominent case was the change in the interpretation of the the nature of feed-in tariffs in China, which led to a peak in reviews and rejections of Chinese wind and hydro projects in 2009 and 2010.

493 A prominent case was again the EB's review of supposed changes in feed-in tariffs in China in 2009/2010, in which the EB expected DOEs to quantify the supposed changes in feed-in tariffs, but this was not possible owing to a lack of insight into the motivations for the decision-making of the Chinese regulators. Also, it may be impossible for DOEs to establish transparency on, or a clear cause—effect relationship with regard to, the subjective reasons which PPs may have for implementing projects.

rule-based steering; and thirdly, the tendency for information asymmetry that colludes an assessment of DOEs' adherence to the CDM requirements.

While in principle divergent interests are a source for concern, there is a strong indication that the already implemented accountability system[494] and other existing counter-incentives already incentivise DOEs (and therefore indirectly also PPs) to submit compliant and complete applications. The accreditation contract is of special value to the DOEs and it would seem irrational to jeopardise the overall business basis just to please an individual customer. The possible further enhancement of counter-incentives (DOE liability) is discussed in section Effectiveness of the mechanism.

Also, direct contracting of DOEs by the EB would not serve to remove the DOEs' focus on cost minimisation, information asymmetries between DOEs and the EB on the one hand and the 'gaming' of PPs on the other hand, or the basic flexibility–clarity dilemma of CDM rule-making. While options for reducing the impact of these problems have already been introduced in this section and will be discussed further in section The efficiency of the mechanism, they are likely to continue to affect outcomes as they are problems inherent to delegation and assessment.

Therefore, the regulator will always need to monitor the outcomes of results to a certain extent, or otherwise correct for a deemed share of false results on a statistical basis.

Under these circumstances, the conclusion can be drawn that a fundamental and work-intensive change to the contractual agreements of DOEs (to being contracted by the secretariat) would have only a limited and uncertain influence on the overall accuracy of the outcomes of their assessments. To recommend any change to the contractual arrangements, the behaviour of DOEs would need to be better understood and a careful comparison of the benefits and challenges of both the current approach and the proposed change would need to be undertaken. Further discussion of the proposed option of the secretariat contracting DOEs is provided in section Effectiveness of the mechanism.

10.3.2 The efficiency of the mechanism

The discussion in this section corresponds mainly to the third aforementioned leading question: how could the current model of verification be improved to make it more efficient without reducing trust in the issuance of CERs? Is there currently a duplication of efforts in the system between the DOEs and the EB? Reference is also made to the discussion in the previous section (Fundamental problems in delegating surveillance) relating to more fundamental causes of inefficiencies (the flexibility–clarity dilemma and information asymmetries). Stakeholder inputs and factual analysis have suggested a range of options for addressing the efficiency-related concerns presented in section Inputs on the efficiency of the mechanism, which options are also partly relevant to the effectiveness of the mechanism.

Option 1: Training, clarification of rules and incorporation of practical feedback

As apparent from Figure 24, the outcomes of decision-making within the CDM process are basically steered indirectly via the regulatory framework, whereas the direct control applied by the secretariat/EB on DOEs' decisions has the function of correcting the outcomes where the rules were not clear or not correctly followed. This illustrates the immense significance of a clear understanding of the rules and their intended interpretation for the overall efficiency of the process. In response to the efficiency-related concerns identified in section Inputs on the efficiency of the mechanism, therefore, stakeholders have suggested various measures to address inefficiencies relating to the **clarity and practical usability** of the CDM rules:

- Train DOEs and PPs: the secretariat is recommended to provide a higher level of training in the application of guidelines. This is a high priority issue for various stakeholder groups.[495] It is especially important as the CDM rules continue to require a high degree of interpretation in order to make them applicable in practice.

- Further improve direct communication channels: while welcoming recent changes in the communication procedures, stakeholders suggest further improving the ad hoc communication channels, in particular allowing for PPs to seek clarification directly from the secretariat and establishing permanent personal points of contact for DOEs at the secretariat.

- Achieve efficiency through improved sharing of lessons learned: the suggestion is to create a transparent learning experience, namely by publishing the rationale for decisions, keeping an up-to-date list of FAQs and disseminating newsletters featuring top 10 mistakes. As key guidance is often provided in relation to individual

494 This includes the accreditation framework, with its DOE performance monitoring and spot-checks, as well as the checks in the registration phase.

495 In the run up to CMP 7 in Durban, IETA (2011) listed the training of DOEs among the top 10 priorities for 2012.

cases and therefore the clarifications are difficult to locate, it would also be important to establish a better dissemination and cross-referencing of such clarifications in methodologies, as well as a feedback-loop for improving the original text of the methodology, in the case that the request for clarification relates to significant deficiencies in the clarity of the methodology.

- Clarify written rules and goals: training is important as it can be made available to address persistent issues relating to the clarity of the rules more quickly than actual revisions to the rules can be made. However, in the long run, the wording of the rules and goals of the CDM should also be made clearer and more self-explanatory in order to reduce the need for interpretation. The lack of clarity relates, for example, to a lack of definitions of key terms, a lack of self-explanatory wording and inconsistencies between various rules within the framework. Furthermore, confusion frequently stems from the fact that the rules for SSC projects implicitly allow for a certain degree of simplification, but that the allowed level of simplification and standardisation is not explicitly communicated by the regulator (e.g. methodology AMS I.C. states that the PP shall use "one of the following baseline scenarios", but does not state whether the PP can just pick one or needs to demonstrate that it corresponds to the actual reality). In practice, there is frequent discussion with DOEs on what the acceptable level of simplification in methodologies for SSC projects is as compared with similar methodologies for large-scale projects, as it is often unclear whether a methodology for SSC projects is just written more vaguely or is actually intended to be a simplification as compared with a similar methodology for large-scale projects. Also, where the rules do not perfectly capture the reality, the signals sent by the regulator (via rules and goals) can be seen as confusingly divergent by PPs and DOEs. The lesson that can be learned from this is that allowed simplifications should always be made explicitly (i.e. the regulator needs to be transparent as to the intention of the rules). This also leads to the observation that, besides improving the clarity of the rules, the EB may also need to more clearly specify its front-end goals, as rules can never cater for all possible cases and this would also avoid divergent signals (e.g. the key paradigm of additionality, "project would not have happened without the CDM", is not explicitly spelled out by the rules, and the often politically led decision-making of the EB leaves PPs guessing at and testing the acceptable limits to the stringency of the EB's decisions). It needs to be kept in mind that unless rules are very case-specific (such as standardised baselines), they may always need to retain a certain degree of generalisation and therefore require goal-based interpretation in the individual case. In this regard, the publication of documents justifying new rules, similar to 'preambles' to laws, could help their proper interpretation.

- Incorporate user/expert feedback in order to enhance the practical applicability of the rules on the ground: stakeholders have criticised, within and outside of the CDM Policy Dialogue, the disconnect between rule-making at the level of the EB and the potential impacts and feasibility of those rules when applied on the ground. A recent example is the lack of a sufficient grace period to protect project applicants from formal changes in documentation relating to the the new CDM PS, which may lead to delays and the consequence that individual projects may miss the key EU ETS end-2012 eligibility deadline for CDM project registration. Also, at a stakeholder workshop in June 2011, the example of a small-scale methodology was quoted which contains efficiency requirements for vehicles which are not feasible in market reality. Another key issue is whether the wording of the rules is self-explanatory to users; this is frequently not the case, as evidenced, for example, by the many stakeholder comments on the recently introduced guidance on 'first of its kind'.

- Involve DOEs in the development of project rules: figure 3 shows that DOEs (i.e. the entities with the most experience of the practical requirements for validating and verifying rules) are not involved in the process of methodology development. This creates inefficiencies when DOEs are supposed to validate rules that contain requirements that cannot be validated in practice (e.g. due to lack of data). The voluntary standard, VCS, prevents such inefficiencies by requiring two DOEs to validate each newly proposed methodology. However, according to DOEs, methodology development is not an attractive service for them to provide, as the potentially long time required for it is hard to anticipate. Based on this factual analysis, an alternative option would be for the secretariat to hire DOE experts to review proposed new (or existing) methodologies from a practical validation/verification point of view and to conduct 'reality checks' on proposed new methodologies. Such an approach could raise concerns regarding the impartiality of DOEs that have been previously involved in checking a methodology; however, such concerns could be addressed by clearly defining the scope of the checks (e.g. practical constraints to data availability and means of validating the proposed methodology).

- Clarify validation requirements and allow DOEs to inform PPs about applicable rules and expected means

of validation: notably, stakeholders have remarked that validation requirements are unclear. This is confirmed by the observation that the VVS often does not provide details on the types and formats of information to be provided by PPs; as well as by the practical observation that, in according to many observers, it still comes as a surprise to many PPs that they need to provide documents to back up their claims during validation. In other words, in practice DOEs add another layer of interpretation and specification to the framework of the VVS. What DOEs expect from PPs regarding the means of validation is, often not clearly communicated to the PPs because of DOEs' concerns about violating the accreditation requirement that they must not provide consultancy to PPs (and also DOEs do not see this as within the scope of their paid services). In practice this can cause significant inefficiencies, with PPs trying to guess at the expectations of DOEs. It is therefore suggested here that the accreditation requirements should allow DOEs to provide PPs with clarifications as to the applicable rules, their interpretation of the rules and the expected means of validation.

Option 2: Risk-based approaches to quality control undertaken by the secretariat

Figure 3 demonstrates the various steps in the decision-making by various entities from the conception of, to the issuance of CERS to, a CDM project activity. This illustrates the importance of a clear definition of the assessment scopes of the various steps, in order to avoid ineffective duplication while still ensuring effective quality control. To ensure the quality control of DOEs' decisions in an efficient manner, stakeholders suggest risk-based approaches. Risk-based approaches to quality control are a common efficiency principle applied, for example, in due diligence schemes and related regulation (e.g. the EU anti money laundering directive).

- The concept of materiality: based on the lessons learned from other schemes, a key request of stakeholders is to introduce the concept of materiality into the VVS. Materiality relates to the fact that issues which have the potential to have a large impact on the volume of GHG emissions merit greater assessment efforts and quality control than issues which only have a potentially small impact on overall emission levels. The introduction of this concept into the VVS would allow DOEs to apply their professional judgement when considering immaterial issues, without needing to seek clarification from the secretariat. The materiality concept is well suited to the consideration of data-based CER quantification issues (e.g. minor deviations from the monitoring plan). An often-quoted example is the tiered materiality-based requirements in the EU ETS monitoring directive.

- Risk-based scope of project assessment: whether duplication of work occurs cannot be clearly assessed, owing to the lack of transparency of the work conducted by the secretariat, but it is likely. Based on past experience of what the key problems to expect for specific project types are, risk-based approaches to quality control could be introduced, thereby tailoring the scope of the quality control to the individual project dependent on the project type (key question: what issues can we expect for a specific project type? e.g. monitoring-related issues for landfill projects and additionality-related issues for waste heat recovery projects). Checks by the secretariat could then focus on specific topics depending on the project type.

- Statistically risk-based spot-checks on project populations: besides the risk-based considerations relating to the scope of project assessments, statistically risk-based approaches can also make increased use of spot-checks as opposed to a 100% coverage of the checking of project applications. Processes could evolve to include spotchecks on DOEs, but a reduction in project-by-project scrutiny. This option has been discussed since 2008;[496] eventually this year the procedures have started to go in this direction. The rating of DOEs' performance would prompt spot-checks on DOEs, while at the same time the assessment of project applications would be carried out using a risk-based approach (i.e. not every project would be checked). The purest form of this option would be that no projects would be checked, only the DOEs' ability to deliver compliant applications. However, a certain degree of monitoring of individual project cases may need to be maintained, owing to the various factors that may distort the accuracy of validation outcomes, as discussed in section 10.3.1, such as DOEs' focus on minimising costs, but also factors outside the control of DOEs. The EB has decided to introduce risk-based approaches to assessing project applications.[497] According to information from the secretariat, statistically risk-based approaches will soon be introduced into CDM project verifications.

Option 3: More regulatory stability

According to various stakeholders, the frequent ad hoc, and often retroactive, revision of the CDM regulatory

496 See e.g. Dornau (2009), who located considerable efficiency gains from such an arrangement.

497 See EB 61 agenda, annex 5: Assessment Report on Project Cycle Operations.

requirements significantly contributes to duplication of work and delays in the process. As pointed out by EPRI (2011a), the regulator seems to value the environmental integrity which prompts such changes above all other values, such as investment certainty for PPs. Stakeholders are calling for clearer grace periods in the case of all significant changes to requirements, in order to respect the investment made by stakeholders in the process in good faith previous to the rule changes. Analysis of other schemes, such as the EU ETS or the VCS, shows that regulators usually apply grace periods in the case of changes (e.g. the EU ETS did not retroactively correct its overallocation in the first phase). One could argue that the EU ETS has no other choice as it operates within a clear legal framework, whereas the CDM rules are only a quasi-legal construct to which PPs submit themselves on a voluntary basis. On the other hand, regulatory arbitrariness always creates distrust in a mechanism, whereas regulatory reliability is a prerequisite for PPs to accept the rules of a scheme. This is complicated by the fact that most CDM methodologies have been proposed by PPs and then just cross-checked by the EB. However, one could argue that the regulator shares part of the blame, as it has not researched its rules thoroughly enough in the first place. To reduce the frequency of rule changes, the regulator could, for example, strive to bundle such changes together at specific times of the year (e.g. a yearly revision) (see also related discussion in chapter Proposed reforms to the project cycle).

Option 4: Standardisation and normalisation (SBLs and 'white lists'/'positive lists')

Increased standardisation and normalisation (e.g. standardisation of baselines or emission factors, and 'white lists'/'positive lists') are proposed by many stakeholders as a means to reduce individual validation efforts. In this context, stakeholders point to the ground-breaking work of some DNAs (such as China), which support PPs by publishing standardised country-specific information (e.g. grid emission factor calculation). Challenges and limitations in relation to SBLs/positive lists include: the ex ante efforts required on the part of the secretariat and DNAs to compile the standardised information; according to some stakeholder inputs, the possible limitation of applicability to certain not-too-complex technologies; and concerns of NGOs about environmental integrity if the definition of baselines/positive lists is not stringent enough. However, other stakeholders argue that, due to the possibility of gaming data for individual projects, only a sectoral perspective can truly identify the potential for additional project activities. Regulatory development is tending to shift away from broad and technologically neutral rules towards tailor-made rules for specific contexts. Such a development has the potential to narrow the scope for audits to the few required input data, but also illustrates the limits to its applicability. Therefore, it cannot be the only solution for creating efficiency. There is also room for standardisation in other areas of the CDM process (e.g. increased digitisation of submissions from PPs to the EB).

Option 5: Removal of remaining barriers within accreditation framework to DOEs performing their functions efficiently

According to inputs from DOEs, currently a significant amount of resources is permanently bound by the work of assessment teams to check DOEs, following the various accreditation-related control procedures. In practice, this often leads to several of the secretariat's assessment teams working in parallel on a DOE, with hardly any period where no assessment team is working. DOEs have noted certain inconsistencies in the work of different assessment teams, and they also state that the criteria applicable to the work of the assessment teams are perceived by the DOEs as a 'black box'. It has also been mentioned that there is a barrier to DOEs voicing their concerns about ongoing assessments because they are concerned that this might negatively affect the outcome of the simultaneous work of other assessment teams. DOEs have therefore come up with various suggestions as to how to increase the efficiency of the control procedure for DOEs in line with established procedures of similar schemes, such as the EU ETS monitoring directive (e.g. concentrate annual checks at a pre-agreed specific period of the year).

10.3.3 Access to local validation/verification capacity

The discussion in this section mainly corresponds to the second aforementioned leading question: are there **regional imbalances** in relation to accredited DOEs? If so, what are the reasons for this? And what are the remedies?.

As presented in section Inputs on access to local validation/verification capacity stakeholders have quoted DOEs' lack of local presence and local knowledge as barriers to small-scale projects in general and to projects in developing countries/the LDCs in particular. As a remedy, some DNAs have been calling for country-specific DOEs or at least more "local DOE capacity". However, stakeholder inputs and factual analysis also suggest alternative options for increasing access to local knowledge on validations.

Option 1: Country-specific DOEs

DOEs acknowledge that local presence is an important prerequisite for reducing transaction costs. PPs/project developers are happy to work with established international DOEs. They point out that even if the DOE's head office is located in Europe or Japan, the requirement for local expertise is already covered by the accreditation requirements relating to composition or project validation teams. Both DOEs and PPs point to the fact that a country-specific DOE company can only be financially viable in a country with a sufficient number of CDM/VER projects, and therefore so far 'national' DOEs have emerged only in countries such as China or South Africa. DOEs also confirm that accreditation costs for setting up a country-specific office can be prohibitive.

Option 2: Increase local knowledge about validations

In addition, DOEs refer to certain existing barriers to the employment of local experts within the current accreditation procedures. Therefore, rather than setting up local country-specific DOEs, DOEs suggest improving the conditions for the employment of local experts on validations.

Besides this key recommendation, the following options (as already presented in section Fundamental problems in delegating surveillance on efficiency) would be conceivable to enhance local DOE capacity: the training of DOEs; the hiring of independent local experts by the secretariat to support all DOEs with their local knowledge; and the funding of local studies on the status of local technologies, markets and regulation as a knowledge base for all DOEs and PPs. Especially in the LDCs, where a lack of availability of independent documentation (studies, etc.) can be expected, the current strongly documentation-based validation approach may soon meet its limit and cause major delays.

Taking into account a stakeholder comment that pointed to possible remaining gaps or practical constraints in the accreditation requirements for local knowledge (e.g. that "financial experts should also have local knowledge"), the regulator could conduct more detailed analysis of such gaps to double check that they would be addressed by the above recommendations.

Lastly, the regulator and DNAs could explore synergies between the proposed options and the newly-established CDM loan scheme.

10.3.4 Effectiveness of the mechanism

The discussion in this section corresponds mainly to the first and second aforementioned leading questions: what constraints exist on the ability of DOEs to discharge their functions **effectively**? And are the accreditation procedures and requirements for DOEs appropriate? In response to the stakeholder concerns presented in section 10.2, two key options are discussed below.

Option 1: The contracting of DOEs undertaken by the secretariat

In this option, the validation and verification contract would occur between the DOE and the secretariat. This option aims at an alignment of interests (i.e. the 'carrot' approach, as discussed in section Fundamental problems in delegating surveillance). Cross reference is also made to the more fundamental discussion of limitations on the influence of DOE contracting in section Fundamental problems in delegating surveillance.

Benefits

By contracting DOEs directly, there is the promise, strongly voiced by political scientists and NGOs,[498] that the secretariat would be in a better position to control them. The discussion in section Fundamental problems in delegating surveillance, however, could not conclude that such a promise would always be followed up, as DOEs have limited incentive to prioritise their clients' interests over their accreditation contract (see discussion in section Fundamental problems in delegating surveillance). This would imply that a direct validation contract with the secretariat would not change the incentivisation of DOEs fundamentally.

However, there would be an advantage to contracting DOEs under the EB's terms and conditions; in that way the EB could deal with issues such as liability, defined default events, etc. in a more straightforward manner.

Drawbacks

The secretariat is, in principle, a legal entity and could enter into contracts with DOEs. This, however, would be contrary to the neutral stance of the secretariat. In addition, contracting would entail the selection of DOEs, which would require a fair, objective and transparent tendering process.

498 See the theoretical discussion in section Fundamental problems in delegating surveillance and the related literature, as well as the feedback received at CDM-PD stakeholder meetings.

No matter how objective the criteria, a more active stance may be needed to administer the contracting in a satisfactory manner.

While in the current setting the market establishes the price of auditing services and selects the most appropriate DOE, those elements would have to be accomplished by the secretariat. While a price clearance can be achieved (e.g. by means of tendering services or fixed pricing and rotational allocation), the selection of an appropriate DOE could be challenging. The secretariat would have to establish a framework with selection criteria and elaborate a set of rules for carrying out the process, as well as establishing the administrative capacity to apply and manage the process, thereby greatly increasing the funding required.

Speaking of funding raises the question of payment. There needs to be a way for the DOE to be paid and there is the issue of how such payment would be funded, arguably by the PP. This, however, raises the issue of counterparty risks and liabilities related to payment schedules.

In a hybrid governance arrangement such as the CDM, the private agents play an important role and the regulator depends on their collaboration. It is ultimately a voluntary decision of a DOE to enter into a validation contract or not. Hence the leeway of the secretariat to dictate their terms and conditions is limited to the extent that the DOEs feel comfortable to offer their services on the basis of a sustainable business practice. This practical aspect has the potential to limit the benefits that could be gained from this option, if the DOEs are reluctant to accept more strictly regulated business conditions than they face in the current arrangement.

Variants

- PP-side selection: the PP receives quotes from three DOEs and then submits them to the secretariat, which decides which one to contract. This variant could also work with the current PP–DOE service contract; however, there would be scope for circumventing the EB.
- Open tendering: the secretariat would issue standard tenders with standard terms and conditions and an itemised structure of service elements.

Appraisal

While there are clear benefits promised by this option in theory, it remains uncertain as to what extent such benefits would be realised in practice and whether they would be sufficient to counterbalance the array of drawbacks of the option. In any case, the secretariat would have to shoulder the burden of selecting the appropriate DOE, which would entail objective selection criteria, a selection framework that covers also the quality of the audits (timeliness, competence and capacity) and a more active stance of the secretariat. In all of the variants the funding needs for contracting the DOEs would arguably be greater than in the current setting, since the selection process would require additional capacity. Overall, although the idea may be appealing in theory, it would not be feasible in practice, owing to a whole array of practical constraints (for further information on constraints, see the thirty-fourth progress report of the CDM AP,[499] in which the clear recommendation is given to "keep the current system where the DOEs are directly hired by PPs and ensure that only competent and impartial DOEs are operating in the market", and a more detailed draft working paper of the AP on the impartiality of DOEs[500]). Also, this option would not address problems related to possible gaming by PPs. If the secretariat would still like to explore this option, this should be done only in a very limited environment, such as in one LDC in the context of a donor-funded research project, and only post-2012 so as not to tie up valuable resources until then.

Option 2: Liability for excess issuance ('significant deficiencies')

This option proposes holding DOEs accountable for excess CER issuance. It aims at aligning the interests of DOEs with the expectations of the regulator through tougher sanctions (i.e. the 'stick; approach, as discussed in section Fundamental problems in delegating surveillance), but also constitutes a corrective measure to reinstate the environmental integrity of the CDM ex post.

The lengthy and fierce debate around the option of holding DOEs accountable for excess issuance illustrates the complexity of the topic. In establishing respective procedures not only the 'how?' but also the 'how much?' has to be agreed upon. This gives raise to an array of questions as to what constitutes a significant deficiency; what qualifies as an excess issuance; what are the conditions under which a DOE may be held accountable; and what body should be enacted with the respective powers?

For a long time the topic of 'significant deficiencies' has been hovering over the CDM regulatory discussions. The CDM

499 Thirty-fourth progress report of the CDM AP, September 2009 (UNFCCC, 2009b), available at http://cdm.unfccc.int/EB/050/ap_034_rep.pdf.

500 Draft paper on impartiality of DOEs, threats to impartiality and potential safeguards thatcould be introduced as part of the CDM accreditation requirements, August 2009, not public (UNFCCC, 2009c),

M&P[501] lay down that a DOE that has caused excess issuance on the basis of "significant deficiencies" has to acquire and surrender an equivalent amount of CERs. However, until now no corresponding rules have been adopted by the Board. The CMP reminded the EB of this outstanding issue at CMP 6 in Cancun in 2010[502] and at CMP 7 in Durban in 2011 requested the EB to explore the issue and report back by CMP 8 in Doha[503] at the end of 2012. The reason behind the rule in the CDM M&P is twofold: firstly, the provision protects the environmental integrity of the CDM. Every CER that has been found to be issued in excess must be compensated by the cancellation of a valid CER. Secondly, the aim is to increase the incentive of DOEs to adhere to the requirements of the CDM. An array of questions as to how to strike a workable balance between potential liabilities and protecting environmental integrity has hindered the adoption of a guideline up until now. At EB 67, in a closed session with DOEs, the Board discussed possible options for the way forward. The EB will use the input gained to produce a report for the CMP by EB 69.

Benefits

One goal of this option is to achieve an enhanced alignment of DOEs' interests with the expectations of the regulator through sanctions. Given that other incentives are already in place within the accreditation framework, the procedure in the case of significant deficiencies would be complementary. Such an additional layer of accountability makes sense if the existing accreditation framework would be deemed insufficient to control the DOEs. However, there are no signs that the current procedures are not working appropriately (see section Fundamental problems in delegating surveillance).

Furthermore, the procedure provides for a safeguard mechanism aiming to protect the environmental integrity of the CDM. Provided that significant deficiencies can be detected and a DOE can in fact be held liable, the environmental integrity of the CDM is protected ex post through the cancellation of CERs, in addition to all the conservativeness already built into the system.

Drawbacks

DOEs are voluntarily participating in the CDM and as such they may decide not to offer auditing services. On these grounds the acceptance of the rules by the DOEs is indeed a necessity, since otherwise no DOE would be willing to provide the validation and issuance services on which the CDM relies.

The main concerns of DOEs with regard to liability lie in two fundamental issues: firstly, the fact that excess issuance has to be compensated for in the form of surrendered CERs brings about an exposure that cannot be quantified. The value of the liability is in nominal terms and based on fluctuating CER prices. Secondly, the potential liabilities that could result from a validation contract are not commensurate. While a validation contract is worth in the range of 30 to 75 thousand euro, the potential damage could easily surmount 250 to 500 thousand euro.[504]

Variants

The following variants to the option are being discussed in principle:[505]

- Liability is fully borne by the DOE but complemented by a private insurance facility. This approach depends on the insurability of the risk. However, there is an array of issues, inter alia the small volume of the insurance business, the variable price of CERs and the non-stochastic occurrence of significant deficiencies.
- Limited liability of DOEs by means of a CER fund operated by the CDM. The fund would draw on the share of proceeds from issued CERs to establish a pool of CERs from which to draw CERs for cancellation of excess issuances.
  - As a subvariant, the fund could try to hold DOEs or PPs accountable for negligence or malfeasance and seek to cover the damage incurred by having the CERs cancelled. This could be done with standard legal processes.
  - The liability of DOEs could also be waived entirely from the point of registration onward. Significant deficiencies would instead lead to the suspension of DOEs' accreditation and penalties upon re-accreditation.

Appraisal

Given that a discussion is under way, there is merit in considering the consolidated input that represents years of

501 See the annex to decision 3/CMP.1, paragraphs 22—24.

502 In decision 3/CMP.6, paragraphs 25 and 26, the EB is requested to adopt a procedure while also being granted the right to amend the original paragraphs of the CDM M&P.

503 See decision 8/CMP.7, paragraph 13.

504 Assuming e.g. a project found to be non-additional on the basis of evidence witheld by the PP, with an annual emission reduction potential of 75,000 tonnes of carbon dioxide equivalent and a CER price in the range of 3 to 7 euro.

505 E.g. during the Integrated Workshop in August 2011 in Bonn.

negotiations between the Board and DOEs. However, the combination of the two aims – protecting the environmental integrity of the CDM and establishing a complementary layer of accountability – constitutes a serious obstacle to finding a mutually acceptable solution. In this case it might prove worthwhile to decouple the twofold ambition of the guideline on significant deficiencies and seek a solution for each of the goals individually: one process for ensuring integrity in the case of excess issuance and another process to increase the incentive for DOEs to comply with the expectations of the regulator.

10.4 Conclusions

In summary, regarding the improvement of the **efficiency of the mechanism**, stakeholder inputs to the CDM Policy Dialogue have revealed vast remaining potential for efficiency improvements within the current standards and processes (for details, see section The efficiency of the mechanism). All of the options discussed in section The efficiency of the mechanism are, in principle, to be recommended. Among these, the key recommendations are the following:

- Based on past experience since the inception of the CDM of what issues can be expected in relation to various project types, the redefinition and clarification of the work-sharing between the secretariat and the DOEs, moving over to risk-based approaches, such as statistical approaches to checks conducted by the secretariat, and, as a key request, the introduction the concept of materiality into the VVS.

- The provision by the secretariat of a higher level of training in the application of guidelines and the interpretation of rules. This has been called for by various stakeholder groups as a high priority issue.

- In relation to training, the further enhancement of local knowledge. In this respect, the removal of the barriers to the hiring of DOE staff locally and the establishment of local experts hired directly by the secretariat to disseminate information could play a key role.

- The further improvement of direct communication and the removal of information asymmetries between PPs, DOEs and the EB in both directions (e.g. by publishing the rationale for decisions; transparently sharing lessons learned, such as by keeping an up-to-date database of FAQs, disseminating newsletters featuring top 10 mistakes, creating a database of country studies, etc.; further improving the modalities for the direct communication of stakeholders with the EB; and adopting measures to test whether the wording of rules is self-explanatory and whether they can be validated in practice).

- The removal of the remaining barriers within the DOE accreditation framework to the DOEs performing their functions efficiently (e.g. by improving the efficiency and consistency of the work of the assessment teams and by allowing limited consulting pertaining to what the rules are and means of validation).

- The creation of greater regulatory certainty by reducing the frequency of rule changes.

With regard to **improving access to local validation/ verification capacity**:

- Rather than setting up local country-specific DOEs, DOEs suggest improving the conditions for the employment of local experts on validations.

- The following options would also be conceivable to enhance local DOE capacity: the training of DOEs, the hiring of independent local experts by the secretariat to support all DOEs with their local knowledge, and the funding of local studies on the status of local technologies, markets and regulation as a knowledge base for all DOEs and PPs. Especially in the LDCs, where a lack of availability of independent documentation (studies, etc.) can be expected, the current strongly documentation-based validation approach may soon meet its limit and cause major delays.

- Taking into account a stakeholder comment that pointed to possible remaining gaps or practical constraints in the accreditation requirements for local knowledge (e.g. that "financial experts should also have local knowledge"), the regulator could conduct more detailed analysis of such gaps in order to double check that they would be addressed by the recommended measures.

- Lastly, the regulator and DNAs could explore synergies between the proposed options for improving access to local capacity and the newly established CDM loan scheme.

With regard to **improving the effectiveness ofDOEs' performance**:

- The proposal of an NGO for the secretariat to contract DOEs directly may in theory seem appealing, but is out of the question owing to many practical considerations. If the secretariat still wants to test this model, they could do so, for example, within a donor-funded one-country pilot project, but should not do so before 2012 so as not to tie up any valuable resources. As for the introduction of DOE liability for CERs issued in excess, this needs to be discussed in the light of the question of whether or not another layer of negative incentives (including fines and suspensions) for DOEs is needed, given the already strong incentives provided via the existing performance control system; but it would definitely add a safety net to preserve the environmental integrity of the CDM in case other controls have failed.

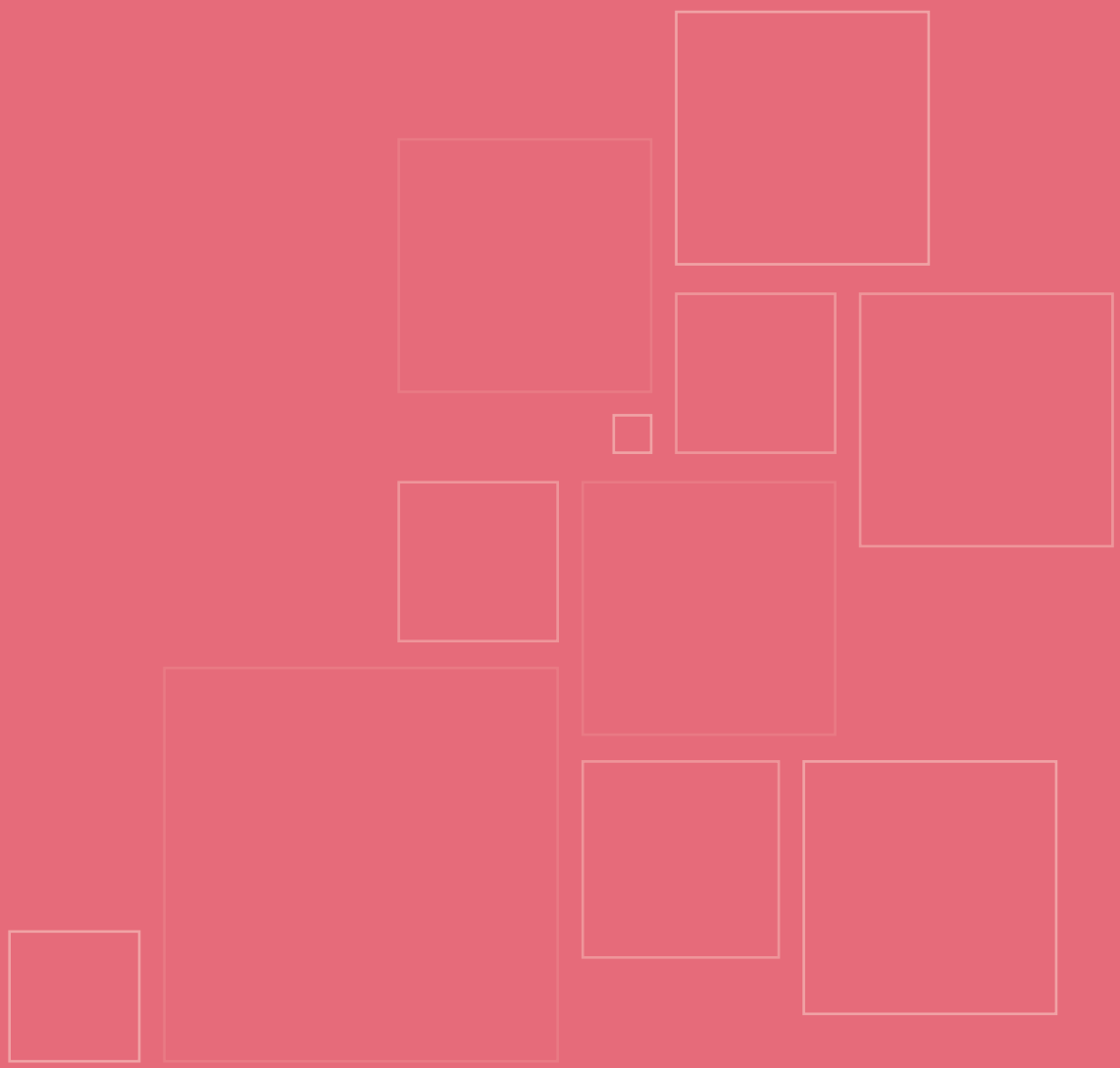
- Some 'wrong decisions' taken by DOEs can be attributed to a lack of clarity of the existing rules, especially a lack of explicit communication of the allowed simplification by the regulator (also a lack of distinction between discretionary and bound decisions), a lack of definition of goals and key terms, and difficulties anticipating the increasingly political decision-making of the EB. Therefore, the clarification of and consistent training on the rules still remains a key task for the regulator in order to improve the effectiveness of validation.

- Many stakeholders have called for the increased introduction of SBLs and 'white lists' in order to reduce both the secretariat's workload and the amount of subjectivity involved in individual project validations. The drawback of this is that it shifts the workload onto the regulator ex ante, may be time-consuming to establish and may not be feasible for all project types. As an interim measure, the funding of country-specific research studies which describe practices, policies and trends in priority CDM sectors may help to provide a basis for sound decision-making in relation to individual projects.

- Establishing local technical experts hired by the secretariat could add value in various respects, in terms of the provision of training and support to all DOEs with their relevant local information. It would also represent a middle way in complying with the NGOs' request to establish a certain control which is paid for by the secretariat not by the PP, without needing to shift validation contracts from PPs to the secretariat.

Finally, addressing the question of the distribution of responsibilities between DOEs and the secretariat, it can be concluded that the future path should be to better enable/empower DOEs to do their work chiefly through training, clarification of goals and rules and transferring more responsibility to them for making immaterial decisions. Checks by the secretariat should continue but clearly be more risk-based and, in order to conduct such checks effectively, the technical/local/sectoral knowledge of the secretariat must be ensured. The direct contracting of DOEs by the secretariat will not be practically feasible or add value; however, limited DOE liability for excess CER issuance is a promising concept, as it also creates a safety net to preserve the environmental integrity of the CDM through the cancellation of CERs where quality control has 'slipped through the net' until registration.

III – FINAL RECOMMENDATIONS



11 Leading questions for the research on the governance of the CDM

RECOMMENDATION 1:	Give high priority to the ongoing projects that aim at an automation of the workflow, employing an appropriate IT solution.
RECOMMENDATION 2:	Enhance the level of support provided to the stakeholders that are subject to the CDM rules.
RECOMMENDATION 3:	The High-Level Panel should consider the two different prototype avenues for the further development of the governance structure of the CDM. The first option implies that the secretariat, or more specifically the SDM, would be vested with the power to make the final ruling on case-specific matters. The second option foresees a shift in the secretariat's role away from project scrutiny towards ensuring the capacity of the auditors.
RECOMMENDATION 4:	Two specific options for modifying the rules governing the project cycle may be considered: (i) the promotion of SBLs; and (ii) the merging of elements from validation and first verification.

11.1 Can the project cycle be further streamlined to improve efficiency and reduce costs? How can this be done?

The regulations governing the project cycle have been under development since the inception of the CDM. Regulatory improvements have occurred against the background of an ongoing discourse between the regulator and the different groups engaged with the CDM. Currently the momentum for consolidating the body of rules and implementing further improvements in response to past discourse is considerable. The MAP 2012 includes a number of development projects that aim at addressing several prevailing points of criticism.

The current thrust of reform initiatives within the UNFCCC makes it difficult to put forward any recommendations on options for improving the project cycle operations. Rather statements regarding the prioritisation of certain initiatives over others can be made. There are a number of projects that will improve the efficiency of the mechanism, without having an impact on its integrity. This approach leads to the following recommendations:

1. **High priority should be given to the ongoing projects that aim at an automation of the workflow**, employing an appropriate IT solution. This should include the workflow with respect to processing project assessment cases and also the management of the MoC. Specifically:

a) The case handling workflow should entail provisions to simplify and clarify the PDD structure in order to avoid spurious and duplicate information, which is a frequent source of mistakes.

b) A public API[506] could provide an interface between the IT systems of DOEs and developers to ensure integrated automation throughout the value chain of the CDM.

2. **The level of support provided to the stakeholders** that are subject to the CDM rules should be enhanced. This may be achieved by a number of straightforward measures:

a) Improving the UNFCCC website navigation, taking into consideration inputs from the website's users.

b) Establishing FAQs relating to the use of specific guidelines, methodologies and tools, taking into consideration clarifications provided previously.

c) Integrating official clarifications into the rules and methodologies concerned, in order to ensure that the users are always aware of the complementary clarifications provided.

d) Enhancing the level of 'calibration' of the understanding of the rules by DOEs, PPs and the secretariat by means of dedicated joint workshops.

In terms of further developing the project cycle operations and in order to unlock further efficiency gains, two different avenues can be followed. One is a more centralised arrangement, whereby the secretariat receives explicit decision-making power in order to manage the operations more efficiently. The other avenue vests DOEs with more discretion in making their decisions, while the secretariat provides the requisite training to them in order to ensure their good decision-making.

3. The High-Level Panel should consider the **two different prototype avenues** for the further development of the governance structure of the CDM:

a) The first option implies that the secretariat, or more specifically the SDM, would be vested with the power to make the final ruling on case-specific matters, but within the limits of the given regulations and provided that no political considerations are involved.

ii) This option would require establishing full-time decision-making capacity. Several options are conceivable, including the establishment of a dedicated decision-making body.

iii) Specific modalities and procedures would be required to ensure the accountability of the decision-making body. Decisions and the underlying rationale would need to be published in a timely fashion.

b) The second option foresees a **shift in the secretariat's role away from project scrutiny towards ensuring the capacity of the DOEs' auditors**.

iii) This would involve keeping the level of project case assessment conducted by the secretariat to a minimum and it applying spot-checks on cases instead, within the accountability framework highlighted below.

iv) The resources of the secretariat could be reallocated to establish a system of accredited training processes and procedures, in order to provide a greatly increased level of training and support to DOEs.

v) DOEs would be vested with a broader scope for making discretionary decisions.

vi) The existing accountability framework, consisting of the accreditation procedures, could be adapted to suit the specific needs of this option, evolving the current system of spot-checks on or audits of the DOEs' processes.

vii) The rights of project developers would be addressed by ensuring a channel for their direct interaction with the regulator and a point of contact for them to address claims to. While such things are, in principle, included in the current rules, they may need to be adapted to suit the context of this option.

c) Both options have precedents within other existing regulatory frameworks. The EB should be invited to analyse the different design options and the respective experiences with them.

4. Two specific options for modifying the rules governing the project cycle have been discussed in the research: (a) the promotion of SBLs; and (b) the merging of elements from validation and first verification. Both avenues may be followed in coexistence with the current rules, with PPs choosing which approach is more suited to their proposed project:

506 Application programming interface, intended to be used as an interface by software components to communicate with each other.

a) With regard to **SBLs, the recommendation is to prioritise further work on the framework, observe emerging findings and critically assess the workability and integrity of the resulting tools**. While the research shows the potential in creating the basis for streamlined procedures in combination with standardised baselines, it could not be established whether the current approach is likely to live up to expectations.

ii) Apart from the fundamental methodological issues already pointed out, some procedural building blocks are missing that would allow methodologies to refer to an SBL and give guidance on the monitoring of projects under SBLs.

iii) As set out in the findings of the fundamental research on the determination of additionality, in principle the approach of producing rules that treat the determination of baselines and additionality jointly and in the specific context of the project is the approach recommended to ensure offsets that can be deemed additional with a high degree of certainty.

iv) However, the current approach formalised in the framework for sector-specific SBLs may need to be revised further. The reasoning in this report indicates that, in developing the standardised approach further, a convergence with the current PoA-DD set-up is envisaged. Without pre-empting the methodological mechanism, the recommendation is to depart from technology-neutral tools and focus on project-specific rules that integrate the determination of methodologies, baselines and additionality, leakage, eligibility criteria for inclusion and stakeholder consultations.

b) Also **recommended is the exploration of the possibility of merging validation with first verification**. For many projects this may avoid the issue of validation occuring at the design stage, but the project's implementation then deviating from the intended design. While all of the required pre-registration elements would still be conducted, such as local stakeholder consultation etc., the project documentation would be established only later, on the basis of the implemented reality.

iii) Project proponents could choose such an approach for project types that are almost certain to be accepted. On the basis of a highly standardised case, it may be established ex post that all eligibility criteria will be met and registration will be very likely. Likewise, if a project type has from registration practice a precedent for near to certain registration a project owner may decide to validate at first issuance (e.g. for mitigation technologies that are far from being competitive).

iv) However, the development of such an approach needs to be attuned with the further development of the determination of additionality. For instance, there are suggestions that a project with a starting date prior to its registration should not be deemed additional.

11.2 Should the methods for determining additionality be changed? If so, how?

RECOMMENDATION 5:	On an operational level, further prioritise the establishment of standardised approaches (e.g. specific pre-approved values for the input data used in the determination of additionality).
RECOMMENDATION 6:	Drastically reduce the timelines for registration.
RECOMMENDATION 7:	Modify the existing rules for assessing additionality and baselines so as to increase the probability of projects being additional.
RECOMMENDATION 8:	Depart from the technology-neutral approach, as it is applied in the CDM additionality tool.
RECOMMENDATION 9:	Explore how the institutional arrangements of the CDM can be modified so that it can live up to its role as a global regulatory and standard-setting body.

The research approached this question both from the perspective of the current prevailing practice as well as from a viewpoint of fundamental reasoning. The findings indicate that there is a strong need to improve the current methods for determining additionality.

The assessment of the current methods employed confirms that the perceived deficiencies in the process for assessing additionality are the main reason that projects are being called for review and eventually rejected. While the number of rejected projects is small, reviews are much more frequent. In conjunction with the consideration of the key drivers of the bottlenecks in the process, improved clarity in the determination of additionality has the potential to increase the efficiency of the project cycle considerably.

There was much evidence of the importance of objective and unambiguous rules in the assessment of additionality. In cases where an unambiguous ruling was available from the EB or DNAs, often in the form of tabled values, this resulted in a reduced need to review applications. As an illustration, it was shown that in cases where host-country governments provide structures that produce officially endorsed benchmark data for the investment analysis, the investment analysis is less likely to face scrutiny by the EB.

The impact of specific revisions of methodologies could be linked to an increased incidence of reviews, owing to the fact that projects applying for the CDM became non-compliant with the revised rules. This shows the importance of stable rules for the performance of the mechanism.

5. On an operational level the recommendation is therefore **to further prioritise the establishment of standardised approaches** (i.e. objective rule sets and specific pre-approved values or approved data sources for the input data used in the determination of additionality). Such approaches greatly facilitate the determination of additionality and the respective validation, thereby saving time and resources.

a) According to the results of the assessment, the following parameters cause the most problems in retracing the claim of additionality: (i) the PLF; (ii) profitability benchmarks; and (iii) investment costs. The EB should give priority to making those parameters as objective as possible.

b) The assessment showed the importance of reference data provided by competent national authorities. Examples include the requirement for feasibility study reports, tariff award systems and profitability benchmarks. DNAs can contribute greatly to improving the efficiency of the determination of additionality on an operational level.

6. Another **recommendation is to drastically reduce the timelines for registration**. The assessment showed that projects that are implemented by the time of requesting registration have more difficulties defending their additionality. With short registration timelines the CDM could be considered on a more timely basis in the decision to undertak the projects, which is a decisive element in backing up the claim of additionality.

A fundamental rethinking of the way in which additionality is assessed and determined is recommended, including a comprehensive reassessment of the concept. First and foremost, a conscious decision has to be made regarding the purpose of the CDM. If the CDM is perceived to be purely a reward programme for climate-friendly behaviour, the additionality of registered CDM projects does not need to be the criterion at the core of the mechanism. However, if a CER does indeed claim to represent a true emission offset, then credible determination of additionality and baselines necessarily becomes the central focus of the mechanism. The recommendations provided below assume that the purpose of the CDM is to issue credible offset credits, rather than to simply recognise and reward projects perceived to be climate-friendly or to promote sustainable development.

On that basis, the research concludes that the current way of determining additionality is not sufficient to ensure additionality, for a number of fundamental reasons. At the core of this observation is the fundamental failure of the current rules to explain additionality, not only in the language used to define additionality, but also in the implemented guidelines and tools. Ultimately the research prompts the regulator to make explicit in its rules: (i) in what way the CDM, through the 'intervention', causes project owners to change from their baseline behaviour; (ii) what behavioural rationale the project owner follows and (iii) what constitutes a sufficient level of intervention to allow one to be confident that the intervention has produced the change. These three aspects have to be understood, or at least approximated, to determine additionality with a minimum level of confidence. Currently the rules and guidance for assessing additionality are based on implicit, rather than explicit, assumptions (e.g. 'first of its kind' guidelines and treatment of national policies), leading to inconsistent determinations across project proposals.

Ultimately the research findings converge into a series of recommendations on how to develop the concept of additionality further.

7. The first **recommendation is to modify the existing rules for assessing additionality and baselines** such that they increase the probability of projects being additional. This includes maintaining a certain 'signal-to-noise' ratio based on an explicit understanding of how the intervention causes behaviour change and what is deemed the minimal required strength of the intervention. Concretely this would imply:

a) Establishing in the current review of the additionality tool a more strict treatment of the minimum intervention strength (e.g. the share of carbon revenue in the total expected revenue).

b) This, however, could mean that certain investment-intensive project types (such as infrastructure projects and large renewable energy projects) will not be able to access the CDM, as they cannot credibly claim that the carbon revenue was a significant factor influencing their decision-making. The same holds true for other projects for which carbon revenue plays a minor role, but which are still driven by the prospect of revenue, such as solar photovoltaic projects. In effect, by limiting the scope of accepted project groups, this step would constrain the ability of the CDM to scale up its aggregate mitigation activity.

c) Abandoning the 'first of its kind' barrier, as the guidelines for this test fail to provide for a sufficiently certain determination that the fact of being 'first of its kind' indeed implies additionality.

d) Restricting, as a base case, access to the CDM to projects that did not start prior to considering the CDM. To that end, a revision of the respective rules should be initiated, taking into consideration input from DOEs and stakeholders.

8. Further, the **recommendation is to depart from the technology-neutral approach**, as it is applied in the CDM additionality tool. Such a 'one size fits all' algorithm is unlikely to produce sufficiently certain determinations of additionality across diverse ranks of technologies. Rather, the development of heuristics that are specific to technologies and contexts (e.g. regions, countries, climates, etc.) should be pursued. In the light of this, the specific way of determining additionality can be integrated with the respective methodologies. This would result in a much more integrated approach that combines the determination of the baseline and additionality into one standard.

a) That way the additionality of problematic project types (such as large hydro dams) or issues with interfering national policies (E-/E+) could be treated in a more appropriate manner and result in a more certain approximation of additionality.

b) This approach also opens up the scope for addressing other aspects, like sustainable development, in a very targeted manner. This has been pioneered already by other standards, such as the Gold Standard.[507]

c) An eventual convergence of this approach with the framework for SBLs is conceivable. In fact, the current framework for PoAs already combines the determination of additionality and methodology through the establishment of eligibility criteria in the PoA-DD.

9. The general observation that the CDM is, effectively, a global regulatory and standard-setting body leads to the **recommendation to explore how the institutional arrangements of the CDM could be modified** so that it can live up to this role. To that end, there would be a need to:

a) Maintain closer contact and enhance exchange with other national regulatory bodies, industry groups, the scientific community, project developers and civil-society representatives. A more public debate on methodological issues, aspects of integrity and the workability of the standards would improve not only the standard-setting but also the broader understanding of the core concepts of the CDM. Consequently, not only should the acceptance of the offset credits increase but so should the broader legitimacy of the CDM.

b) Explore the relationship of the CDM with international scientific bodies (such as the Intergovernmental Panel on Climate Change) and options for a closer collaboration on scientific issues, such as techniques for credibily predicting the effect of CDM interventions and the development of default factors.

c) Strengthen the capacity of the rule-making panels and working groups of the CDM by, for example, creating full-time positions and staff that have focused expertise in project-focused areas, unlike the current part-time status of panel members.

507 The Gold Standard introduced, in its version 2.2, sustainable development checklists for hydro, wind and biomass projects; see http://www.cdmgoldstandard.org/project-certification/rules-and-toolkit.

11.3 Does the UNFCCC secretariat discharge its functions effectively?

RECOMMENDATION 10:	Vest a body within the secretariat with explicit decision-making power so as to ensure an efficient daily operation of the CDM.
RECOMMENDATION 11:	In order to balance the positions of the secretariat and the EB, establish a mutual accountability framework between them.
RECOMMENDATION 12:	Enhance the accountability system for managing the concerns of and interventions from stakeholders and project developers.
RECOMMENDATION 13:	Scale up the communication functions of the secretariat.

The research subjected the governance of the secretariat to an assessment, with a specific focus on accountability and internal structure. While the findings evidence a high degree of commitment of the secretariat to its mandated functions and a strong drive for structural improvements, a couple of critical observations were made. It was observed that the secretariat, while adhering to a conduct that is marked by neutrality and objectivity, is in fact entrusted with a number of decision-making functions. At the same time, accountability is not ensured for all aspects of the secretariat's operations.

10. 10. The findings support the **recommendation to vest a body within the secretariat with explicit decision-making power so as to ensure an efficient daily operation of the CDM**. Such decision-making functions need to be available on a permanent basis and not be dependent on periodic meetings of the EB. The decision-making role requires a greatly improved accountability system, including:

a) The ring-fencing of the separate regulatory functions of the secretariat as a requisite for ensuring the impartiality of the body and avoiding conflicts of interest, notably by separating standard-setting from assessment against those standards, the enforcement of those standards and the issuance of CERs.

b) Further improved transparency of decisions and the exposure of decisions to the public, in order to enhance the effectiveness of the accountability system.

c) An ombudsman to play an important role in investigating suspected transgressions and complaints made by project applicants and NGOs. This role would be in conjunction with the recommended appeals process, but could be introduced as independent from it and would be much faster.

d) Shifting the role of the EB to one of more strategic oversight and the adoption of political decisions.

e) The Publication of the technical aspects of the methodologies, tools and frameworks in peer-reviewed journals to spur on a scientific debate and improve their appropriateness and acceptance.

11. In order to balance the positions of the secretariat and the EB the **recommendation is to establish a mutual accountability framework between them**. This would require them both to agree on targets and performance indicators that would be reviewed periodically. For functions that are not easy to quantify, an external panel of peers should critically assess, for example, the development of frameworks and standards on an annual basis. As for the recommendation above, publicity may enhance the effectiveness of the accountability system.

12. Besides the secretariat's improved accountability towards the EB, it is **also recommended that the accountability system for managing the concerns of and interventions from stakeholders and project developers be enhanced** at the level of requests for registration and the review procedure. This would include transparency with regard to decisions made by the secretariat and the option for project developers to make use of their right to be heard within a ruling objection period (i.e. before the decisions become effective). This could occur in conjunction with the above-mentioned ombudsman or an appeals body.

13. A further **recommendation is to scale up the communication functions of the secretariat**. Currently, communication is underutilised and underresourced; needs for increased management time and resources have been noted. A shift towards a more open communication with stakeholder groups will call for a shift in mindset to match with the future requirements.

11.4 Should the current validation/verification model be reformed? If so, how?

RECOMMENDATION 14:	Do not change the current arrangement for contracting DOEs.
RECOMMENDATION 15:	Evaluate concerns about the functioning of the accreditation framework prior to deciding on whether the DOEs should be held liable for excess CER issuance.
RECOMMENDATION 16:	Promote the employment of local experts to assist in the assessment of projects by DOEs, rather than promoting the establishment of local DOEs that might need to operate in an unsustainable commercial environment.
RECOMMENDATION 17:	Promote communication with, and the training of, DOEs in order to ensure a common understanding of the rules and an alignment of expectations of the validation result.
RECOMMENDATION 18:	Open up comparable training and communication channels for project developers, addressing their desire to avoid friction in the approval process.
RECOMMENDATION 19:	Clarify further the validation and verification requirements.
RECOMMENDATION 20:	Promote the establishment and use of standardised elements, with a view also to improving the validation and verification processes.

The research showed that the concerns related to DOEs' performance relate largely to their impartiality, their ability to ensure integrity and their diligence in processing validations. Among the more controversial issues discussed were measures that aim at better aligning the interests of DOEs with the expectations of the CDM. In this context, two options come to the fore: (i) the contracting of the services of DOEs through the secretariat; and (ii) establishing tougher sanctions for deficient services by holding DOEs liable for excess CER issuance.

14. Based on the research findings, **changing the current arrangement for how DOEs are contracted is not recommended**. Contracting by the secretariat would face a variety of problems, while not bringinga considerable gain in alignment. According to the research, in the current contractual arrangement the accreditation contract between an individual DOE and the secretariat is of the greatest value to the DOE as it constitutes the requisite for their business activities. The threat of a potential suspension therefore prevents DOEs from prioritising the expectations of their contracting PPs over the expectations of the CDM. The research also found that a variety of other factors affect validation results, which would not be improved by a change in the contractual arrangements. Contracting by the secretariat would require a sound framework for selecting the DOEs. While this framework would need to substitute for the functions of the open market, it would also need to cover criteria beyond the current accreditation framework, such as technical and managerial skills.

15. A further recommendation arising from the research is for the **evaluation of concerns about the functioning of the accreditation framework prior to deciding whether DOEs should be held liable for excess CER issuance**. The call for holding someone liable for excess CER issuance has a twofold purpose: to sanction DOEs; and to restore the environmental integrity of the CDM through the cancellation of CERs. Only if said evaluation substantiates the concern that the current sanctions implied in the accreditation framework are not effective at aligning the interests

of DOEs with the expectations of the regulator should the option of holding DOEs liable be investigated further. Rather, the recommendation is to decouple the two goals by establishing a fund or an insurance solution that ensures integrity in spite of excess issuance. Different mechanisms could seek compensation for losses incurred to the fund in cases where negligence, fraud or malfeasance is evidenced. For this, legal action could be taken.

The assessment showed that the call for establishing country-specific DOEs is confronted by issues of practicability. The requirements for accreditation are very demanding and only large, often internationally operating, companies can therefore afford such a step. Thus, in countries with a certain number of projects the establishment of a country-specific DOE may be justified. However, it should be noted that under current conditions DOEs already employ local staff that form part of the audit teams. The research clearly evidenced that local knowledge is essential for project assessment, both by the DOEs and the secretariat.

16. Therefore the **recommendation is to promote the employment of local experts** to assist in the assessment of projects by DOEs, rather than promoting the establishment of local DOEs that might need to operate in an unsustainable commercial environment. Local experts would contribute with technical, legal and financial knowledge to improving the quality of DOEs' assessment. Various ways of increasing the use of local expertise in assessments were identified, including by:

a) The EB improving the conditions for the employment of local experts by DOEs, by adapting the rules governing the requirements for the use of local experts.

b) The Secretariat establishing a roster of local experts with the skillsets, training and experience needed to engage in validations; these could be hired by DOEs or hired by the secretariat itself to support all DOEs.

c) DNAs engaging in training local experts to enable them to perform assessments of projects or certain aspects thereof.

d) Training local experts and establishing country studies to leverage further synergies. Official studies on technical aspects specific to host countries could substitute for employing locals to collect such data and release DOEs from assessing the validity of respective data.

The efficiency of the hybrid scrutiny system, constituted by the DOE and the regulator, is impaired by the lack of a common understanding of the rules. This was also confirmed by the assessment of the current practice for the determination of additionality. The performance of validation and verification is to a large extent determined by the degree to which the regulator is unable to make its requirements explicit. It is by no means only the stringency of the requirements that leads to a lengthy approval process. In essence it is the lack of objectivity in applying the rules that results in a discrepancy between the validation result and the expectations of the regulator. Whenever the DOE resorts to using official values, the validation result is less likely to be contested by the regulator than in situations where the DOE validates data established for the specific project only. Thus the analysis shows that measures that are qualified to improve the alignment of the DOEs' validation practice with the expectations of the regulator have the potential to greatly improve the performance of the assessment system.

17. To that end, the **recommendation is to promote communication with, and the training of, DOEs**, in order to ensure a common understanding of the rules and the alignment of expectations of the validation result. Again, there is an array of individual measures that can be implemented in order to improve the process, such as:

a) An enhanced level of training. The secretariat could establish courses with study units covering the application of the rules and methodologies that cause the most friction in the validation process. Training could occur either via local in-person workshops or in web-based learning environments. A certain level of training could be made mandatory for certain roles (e.g. team leader or sectoral expert).

b) An enhanced level of learning. The secretariat should analyse and make available the lesson learned from past friction in the approval process, including FAQs on different rules, taking into consideration the relevant clarifications. The rationale for decisions must be made available to DOEs in a timely fashion.

c) An enhanced level of support. While there is already an established interface for DOEs to request official clarification, its effectiveness could be improved considerably. Short response times by the secretariat would be key. Since clarification often involves the consideration of different interpretations, the need to engage the panels or the EB may delay the response considerably. The situation could be improved

by vesting the secretariat with the power to provide responses that involve final rulings on technical aspects.

d) An enhanced level of communication. Designated contact points within DOEs and the secretariat for each project case would facilitate direct communication and would mean that possible misunderstandings could be resolved before causing an issue.

In has to be borne in mind that validation is only one, and not the first, step in the assessment of projects. The better the project developers know the regulatory requirements, the more targeted their identification of suited projects is and the better the collaboration on the validation will be.

18. While the above measures are geared towards DOEs, another **recommendation is to open up comparable training and communication channels for project developers**, addressing their desire to avoid friction in the approval process.

a) It is essential that project developers are also included in the learning process to achieve the targeted 'quality from the outset'.

b) While some of the communication channels and documentation recommended above would be restricted to DOEs, it is the natural right of PPs to have the possibility to seek clarification on their own behalf. This could be done either through the DOEs, while ensuring free access, or by means of a parallel communication channel. This would improve the overall accountability of the system.

19. An additional **recommendation is to further clarify the validation and verification requirements**. The research indicated that the validation and verification requirements could be made clearer. This would have the effect of improving the alignment of the expectations of DOEs and the secretariat considerably and thus reduce friction.

a) A concise understanding must be gained of what constitutes material data for which a high level of assurance is required. This would include the integration of a materiality framework into the VVS, which should be grounded in the methodologies themselves.

b) Clarification is also required with respect to the room of DOEs for discretionary decisions within the scope of their expertise in sectoral technology and the local context.

c) To avoid inefficiencies in the validation process, it should be made clear that it does not qualify as consulting when DOEs inform PPs about applicable rules and validation requirements.

The paramount importance of standardisation for the performance of the project approval process has been recognised by stakeholders and is strongly supported by the results of this research. The ability to resort to a pre-approved, or standardised, value or procedure is a key driver for performance. Standardisation has been shown to improve the process of determining additionality, where the availability of officially approved values, such as IRR benchmarks, lending rates or official feasibility study reports, greatly reduces the potential need for an in-depth case review by the secretariat.

20. Therefore, the **recommendation is to promote the establishment and use of standardised elements** where possible, with a view to improving the validation and verification process.

a) Host countries can play an important role in releasing official data that are instrumental in the formulation of the CDM project, including benchmark profitability rates, technologies on positive lists, technology penetration rates, etc.

b) The establishment of standardised approaches could be promoted by the CDM, covering similar aspects as mentioned above. An existing example is the default values for the fraction of non-renewable biomass for LDCs/SIDS.

c) Further, the use of default values in methodologies can be promoted, while observing a level of conservativeness that corresponds to the materiality of a potential error.

11.5 Should the EB be professionalised in terms of its composition and conduct? If so, how?

RECOMMENDATION 21:	Promote a nomination procedure that pays greater attention to the competencies of the nominated candidates.
RECOMMENDATION 22:	The EB should retain its system of part-time engagement in recurrent meetings to discuss open issues and make final decisions.

There is an unequivocal view among stakeholders that the EB should be focusing on strategic goals and deciding on high-level policy issues as well as supervising the CDM. The technical issues and administration should be dealt with by its support structure to the extent possible.

Further, there was a strong call for the nomination of the members of the EB to be decoupled from the candidates negotiating positions and focus instead on their skills, qualifications and competencies. The current rules governing the nomination process do not provide any nomination criteria other than the regional affiliation required for the available posts and a very generic description of the ToR.

21. On the basis of the above observation, the **recommendation is to promote a nomination procedure that pays greater attention to the competencies** of the nominated candidates.

a) This could be achieved by establishing nomination criteria in the ToR that refer to the skills required to fulfil the role effectively.

b) An open nomination procedure that makes explicit the background, competencies and past track record of the candidates could enhance the nomination process further.

c) When electing the members of the EB, the CMP should place the most importance on the competencies of the candidates, thus ensuring the appropriate level of competency in the composition of the EB, while also taking into consideration the actual political context.

d) The nomination criteria should also cover the affiliations and past duties of the candidates, in order to reduce the potential for conflicts of interest and thereby enhance the overall accountability of the CDM.

With respect to the "professionalisation of the EB", the seemingly ambiguous notion of the term 'professionalisation' resulted in divergent views. The assessment, however, showed that stakeholders do not necessarily support the idea of a 'full-time' EB, but rather favour an increased level of responsiveness of the Board.

22. This leads to the **recommendation that the EB should retain its system of part-time engagement in recurrent meetings** to discuss open issues and make final decisions. The increased ability of the secretariat to provide final rulings on cases would support the EB in shifting its focus from case-ruling to standard-setting. However, some complementary recommendations can be made:

a) The EB should communicate not only its activities and strategic considerations more proactively but also the virtues of the CDM.

b) It is important for the EB to prioritise the transparency of its rulings and the underlying rationale. This pertains to decisions on cases as well as on standards and emerging frameworks.

11.6 How should the major disputes regarding the registration/issuance appeals process be resolved?

RECOMMENDATION 23:	Establish two complementary mechanisms
RECOMMENDATION 24:	Establish an appeals mechanism
RECOMMENDATION 25:	Establish a grievance mechanism

Against the background of the observed issues surrounding the decision-making of the EB, it can be concluded that an appeals mechanism is necessary for ensuring accountability and promoting consistency in the decisions of the CDM institutions. It is acknowledged that considerable work has been done by the EB in requesting public input on the matter and also by the SBI, which has been considering the issue since 2011.

23. On the basis of the ongoing discussions and the practice in other comparable institutions, the recommendation is to establish two complementary mechanisms:

a) An appeals mechanism, accessible to project operators, NGOs and other related entities.

b) A grievance mechanism, accessible to local concerned stakeholders.

24. With respect to the **appeals mechanism**, the recommendations are:

a) To limit access to project participants, NGOs and other related concerned entities which fulfil certain admissibility criteria. Complaints from DOEs against decisions of the CDM institutions will be handled within the scope of the existing accreditation procedures.

b) To allow appeals against unlawful project rejections and flawed project approvals.

c) To give the appeals body the power to confirm or remand the decisions made by the EB.

d) To allow, as grounds for appeals, substantive as well as procedural issues.

e) To establish a transparent procedure for nominating the members of the appeals body which ensures the integrity and required expertise of the appointed members.

f) To expose the decisions of the appeals body to the public by publishing the rulings and the rationale behind them.

g) To implement a mechanism that allows for the timely adoption of final decisions, bearing in mind that delays in issuance and registration may inflict damages on project operations.

25. With respect to the **grievance mechanism**, the recommendations are:

a) To establish an international grievance mechanism for local concerned stakeholders to address environmental and social concerns.

b) To establish eligibility criteria for the international grievance mechanism.

c) That CDM host countries develop their own respective procedures for hearing grievances at the project level, taking into account national laws and customary dispute settlement mechanisms.

11.7 Should the current requirements for stakeholder consultation be strengthened? If so, how?

RECOMMENDATION 26:	Carry out continued stakeholder consultation at predefined intervals and document the consultation process and the concerns raised in the monitoring report.
RECOMMENDATION 27:	Seek inputs as to whether or not verification by the DOE of the continued consultation should be required.
RECOMMENDATION 28:	The EB should establish a guideline to differentiate the requirements for stakeholderconsultation depending on the project's exposure.
RECOMMENDATION 29:	Establish an interface between the local legislation and the CDM and consider whether this should be a requirement for participation in the CDM.

Civil society must be understood as an integral part of the CDM. It plays an essential role in the hybrid governance arrangement of the CDM, as concluded in section The role of civil society. This is evidenced by the many instances throughout the history of the mechanism in which the interaction of civil-society groups has made a difference. Notably, NGOs have had an investigatory role, discovering methodological flaws, and have been able to point out irregularities and induce buyer-side actions to impose additional standards for certain technologies.[508] Civil society also plays an essential role in building up capacity in terms of knowledge about the CDM and the ways of interacting with it. In such a way the capacity to report irregularities can be improved by informed stakeholder groups. The role of research institutions and private consultancies in capacity-building must also be acknowledged, in providing an up-to-date database[509] and explaining the rules.[510]

Therefore, civil-society stakeholders have a relevant role in the overall accountability mechanics of the system. This holds true specifically for the post-registration phase of projects, in which phase CDM procedures do not currently consider stakeholder concerns on a systematic basis. It is, however, precisely the operational phase in which adverse impacts eventually materialise.

This leads to the current situation, where, in the absence of dedicated complaint channels, stakeholders tend to use intervention options in an unintended manner. Sometimes this is to the detriment of fair process when the debate is taken into a political arena and facts and allegations are not clearly separated. Ultimately such debates have an impact on the reputation of the CDM as a whole.

The implementation of an appropriate grievance mechanism is important as it will give stakeholders a proper means of voicing concerns during the operational phase of projects. While such a mechanism has the potential to channel the concerns, it does not provide for the proper consultation of directly affected stakeholder groups throughout the lifespan of the project.

26. Therefore, the **recommendation is to carry out continued consultations at predefined intervals** and to document the consultation process and the concerns raised in the monitoring report. The documentation should form the basis for public scrutiny.

27. The documented consultation will gain in integrity if DOEs are able to verify the statements made during site-visits in the verification phase. Another **recommendation is to seek inputs as to whether or not verification by DOEs of the continuing consultation is required**.

28. There is a justified concern that such blanket requirements can lead to disproportionate costs for projects that affect local communities only to a limited extent. Therefore, while maintaining a common process, the

508 Large hydro projects require compliance with the standard of the World Commission on Dams to be eligible for theEU ETS.

509 Notably, the freely accessible UNEP Risoe CDM Pipeline (www.cdmpipeline.org) or the data analysis of IGES (enviroscope.iges.or.jp), but also commercial data providers may be mentioned.

510 Essential publications include the IGES "CDM in Charts" (enviroscope.iges.or.jp) and the CDM Rulebook (www.cdmrulebook.com).

requirements for consultation must be able to be differentiated depending on the project's exposure. To that end, it is **recommended that the EB establish a corresponding guideline**.

The research clearly shows the potential synergies from integrating the DNA and the applicable domestic laws into the consultation process. Not only can the DNA coordinate and give guidance to the consultation process itself, it can also take on a role in penalising defaulting projects within the legal framework. Some countries have procedures in place to enforce environmental standards that also require stakeholder consultation. This, in principle, offers the potential for synergies with CDM procedures and for holding projects accountable for breaching environmental standards. While many CDM host countries lack the respective laws, particularly regarding sustainability standards, this shows that, in principle, there would be scope for a better integration of the CDM into local laws. Where such integration can be achieved a grievance mechanism could become an effective instrument to protect the rights of local population.

29. Acknowledging the unequal circumstances of the different host countries, the **recommendation is therefore to discuss different options for establishing an interface between local legislation and the CDM** and whether this should be a requirement for participation in the CDM.

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APPENDIX 1: THE STRUCTURE AND FUNCTIONS OF THE UNFCCC SECRETARIAT'S SUSTAINABLE DEVELOPMENT MECHANISMS PROGRAMME

Process Management Unit

PMU manages the processes for the operation of the CDM and JI, including the direct support provided to their regulatory bodies (the EB and the JISC) and their panels and working groups. The manager of PMU is also the secretary to the EB and the JISC.

EB, JISC and CMP Support Team

- Coordinates the support to and organisational aspects of the regulatory bodies, including agendas, document preparation, reports and liaison with chairs and vice-chairs
- Supports the governance mechanisms of the regulatory bodies
- Prepares and monitors the work programmes of the regulatory bodies
- Supports the interaction of the regulatory bodies with the negotiation processes of the CMP and its subsidiary bodies

Accreditation and Methodologies Process Management Team

- Coordinates the support to and organisational aspects of panels and working groups, including agendas, document preparation, reports, liaison with chairs and vice-chairs, and their interaction with the regulatory bodies
- Supports the governance mechanisms of panels and working groups
- Prepares and monitors the workplans of panels and working groups
- Coordinates the accreditation and methodologies processes

Regulation and Knowledge Management Team

- Prepares recommendations for new and revised operational procedures under the CDM and JI processes
- Provides records management and ensures clear and transparent access to decisions

Registry and Database Support Team

- Administers the operations of the CDM registry, including the issuance of CERs
- Manages the database support with regard to the CDM project cycle
- Implements the MoC with PPs

Standard-Setting Unit

SSU provides technical advice to the regulatory bodies and their panels and working groups with regard to the setting of standards, including methodologies, methodological tools, policy-related standards and associated guidelines.

Methodology Teams

- Provide technical advice to panels and working groups for use in their consideration of proposed new methodologies, requests for revision and requests for clarification
- Prepare recommendations for improvements of approved methodologies
- Prepare recommendations for new methodologies, tools and technical and methodological guidelines, when requested by the EB
- Provide support to the SBSTA with regard to technical CDM issues

Accreditation Standards Team

- Prepares recommendations for new and revised accreditation and other policy-related standards

Project and Entity Assessment

PEA provides technical advice to the regulatory bodies with regard to the compliance of project activities and DOEs/AIEs with applicable standards.

Entity Assessment Team

- Coordinates the assessment by qualified assessors of entities with regard to compliance with accreditation standards
- Reports on assessment activities and conducts quality control

Project Assessment Teams

- Process requests relating to project activities, including requests for registration, issuance, revisions of monitoring plans, renewals of crediting periods and post-registration changes, and interacts with PPs
- Prepare summary notes on requests for the regulatory bodies
- Assess requests for registration and issuance for cases in the review process
- Monitor and assess DOEs' performance

Organisation and Stakeholder Development

OSD engages with stakeholders to improve the quality of their inputs to the regulatory processes and facilitate their inputs to the policy-setting of the regulatory bodies, and collaborates internally to improve the working practices of the programme.

Stakeholder Collaboration Team

- Coordinates the communication between stakeholders and the EB and the JISC
- Engages with external stakeholders through public calls for input and by supporting information exchange, workshops, forums and training events
- Coordinates measures to promote regional distribution and capacity-building
- Maintains the DOE performance management system and provides systematic feedback to the EB, AP and DOEs

Business Analysis and Process Development Team

- Conducts systems analysis of SDM business processes to improve efficiency
- Provides technical expertise to the programme to support improvement activities
- Develops and maintains quality management systems

Services and Management Support

SMS provides management support to the programme and external stakeholders.

Public Information and Communication Team

- Communicates and reaches out to external audiences
- Provides media support to the regulatory bodies
- Serves as press office for the secretariat on mechanisms-related issues

Skills Development Team

- Conducts skills needs assessments for SDM staff and external stakeholders
- Prepares and implements skills development strategies and activities

Finance and Human Resources

- Supports financial and human resources management for the programme

Strategic and Policy Development

SPD supports activities to further develop current and future market-based mechanisms.

Future Negotiations Support Team

- Supports intergovernmental negotiations on the development of the international climate regime in relation to market-based mechanisms

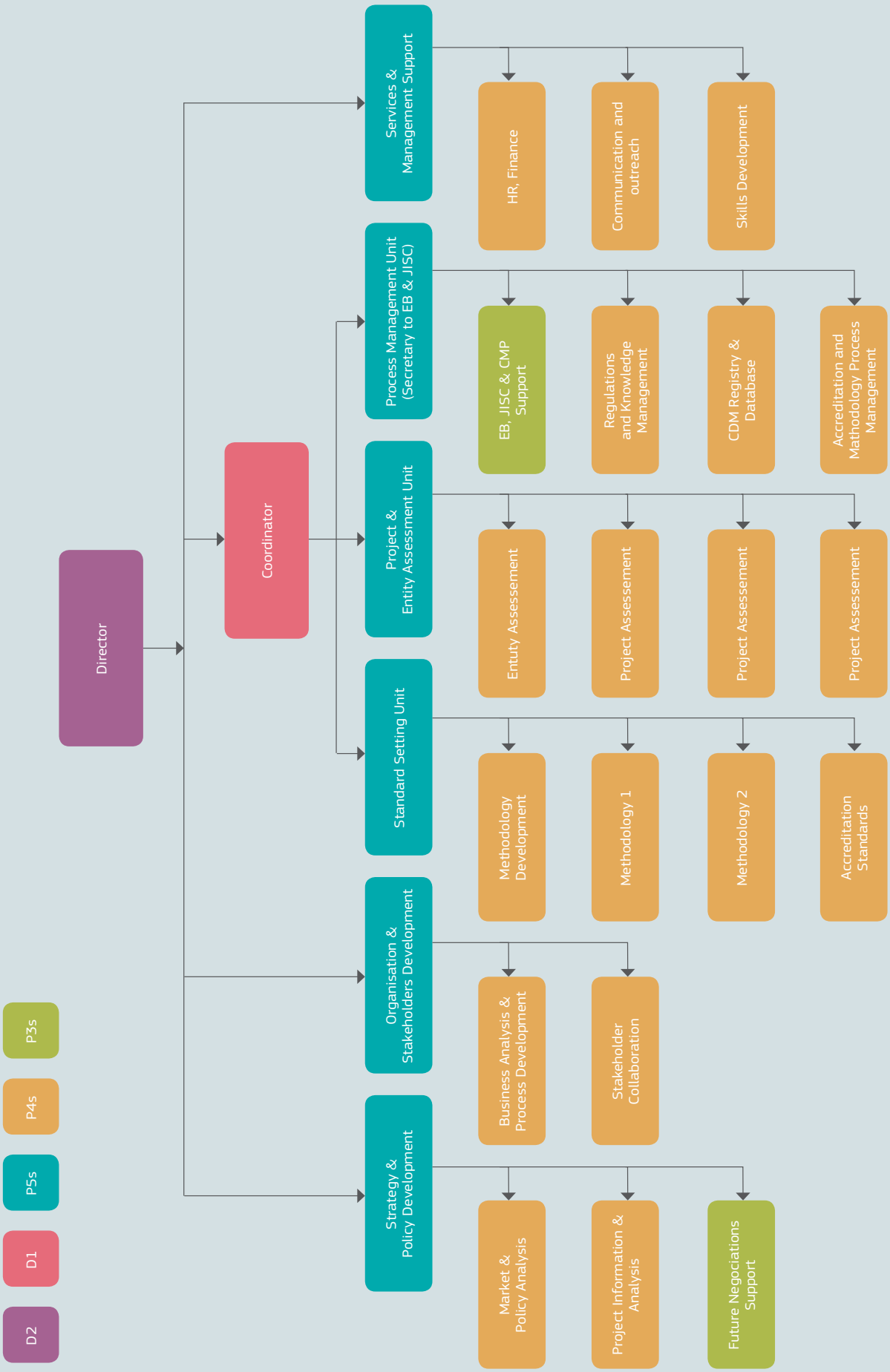
Market and Policy Analysis Team

- Analyses and reports on developments in markets and government policies
- Supports the programme and regulatory bodies in responding to developments
- Supports interaction with national and regional policy development

Project Information Team

- Analyses and reports on developments and trends in CDM and JI projects
- Enhances the availability and usage of project information
- Coordinates partnerships with external providers of information on the CDM and JI

Figure 25. SDM organogram



APPENDIX 2: INPUT RECEIVED ON STAKEHOLDER CONSULTATIONS (TABLES 1 AND 3) AND LIST OF CONTESTED PROJECTS (TABLE 2)

Table 1. Stakeholder consultation: concerns raised during the CDM Policy Dialogue

RIGHT TO BE HEARD (table 1: concerns) **Comments that addressed the stakeholder consultation process, and that questioned whether the process for raising issues is effectively and appropriately structured, are grouped under this category**	
	IDENTIFICATION OF CONCERNS RAISED
Local stakeholder consultations	
a. Reconsideration of the timing of consultation	To avoid overburdening local stakeholders, it is sometimes preferable to combine the CDM local stakeholder consultation with other consultation exercises (e.g. public participation processes required as part of domestic EIA processes). However, on occasions DOEs are unwilling to accept such a combination and insist that a specific CDM local stakeholder consultation process is required.[516] This can lead to a piecemeal and fractured consultation process.
b. Language	Language was identified as a major barrier in the system, in particular given the requirement to submit key documents, such as the PDD, in English. It was indicated that this requirement limits the participation of stakeholders in any given project.
c. Public participation by all stakeholders and the need for a more transparent and inclusive participatory process	It is essential to strengthen stakeholder consultation to ensure the legitimacy of projects.[517] Currently the process does not provide for sufficient public participation to enable host-country citizens to fully understand the impact of CDM projects. In many cases projects are validated without any feedback from local stakeholders and affected communities, owing to the limited time frame, language restrictions and also practical limitations such as lack of access to computers and the Internet.[518]
a.	Current requirements do not ensure adequate means of communication with stakeholders or meaningful opportunities for stakeholders to participate in the design and implementation of CDM projects.[519]
a.	Local stakeholder consultations are managed by the project developer, giving rise to a potential conflict of interest and bias towards favourable stakeholders.
a.	Women's participation in the stakeholder consultation process is often limited.[520] Gender mainstreaming in CDM projects is essential in order to comprehensively address gender equality. This requires the consideration of gender at all stages of the project cycle and the support of all project stakeholders, from the EB to project developers and communities.[521]
	Transparency is an issue for local communities, because of the technical language and the complexity of the system.[522]
d. Rules, guidance and further standardisation of requirements	Clearer and more defined rules should be provided for local stakeholder consultation.
e. Capacity-building and technical assistance	Awareness of the CDM consultation processes is very low; affected people are not aware of the right to and importance of public consultation.
f. Clear identification of stakeholders	This is a requirement for the achievement of full participation and anticipates a refining of the very broad definition of CDM stakeholders.

RIGHT TO BE HEARD (table 1: concerns) **Comments that addressed the stakeholder consultation process, and that questioned whether the process for raising issues is effectively and appropriately structured, are grouped under this category**	
Global stakeholder consultations	
g. Insufficient public notice of global stakeholder consultation	Civil society is not informed about CDM projects or given an accurate account of the expected impacts. Moreover, civil society is not informed of the short 30-day public commenting period, which is only announced online and only allows submissions in English.[523]
h. Commenting period	Too short.
i. Access to information a.	It was indicated that there is a need for access to documents used during the validation process.
	There is a need for improved access to and quality of information on projects in the PDD and/or posted on the CDM/UNFCCC web portal. Many CDM project applications do not include enough information to adequately understand or evaluate a given project and it is difficult to find additional information about a given project.[524]
j. Communication with the UNFCCC	It was indicated in similar submissions that communication with the UNFCCC needs to improve.[525]

511 Input received from the PD-Forum in response to the call for public input on the validation process, dated March 17, 2012 (p.1).

512 Document 'Summary from stakeholder engagement: CDM Policy Dialogue stakeholder meetings (March–May 2012)' (p.8).

513 Similar inputs received from Focus on the Global South, dated January 16, 2012 (p.2) and International Rivers, dated January 16, 2012 (p.3) in response to the call for public input on the CDM Policy Dialogue.

514 Civil-society letter to the High-Level Panel on the CDM Policy Dialogue, dated May 21, 2012, submitted by 84 civil-society organisations (p.2).

515 Input received from the Finnish DNA in response to the questionnaire made reference to a 2012 report commissioned by the Government of Finland that studied the relationship between gender and the CDM. The DNA's input highlighted that the report indicates, inter alia, that"women's participation in the stakeholder process was rarely mentioned".

516 Input received from the Mary Robinson Foundation – Climate Justice in response to the call for public input on the CDM Policy Dialogue, dated January 16, 2012 (pp.1 and2).

517 Summary from stakeholder engagement: CDM Policy Dialogue stakeholder meetings (March–May 2012) (p.8).

518 Civil-society letter to the High-Level Panel on the CDM Policy Dialogue, dated May, 21 2012, submitted by 84 civil-society organisations (p,2).

519 Input received from the the Fundacion Rio Napo in response to the call for public input on the CDM Policy Dialogue, dated January 16, 2012.

520 Similar inputs received from the Gujarat Forum, Paryyavarnia Vikas Kendra, Snehal B. Satyapanthi, Paryavaran Mitra and Vijay Bharatiya in response to the call for public input on the validation process.

SCOPE OF COMMENTS AND/OR CRITICISM (table 1: concerns) Highlighted issues are grouped here	
	IDENTIFICATION OF CONCERNS RAISED
a. Sustainability	Increased requirements for stakeholder involvement at the global and local levels are seen as an important means to enhance reporting on sustainable development co-benefits.[526]
a.	A submission received as input to the CDM Policy Dialogue illustrates this point: With regards to contributions to or impacts on local social or environmental issues, it is effectively the host country's responsibility to address and judge the project's compliance with national law and principles of sustainable development and that stakeholder comments were taken into account. Thus, it is the DOEs' responsibility to ensure that all CDM stakeholder consultation processes have been conducted in [a] transparent manner and that the relevant governmental entities and the DNA are aware of the comments and the respective responses and measures taken. However, neither the DOE nor the EB can question the host government's judgement about the project's compliance with the country's own principles for sustainable development or legislation. While the PD-Forum wholeheartedly supports the statement that CDM projects should do no harm, a formal 'do-no-harm assessment', as is being proposed in the discussions, is likely to infringe [on the] host country's sovereignty in regards to defining sustainable development.[527]
b. Human rights	A strong call was made for the CDM not to support projects that cause human harm, including human rights violations. It must be clarified that CDM projects that violate or threaten to violate human rights, including labour rights, are ineligible for registration or will be suspended.[528]
c. Environmental integrity	It was indicated that the environmental integrity of the CDM needs to be assessed as well as the need for "a revision of stakeholder guidelines for project participants, DOEs and where appropriate DNAs that draws on best practice approaches in other industries".[529]
d. Transparency of monetary decisions	Monetary transactions should be transparent and should be displayed. Proactive disclosure by project proponents is needed, in relation to public consultation, CER certification and information on monetary transactions.[530]

521 EB 65 report, annex 17, on sustainable development co-benefits and negative impacts of CDM project activities (p.3).

522 Input received from the PD-Forum in response to the questionnaire, dated May 8, 2012 (p.8).

523 Civil-society letter to the High-Level Panel on the CDM Policy Dialogue, dated May 21, 2012, submitted by 84 civil-society organisations (p.2).

524 Input received from Australia in response to the call for public input on the CDM Policy Dialogue, dated February 2012.

525 Similar inputs received from the Gujarat Forum, Paryyavarnia Vikas Kendra, Snehal B. Satyapanthi, Paryavaran Mitra and Vijay Bharatiya in response to the call for public input on the validation process.

ACTIONS TAKEN (table 1: concerns)

Comments that mentioned and identified appropriate actions for taking stakeholder feedback into consideration are grouped under this category. Also, comments that indicated how the stakeholder consultation process should be implemented and rules that might need to be changed, and the extent to which civil society's feedback should be taken into consideration in order to address and correct actions, are considered.

	IDENTIFICATION OF CONCERNS RAISED
Local stakeholder consultations	
a. Consideration of comments received	It was indicated that comments submitted were not taken into account.
a.	It was also indicated by the DOE/AIE Forum that in certain instances local stakeholders raise concerns after the conclusion of the local stakeholder consultation by sending unsolicited letters to the EB.[531]
Global stakeholder consultations	
b. Type/scope of comments and consideration of comments received	Irrelevant or defamatory as well as generic[532] e-mail comments are often received; such comments delay the process and increase costs.
c. Guidelines on how to assess comments received	Clear guidelines should be provided to DOEs regarding how to address comments received
d. Outcome of validation process	It was indicated that stakeholders who respond to the consultation process should be informed of the outcome of the validation process.

Table 1 notes

526 Input received from the DOE/AIE Forum in response to the call for public input on the validation process, dated August 14, 2011 (p.1).

527 For a recently registered project, it took the DOE 17 pages to respond to two generic e-mail comments, resulting in unnecessary costs; input received from the DOE/AIE Forum in response to the call for public input on the validation process, dated August 14, 2011 (p.2).

OTHER (table 1: concerns)	
	IDENTIFICATION OF GENERAL COMMENTS RAISED
General	The PD-Forum indicated that: "There have been suggestions to deploy the double consultation process which has been pioneered by the Gold Standard. The PD-Forum would not support such a move. The double consultation process may be applicable to meet the higher standards set by the Gold Standard regarding the monitoring of sustainable development benefits but this is not appropriate to the CDM in general because, as discussed above, sustainable development is the preserve of the host country. In addition we believe that this would quickly lead to stakeholder exhaustion for many projects where there are relatively few social or environmental impacts (such as an energy efficiency project in an industrial facility, or a wind farm in a desert) and more so amongst the government departments that are invited to attend such events. In addition, such a requirement would increase costs and delay the validation process further at a time when we are trying to make the process more efficient".
Local stakeholder consultations	
a. Adequate process	The PD-Forum indicated that: "The stakeholder consultation process (both local and global) under the CDM is adequate. It is important to remember that stakeholder consultation is a country-specific activity and, in Durban, the Parties strongly opposed any form of guidelines which would intervene with their own stakeholder processes. Some countries have existing consultation built into their own regulations and others leave it to the PPs to organise their own consultation. Not only is stakeholder consultation country-specific, it is also project-specific. It would also make more sense to recognise different stakeholder consultation requirements for projects in remote and sparsely populated areas such as wind farms in desert areas and, for example, an industrial project in a city centre factory. The former should be able to apply a light touch consultation process with less emphasis on transporting people significant distances just for the sake of holding a meeting, whereas the latter may need to carry out extensive consultations which could involve hundreds of stakeholders".
b. Range, populations for survey and the structure of local stakeholders	"The justification for the range, the populations for survey and the structure of local stakeholders is often asked for by the validator. The local stakeholder consultation is designed by the PDD developer and implemented by the project owner. But most of the PDD developers and project owners are not professionals in public surveys. Often, the project owner only knows which village is the nearest to the project or which villager was impacted by the project. It is my suggestion that the range, the populations for survey and the structure of local stakeholders may be defined as follows: the range may be defined as the villages or the residential district nearest to a project or those people impacted by a project; the population for survey may be defined as not less than 30 people for large-scale projects and not less than 15 people for small-scale projects."[533]

Table 2. contested projects

CONTESTED PROJECTS (table 2)						
Item	**Project name and CDM reference number**	**Location and project type**	**Process: how concerns on the issue of stakeholder consultation were addressed[534]**	**Was stakeholder consultation satisfactorily undertaken?[535]**	**Were stakeholder concerns satisfactorily addressed?[536]**	**General comments[537]**
1.	AESA Misiones (Proactiva Group) Sanitary **Landfill Gas capture and flaring** project (project 1442) PDD Version 03, 28-07-2006 Validation issue 3CDM. Val1076, 17-10-2007	Fachinal, Province of Misiones, Argentina Sanitary landfill gas capture and flaring project	Public hearing was conducted; at the public meeting the proposed project was presented and comments were invited (PDD, p.67). No icomments on stakeholder consultation received.	Queries stated during meetings and presentations were clarified and answered at the meetings. Broad stakeholder involvement (PDD, p.68).	All stakeholder concerns were addressed; there were no comments of a nature to force changes to be made to the design document (PDD, p.68)	Academic, political and local community showed interest and comments were generally encouraging (PDD, p.67). Contrary to the overall positive perception of the project in the PDD and verification protocol, GAIA raised concerns that neighbouring countries were not present and civil society had a very minor representation.
2.	CGN Yunnan Mouding **Wind Power** Project (project 5791) PDD Version 03, 28-07-2006 Report No BVC/CHINA-VAL/6091/201101/02/2012	Mouding County, Chuxiong Yi Autonomous Region, Yunnan Province, P. R. China Wind power project	Project owner conducted a survey in March 2011 of local residents living in villages around the project by distributing questionnaires. A total of 50 questionnaires were distributed and all of them were returned (PDD, p.35).	Validator confirmed that the local stakeholder consultation was performed and the process of local stakeholder consultation was observed to be adequate (verification report (VR), p.27).	The review of the returned questionnaires showed that the summary of the comments received was completely provided in the PDD and due account of the comments was described in the PDD (VR, p.27).	No contrary information found.

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3.	Allain Duhangan Hydroelectric Project (ADHP) (project 0862) PDD Version 02, 01-07-2004 Report No 2006-0873 Revision No 2, 2007-05-07	Prini village in Manali, town of Kullu district in Himachal, Pradesh State of India Hydroelectric project	Project proponents undertook a social impact survey with the help of professional experts and consulted with different sections of stakeholders and invited them to provide their opinion on the project activity (PDD, p.34).	Account was taken of stakeholders' comments on issues such as compensation for loss of livelihood, income and land, transition allowance, tree-shifting allowance and women's welfare (VR, p.40).	The project developer conducted a social impact survey with the help of professional experts. Consultations were also held with different sections of stakeholders (VR, p.39).	PDD seems positive as adequate compensation and alternate land for cultivation would resolve most issues. International Rivers raised concerns that locals were not adequately informed and that resettlement measures were in violation of World Bank norms (PDD, p.36).
4.	Barro Blanco Hydroelectric Power Plant Project (project 3237) PDD Version 03, 28-07-2006 Report No 2008/0004/ CDM/01, 2010-01-24	Between the counties of Bella Vista, Veladero and Cerro Viejo, in the district of Tolé, within the province of Chiriquí Hydroelectric power plant project	NGOs' objections referred to leaders of most relevant affected communities, which dispelled concerns. Cross-checking of approval with local stockholders confirmed approval of project.	Representatives of different communities of the district of Tolé and representatives of the DNA interviewed in Panamá City. Research, informative meetings and comprehensive surveys were performed in the local stakeholder consultation process. Not possible to determine whether stakeholder consultation was brought into question.	The DNA granted a complacency letter and a no-objection letter, confirming that the communities located in the area supported the development of the project activity.	Initial consensus was marginally negative but improved drastically when issues were addressed and explained to local inhabitants. Strong objections received from NGOs, claiming that the validation report only considered the opinion of the non-indigenous population. No adequate consultation with civil society and comments not taken into account.

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5.	The Chengdu Jiujiang Municipal **Solid Waste Incineration** Power Plant Project (project 5359) PDD Version 03, 28-07-2006 Report No 1944.V1, 24-10-2011	Jiujiang Town, Shuangliu County, Chengdu City, Sichuan Province, P.R. China Municipal solid waste incineration power plant project	Local stakeholders were invited to comment on the proposed project activity before the submission of the project for validation. Appropriate stakeholders were identified that might be affected by the development of the project. Survey meeting and explanation of information were undertaken. The stakeholders did not identify any serious concerns or significant negative impacts in relation to the construction of the project (PDD, p.35).	The project activity conformed to all other requirements for CDM project activities in relevant decisions of the CMP and the EB (VR, p.2).	Issues were raised concerning the small pool of stakeholders engaged in the project and that no methodology for the survey was given. Issues were addressed individually, the verification protocol confirmed the findings in the PDD and comments were addressed adequately (PDD, p.38).	GAIA claimed that the overwhelmingly positive reaction to the proposed project could be explained by the small size of the focus group and that the findings were therefore unreliable and did not reflect the overall negative consensus of the local stakeholders.
6.	Chengdu Luodai **Municipal Solid Waste Incineration** Project (project 3837) PDD Version 03, 28-07-2006 Report No JQA-C0130-VaR, 15 July 2010	Luodai town, Longquanyi District, Chengdu City, Sichuan Province of China Municipal solid waste incineration project	Public consultation on the social, economic and environmental effects of the project carried out before implementation. The invited stakeholders were given questionnaires that were distributed by the heads of surrounding villages in a transparent manner (PDD, p.57).	Stakeholders showed an understanding of and support for the proposed project and feedback comments were added to the revised PDD. Thorough stakeholder consultation performed, as confirmed by the verification protocol (PDD, p.57).	Issues were raised that the invitation for comments was not made in an open and transparent manner and that a reasonable time frame for comments was not afforded. Issue was explained and resolved. Through the validation process, several requests for clarification were answered (VR, p.45).	Verification protocol confirmed that stakeholder consultation was held in a transparent manner and deemed that due account was taken of stakeholder comments. GAIA claimed stakeholder consultation was flawed in that local communities expressed overall opposition, inter alia alleging that the focus group for consultation was too small and unreliable.

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7.	González Catán **Landfill Gas** Project (project 0426) PDD Version 02, 01-07-2004 Project No CDM.Val0241	González Catán and Ensenada landfill sites in the province of Buenos Aires, Argentina Landfill gas project	Local project stakeholders were identified and invited by letter to attend a series of public information sessions and to provide their comments on the proposed undertaking. A public meeting with local stakeholders was held and a questionnaire was distributed to the meeting participants for feedback (PDD, p.37).	Parties, stakeholders and UNFCCC-accredited NGOs were invited to comment on the validation requirements. The PDD and comments were made publicly available (VR, p.3).	Comments received concerning the project activity, as indicated on the questionnaires, were overwhelmingly positive at the public meeting. Further information was provided regarding the nature and efficacy of the technology (PDD, p.37).	PDD and verification protocol agreed and confirmed that successful and inclusive stakeholder consultation was executed. However, GAIA raised concerns regarding the complete lack of consultation with neighbouring countries and the very minor representation and participation of civil society.
8.	Jorethang Loop **Hydroelectric** Project (project 1326) PDD Version 03, 28-07-2006 Report No 2006-9147, 2007-08-01	West District, Sikkim, Eastern Region of India Hydroelectric project	Public hearing was conducted, at which the proposed project was presented and comments were invited. 101 local attendees signed the register as present at the meeting. A meeting of the Expert Committee was arranged (PDD, p.30).	A large public hearing was conducted, participants in the meeting included local villagers, government representatives and academics (PDD, p.30).	Lack of participation ofstakeholders such as local villagers and apparent lack of transparency in all matters. No involvement in project or access to documentation (VR, p.18). DNV (DOE) addressed all above concerns and confirmed that the responses provided by the project proponent to each of the comments were adequate (VR, p.30).	Despite the projection of an all-inclusive consultation process, International Rivers found that many villages were unaware of the hearing and of the basic aspects of the project. A refusal to release project documentation was an issue as the environmental impact assessment and other project documents were requested but refused to be given out by the developers.

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9.	Project for **HFC-23 Decomposition** at Limin Chemical (project 0550) PDD Version 02, 01-07-2004 Report No JQA-CDM-L-P028-07-2006040	City/Yongquan Town, Zhejiang Province, Linhai, China Industrial gas project	Questionnaire-based survey conducted. To facilitate the conduct of the questionnaire-based survey, an announcement of inviting stakeholders' comments was posted in mid-December on the bulletin board of the three villages nearby (VR, p.12).	Soliciting of public comments was not requested by the local environmental protection bureau. A questionnaire-based survey was conducted, which confirmed that the local stakeholders had sufficient support for the proposed CDM project in Limin (VR, p.12).	Most of the comments received in response to the survey were supportive of the project activity. Parties, stakeholders and NGOs were invited to comment on the UNFCCC website. No comments were received (VR, p.12).	GAIA claimed that the findings from the process were unreliable as they were too positive to be accurate, and further that the representation of local stakeholders was not extensive enough to obtain an accurate idea of stakeholder perception.
10.	24 MW **Waste Heat Recovery for Power Generation** Project at Ningxia Saima (project 3135) Report No 2009-907026, September 2010	Yinchuan City, Qingtongxia City and Zhongning County, Ningxia Hui Autonomous Region, China Waste heat recovery project	Local stakeholder meeting with shareholders invited to express their comments. Representatives and experts also present. The project entity presented the project activity and its various impacts (PDD, p.42).	All parties concerned convinced that the project activity could significantly improve the energy consumption efficiency of the cement plants. However, also some concerns among the staff workers around costing and the unexpected nature of the new technology. Comments were addressed and accepted (PDD, p.43).	Open opportunities for stakeholder comments were made available, but as there are only green zones and no residents around the project sites, it was unnecessary and impossible for the project entity to solicit opinions from the local community (PDD, p.43).	No contrasting information found.

CONTESTED PROJECTS (table 2)						
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11.	Nubarashen **Landfill Gas Capture and Power Generation** Project in Yerevan (project 0069) PDD Version 02, 01-07-2004 Report No JQA-CDM-L-P0015-DR	Yerevan city, Armenia Landfill gas capture and power generation project	DNA of the opinion that surveys, circulation of documentation and soliciting for public comment was adequate consultation (PDD, p.54). From the date of the revised PDD, comments from special interested parties and general comments were collected.	There is no regulation regarding collecting stakeholders' comments on such a project activity. Intergovernmental comments were received, yet no comment could be given on the EIA as this had not been completed by the day of the release of the revised PDD (PDD, p.54). No public or local stakeholder consultation evidenced.	Stakeholder concernsnot addressed; seems as though no public stakeholder consultation took place.	In this case the consultation process did not involve public comment. GAIA found that no consultation had taken place, which in its opinion should have invalidated the consultation as only ministries and the town hall were contacted. Blatant disregard for the process of stakeholder consultation and the process as a whole.
12.	Olavarría **Landfill Gas Recovery** Project (project 0140) PDD Version 02, 1-07-2004 Report No 2004-0863 2005-11-30	Olavarría, Buenos Aires Province, Argentina Gas recovery project	Discussion about the future of municipal solid waste management in the city was launched in early 2002, which led to several meetings to inform stakeholders about the project (PDD, p.26).	All efforts made by the developer and the sponsor to inform stakeholders and the general public were focused on the description of the project activities in general; all interest groups contacted agreed with the concept of the project and most of them emphasised the importance of the positive environmental impact that the project would bring about. No objection regarding the technical, environmental and social issues detected (PDD, p.27).	Extensive local stakeholder consultation process conducted, which led to no adverse comments (VR, p.12).	Although the verification report perceived the consultation process as being extensive (VR, p.12), according to GAIA certain civil-society groups were completely excluded from the process, with no input to or comments on the project from neighbouring countries.

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13.	Xiaoxi Hydropower Project (project 1749) PDD Version 03, 28-07-2006 Report No 1051206 2008-12-08	Midstream of Zishui River within Xiaoxi Village, Pingshang Town, Xinshao County, Shaoyang City, Hunan Province, P.R. China. Hydropower project	Project owner carried out two rounds of surveys focusing on the migrants of the project. 250 questionnaires on each occasion were distributed in a random manner to the migrants of the project and copies of the questionnaires were submitted (PDD, p.37).	Migrants involved in the project, local residents and local government took active part in the survey, with 316 surveys collected (PDD, p.37), reflecting positive feedback on the project.	Special meetings with certain stakeholders on how to solve problems were held (PDD, p.37). Process seen as comprehensive, complete and transparent (VR, p.50).	Impression of a comprehensive consultation process portrayed by both the PDD and the verification protocol. A field report commissioned by International Rivers documented problems, including the forced eviction of 7,500 people, a failure to restore pre-eviction incomes, arbitrary and inadequate compensation for resettlers, a lack of legal recourse for those who suffered losses, and a non-independent EIA process marred by an obvious conflict of interest.

Table 2 notes

528 Input received from Dr Zheng Zhaoning, Technical Director of Goldchina Consultancy International Co., Ltd in response to the call for public input on the validation process, undated (pp.1 and 2).

529 This information is drawn from the respective PDD.

530 As above.

531 This information is drawn from the respective validation protocol.

532 This information is derived from sources other than the PDD and the validation protocol.

Table 3. Stakeholder consultation: options proposed by stakeholders

RIGHT TO BE HEARD (table 3: proposed options) **A general overview of proposed options for strengthening the stakeholder process**	
Local stakeholder consultations	
a. Reconsideration of timing of consultation	Stakeholder comments should be invited during the design phase of the project, at a time when project proponents are open to making changes to the project.[538]
a.	The EB was requested to clarify that the key principle of local stakeholder consultation is to provide local stakeholders with a chance to comment on the project and that this does not necessarily mean that a CDM -pecific consultation is required.[539]
a.	It was suggested that the local stakeholders' comments collected in the EIA phase and the compensation survey could be used as the results of local stakeholder consultation. The local stakeholder survey in the EIA phase and the compensation survey were conducted by a professional independent third entity; the survey process was professionally designed with high reliability.[540]
b. Language	Project-relevant/key documents should be made available in the local language during the local stakeholder consultation period, including interim technical reports, EIAs and PDDs.[541]
a.	The project proponents should therefore translate both the PDD and, where applicable, the EIA into the local language(s). This would not add substantial costs but would provide stakeholders with the opportunity to submit well-researched comments.[542]
a.	Suggestion to accept all commentaries on CDM projects submitted in all main languages recognised by the UN.[543]
a.	Multiple meaningful opportunities (i.e in accessible language) for local and global stakeholders need to be created to enable them to effectively raise concerns throughout the design and implementation of CDM projects and to have them addressed in a timely manner.[544]
c. Public participation by all stakeholders and the need for a more inclusive participatory process	Public notices should be published in at least two newspapers, in the local language and 30 days prior to the public consultation. Notices should also be displayed on the website of the relevant DNA.[545]
a.	Letters should be written to people in the areas affected by the project, any organisations representing them, the relevant local public authorities and the DNA of the host country of the project.[546]
a.	Invitation letters should be sent at least to the following stakeholders: local people affected by the project or their official representatives, local policymakers and representatives of local authorities, an official representative of the DNA of the host country of the project, and local NGOs working on topics relevant to the project. Invitation letters should include a non-technical summary of the project activity in the local language(s), as well as information on the sustainable development indicators used to assess the project activity.[547]
a.	The consultation process should consist of several meetings and follow-up meetings in the local language and should include communication in less-technical language to ensure a more inclusive participatory process.[548]
a.	Many residents of the project area do not have readily available Internet access. Therefore, posting the PDD online is not sufficient to enable stakeholder participation in areas that do not have Internet access. In addition to publishing the PDD online, hard copies of translated versions of the PDD should be made available to communities in the project area (e.g. at community centres, churches, libraries, schools and post offices).[549]
a.	Gender impact assessment tools, such as the "Gender Spectacles Tool", can assist CDM stakeholders and national authorities to integrate gender considerations into planning, implementation and monitoring.[550]

RIGHT TO BE HEARD (table 3: proposed options) A general overview of proposed options for strengthening the stakeholder process	
d. Rules, guidance and further standardisation of requirements	Clear rules and guidelines on how to conduct local stakeholder consultations should be developed.[551] Further standardisation of the requirements for the local stakeholder consultation process would be useful, as currently local stakeholder consultations carried out by project developers vary a great deal from one case to another.[552]
a.	On occasions DOEs are asked to consider stakeholder views which are not entirely aligned with local or national regulations. It was requested that the EB clarify that, in such cases, approved regulations must take precedence over stakeholder expectations and that CDM projects are only required to meet the relevant regulatory standards.[553]
a.	Clear guidelines for DOEs on how to assess stakeholder consultations should be established.[554]
e. Capacity-building and technical assistance	The EB, through the DNA, should hold public capacity-building training and workshops for local affected people and relevant NGOs to create awareness of the CDM process and why public participation is important during the process.[555]
a.	Local actors need to be empowered to understand the chains of accountability under the CDM and in their countries and the key issues involved in order to be consulted in a meaningful way.[556]
a.	Prior to the consultation, a non-technical summary of the PDD should be provided to the stakeholders; in areas of high illiteracy this information must also be provided by oral means (e.g. by means of radio broadcasts or at local meetings).[557]
a.	More technical assistance should be provided to the LDCs to facilitate the uptake of the CDM in these countries.[558]
	Before public consultation, the DNA should ensure that a large number of project beneficiaries are aware of the CDM process and that they know their role as project participants; there is a need for at least a one-day workshop for stakeholders on the CDM/PoA process, which could be financed by the project promoters or by other donors.[559]
f. Clear identification of stakeholders	Stakeholders should be clearly defined by the EB in order to achieve their full participation. It was indicated that the following groups should be included as stakeholders: 1) Local populations potentially affected by the project activity; 2) Local authorities; 3) At least one person from the DNA; 4) Relevant local NGOs working on the issue; 5) At least one person from the DOE undertaking the validation of the project, to ensure objectivity.
Global stakeholder consultations	
g. Insufficient public notice of global stakeholder consultation	Various stakeholders raised this concern.
h. Commenting period	The commenting period for new projects and new methodologies should be increased to 60 days.[560]

RIGHT TO BE HEARD (table 3: proposed options) **A general overview of proposed options for strengthening the stakeholder process**	
i. Access to information	The Board should increase access to information for the global stakeholder consultation period and enhance the transparency of the validation process after the end of the public commenting period.[561]
a.	
a.	Access to information for the global stakeholder consultation process should be increased.[562]
	"We recommend improving access to and requiring submission of the following information as part of the CDM application for hydroelectric projects: ▸ Detailed project description with accurate technical information about project design, project components, proposed operating plan, and expected power production. The basic information about a given project in the PDD is often inadequate to understand or evaluate the project. ▸ Map showing project implementation at a standard 1:50,000 scale. Most maps in PDD applications do not provide an adequate orientation of the project implementation. ▸ Independent EIA. This should be included as a downloadable file attachment and offer a reviewer access to complete information and studies about a given project. ▸ Hydrological studies with a representative multi-annual hydrograph which shows the natural daily flow regimen using data from the river in the project area; 'run-of-river' projects should include an overlay on the hydrograph which clearly shows the daily flow consumption for the proposed operation of the project throughout the annual hydrograph, and an overlay on the hydrograph that clearly shows the remaining net environmental instream flow in the affected river section".[563]
j. Communication with the UNFCCC	The secretariat should improve its communication system by providing clear deadlines and step-by-step guidance on how to submit comments; the UNFCCC was urged to introduce an easier submission process, such as by means of e-mail submissions.[564]
a.	
a.	Website development is crucial.[565]
	The Korean DNA indicated that it would be beneficial if the secretariat were to inform DNAs of the opening of public commenting periods, in order to ensure that the comments are monitored by the DNAs.[566]

ACTIONS TAKEN (table 3: proposed options) **A general overview of proposed options for how to take stakeholder feedback into consideration. Considers comments that indicated how the process should be implemented and rules that might need to be changed. Also looks at the extent to which civil society's feedback should be taken into consideration in order to address and correct actions.**	
Local stakeholder consultations	
a. Consideration of comments received	DOEs should be empowered to apply their expertise and judgement. The local experts on the assessment team are the ones who are best placed to judge whether or not a consultation process has been adequate, taking into consideration local customs and experience and CDM requirements.[567] Also, the DOEs are responsible for following up on any CDM process- or rule-related comment and for ensuring that the project developer addresses any CDM-related concern raised by a stakeholder.
a.	
	DOEs should not be required to make corrections as a result of concerns raised long after the process has finished.[568]

ACTIONS TAKEN (table 3: proposed options) A general overview of proposed options for how to take stakeholder feedback into consideration. Considers comments that indicated how the process should be implemented and rules that might need to be changed. Also looks at the extent to which civil society's feedback should be taken into consideration in order to address and correct actions.	
Global stakeholder consultations	
b. Type/scope of comments and consideration of comments received a. a. a.	Comments which are not project-specific and/or include minatory words or sentences should be ignored and the commenter should provide reliable evidence for project-specific comments.[569]
	Global stakeholder consultation should be restricted to Parties that have signed the Kyoto Protocol. The reason for this request is to open up and emphasise the possibility for PPs and DOEs who are confronted with damaging comments to launch legal action against the commenter. It was furthermore requested to start interaction with the DNA Forum with regard to how DNAs could support affected entities in such situations. A reliable and reasonable commenter will not be endangered by such a procedure, but the threat of legal action might withhold individuals from abusing the global stakeholder process.[570]
	A clear identification of a person logging a comment should be required;[571] those who wish to submit comments by e-mail should first register with the UNFCCC. The PD-Forum proposed that this registration process be strengthened such that, on applying for registration as a bona fide stakeholder, applicants are requested to provide an e-mail address, a postal address and a telephone number. In the event that the DOE wishes to verify the stakeholder's identify, these details may be used. On completion of registration, a password is sent to the stakeholder, which they can use to submit their comments via a web interface. Stakeholders can, in the meantime, still continue to submit comments by fax and letter without registering.[572]
	A form for submitting comments should be created.[573] When making comments, stakeholders should be required to: clearly state their full name and the name of the organisation that they represent, their location (country of residence or legal establishment) and contact details; document their relationship to the project (i.e. why they can be considered an affected stakeholder); express their comments (pros and cons) item by item; and submit additional information in case the commenter is of the view that such information is not yet available to/has not yet been considered by the DOE.

ACTIONS TAKEN (table 3: proposed options) A general overview of proposed options for how to take stakeholder feedback into consideration. Considers comments that indicated how the process should be implemented and rules that might need to be changed. Also looks at the extent to which civil society's feedback should be taken into consideration in order to address and correct actions.	
c. Guidelines on how to assess comments received	"Recalling the discussion at EB 61, we note that genuine comments should satisfy the following criteria: 1) That the stakeholder is a genuine person or legal entity who is impacted by the actions of the project. In order to preserve the transparency principle stated in the VVM, a DOE cannot engage in discussion of any comments if the entity does not exist, is anonymous, uses a false name, etc. The DOE can protect a stakeholder's identity if required, in which case the submitting party should identify itself to the DOE, but request that its identity remains confidential. 2) The comments are specific to the project in question. Comments can be derived from a generic statement such as 'the project is not additional', but further detail must be given to explain why the particular project is not additional. 3) The information must be objectively verifiable. A statement such as 'this project is not additional because the financial analysis is not correct' is not objectively verifiable. Stakeholders must present information which DOEs can use to challenge the statements made by the PP in the PDD. Comments which fail to meet any of these criteria shall be discarded by DOEs."[574] Categorisation of comments:[575] After a revision of the relevant validation procedures, the validating DOE should categorise every argument delivered by means of a global stakeholder process comment form in the following manner: (a) The argument is project-specific and provides provable views, information which needs to be considered in the validation (irrelevant whether already known or not by the DOE). (b) The argument is non-specific or a general non-provable statement. (c) The argument only repeats requirements which are inherent to the validation procedures. (d) The argument is aimed at the CDM, EB, CDM procedures, tools, guidance, etc. (e) The argument is defamatory against the DOE or a PP. Only arguments falling under category (a) shall be made publicly available, while the full comments remain accessible to the DOE, the UNFCCC secretariat and the EB. The DOE has to run the categorisation within [x] working days after receiving a comment. A failure to perform this assessment in a correct manner might qualify for requesting review in particular if important information provided by a global stakeholder was not utilised during validation.
d. Outcome of validation process	"Stakeholders that commented on CDM projects published for global stakeholder consultation should receive a statement on how their comment has been taken into account. This communication could for example be made by the validating/verifying DOE. It should be prepared and received by the relevant stakeholder no later than the registration request is submitted. If no general right to appeal is granted to appropriately qualified NGOs in general, we suggest allowing an appeal by any suitably qualified stakeholder who has submitted a comment during the global stakeholder consultation within the commenting period."[576] Stakeholders who have responded to the consultation should be directly informed of the outcome of the validation process.[577] The transparency of the validation process after the end of the public commenting period should be enhanced.[578]

Table 3 notes

533 Input received from the Wuppertal Institute in response to the call for public input on the validation process, dated August 15, 2011 (p.4); input received from Friends of the Earth in response to the call for public input on the validation process, undated (p.2).

534 Input received from the PD-Forum in response to the call for public input on the validation process, dated March 17, 2012 (p.1).

535 Input received from Dr Zheng Zhaoning, Technical Director of Goldchina Consultancy International Co., Ltd in response to the call for public input on the validation process, undated (p.1).

536 Similar inputs received from the Gujarat Forum, Paryyavarnia Vikas Kendra, Snehal B. Satyapanthi, Paryavaran Mitra, Vijay Bharatiya and International Rivers; input received from Friends of the Earth in response to the call for public input on the validation process, undated (p.2).

537 Input received from the Wuppertal Institute in response to the call for public input on the validation process, dated August 15, 2011 (p.4).

538 Various inputs received.

539 Civil-society letter to the High-Level Panel on the CDM Policy Dialogue, dated May 21, 2012, submitted by 84 civil-society organisations (p.3).

540 Similar inputs received from the Gujarat Forum, Paryyavarnia Vikas Kendra, Snehal B. Satyapanthi, Paryavaran Mitra and Vijay Bharatiya in response to the call for public input on the validation process.

541 Input received from Friends of the Earth in response to the call for public input on the validation process, undated (p.2).

542 Input received from the Wuppertal Institute in response to the call for public input on the validation process, dated August 15, 2011 (p.4).

543 Similar inputs received from the Gujarat Forum, Paryyavarnia Vikas Kendra, Snehal B. Satyapanthi, Paryavaran Mitra and Vijay Bharatiya in response to the call for public input on the validation process.

544 Input received from the Wuppertal Institute in response to the call for public input on the validation process, dated August 15, 2011 (p.5).

545 Input received from the Finnish DNA in response to the questionnaire, undated (p.4).

546 Similar inputs received in response to the call for public input on the validation process from: CDM Watch, International Rivers, GAIA, CAN International, CIEL and Earthjustice, similarly dated August 15, 2011; input received from Focus on the Global South in response to the call for public input on the CDM Policy Dialogue, dated January 16, 2012; input received from the Madagascan DNA in response to the questionnaire, dated March 29, 2012 (p.4); input received from Bhutan's DNA in response to the questionnaire, undated (p.2); input received from the DOE/AIE Forum in response to the call for public input on the validation process, dated August 14, 2011 (p.1).

547 Input received from a DOE in response to the questionnaire, dated May 7, 2012 (p.5).

548 Input received from the PD-Forum in response to the call for public input on the validation process, dated March 17, 2012 (p.1).

549 Similar inputs received in response to the call for public input on the validation process from: CDM Watch, International Rivers, GAIA, CAN International, CIEL and Earthjustice, similarly dated August 15, 2011.

550 Similar inputs received from the Gujarat Forum, Paryyavarnia Vikas Kendra, Snehal B. Satyapanthi, Paryavaran Mitra and Vijay Bharatiya in response to the call for public input on the validation process.

551 Input received from Transparency International in response to the call for public input on the validation process, dated August 15, 2011 (p.2).

552 Input received from Friends of the Earth in response to the call for public input on the validation process, undated.

553 Input received from a participant during a stakeholder engagement meeting in China, held on March 13, 2012.

554 Input received from Burundi's DNA in response to the questionnaire, dated March 29, 2012 (p.4).

555 Various inputs.

556 Similar inputs received in response to the call for public input on the validation process from: CDM Watch, International Rivers, GAIA, CAN International, CIEL and Earthjustice, similarly dated August 15, 2011, and input received from Focus on the Global South in response to the call for public input on the CDM Policy Dialogue, dated January 16, 2012.

557 Input received from International Rivers (based on input from CDM Watch) in response to the call for public input on the validation process, dated August 15, 2011 (p.1).

558 Input received from the Fundacion Rio Napo in response to the call for public input on the CDM Policy Dialogue, dated January 16, 2012.

559 Similar inputs received from the Gujarat Forum, Paryyavarnia Vikas Kendra, Snehal B. Satyapanthi, Paryavaran Mitra and Vijay Bharatiya.

Table 3 notes

560 Input received from the Zimbabwean DNA in response to the questionnaire, dated March 29, 2012 (p.4).

561 Input received from the Korean DNA in response to the questionnaire, dated April 30, 2012 (p.7).

562 Input received from the PD-Forum in response to the questionnaire, dated May 8, 2012 (p.8).

563 Input received from the DOE/AIE Forum in response to the call for public input on the validation process, dated August 14, 2011 (p.1).

564 Input received from Dr Zheng Zhaoning, Technical Director of Goldchina Consultancy International Co., Ltd in response to the call for public input on the validation process, undated (p.2).

565 Input received from the DOE/AIE Forum in response to the call for public input on the validation process, dated August 14, 2011 (p.2).

566 Input received from a DOE in response to the questionnaire, dated May 7, 2012 (p.4).

567 Input received from the PD-Forum in response to the call for public input on the validation process, dated March 17 2012 (p.2).

568 Input received from the DOE/AIE Forum in response to the call for public input on the validation process, dated August 14, 2011 (p.2).

569 Input received from the PD-Forum in response to the call for public input on the validation process, dated March 17, 2012 (p.2).

570 Input received from the DOE/AIE Forum in response to the call for public input on the validation process, dated August 14, 2011 (p.2).

571 Input received from The Climate Concept Foundation/Christopher Brandt in response to the call for public input on the CDM Policy Dialogue, dated January 9, 2012.

572 Input received from Friends of the Earth in response to the call for public input on the validation process, undated (p.3).

573 Similar inputs received in response to the call for public input on the validation process from: CDM Watch, International Rivers, GAIA, CAN International, CIEL and Earthjustice, similarly dated August 15, 2011.