

Guidelines for the Austrian JI/CDM Programme

Based on Sections 13 and 43 of the Austrian Environmental Support Act (ESA) (Umweltförderungsgesetz UFG), Federal Law Gazette No. 185/1993, as amended, the following order is issued in agreement with the Austrian Federal Minister of Finance, the Austrian Federal Minister of European and International Affairs and the Austrian Federal Minister of Economic Affairs and Labour:

Objectives

§ 1. Through the provision of public funds for the purchase of emission reduction units, especially under the Flexible Mechanisms, i.e. "Joint Implementation" and the "Clean Development Mechanism", a cost-effective contribution towards achieving the Austrian reduction target of 13% of greenhouse gas emissions according to the Kyoto Protocol is to be made within the framework specified in the Conclusions of the European Council of May 17, 1999. For projects to be carried out in developing countries, the objectives and principles of Austrian development policy pursuant to Section 1 of the Federal Act on Development Cooperation (Bundesgesetz über die Entwicklungszusammenarbeit), Federal Law Gazette I No. 49/2002, as amended, are to be taken into consideration.

Definitions

§ 2. (1) Joint Implementation (JI) pursuant to Article 6 of the Kyoto Protocol means the joint implementation of emission-reducing projects by two Annex I countries.

(2) Clean Development Mechanism (CDM) pursuant to Article 12 of the Kyoto Protocol means the implementation of emission-reducing projects in a country not included in Annex I of the Framework Convention on Climate Change.

(2a) Assigned Amount Units (AAUs) are units under the Kyoto Protocol which are issued by the States Parties to the Framework Convention on Climate Change according to their allocations pursuant to Article 3, paragraphs 7 and 8, of the Kyoto Protocol. Assigned Amount Units are expressed in metric tonnes of carbon dioxide equivalent.

(2b) Green Investment Scheme means the transfer of Assigned Amount Units between States Parties to the Framework Convention according to Article 17 of the Kyoto Protocol, subject to the use of the proceeds for agreed climate and environmental protection projects or programmes.

(3) Greenhouse gases are the gases specified in Annex A to the Kyoto Protocol, i.e. carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), partially halogenated hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆).

(4) Emission Reduction Units (ERUs) are calculated on the basis of their global warming potentials pursuant to decision 2/CP.3 of the Conference of the Parties to the Framework Convention on Climate Change. They are expressed in metric tonnes of carbon dioxide equivalent.

(5) Baseline means the reference case of development without project implementation ("business as usual"), especially regarding the emissions which would have to be expected in such case.

(6) Memorandum of Understanding (MoU) means a framework contract between the Republic of Austria and the potential host country of a project. The objective of an MoU is to facilitate the organisation of the project and, in particular, the transfer of ERUs.

(7) Letter of no Objection (LoNO): this written document represents the agreement in principle of the host country to the planned JI or CDM project.

(7a) Letter of Approval (LoA): this written document represents the final approval by the host country of the planned project to be recognised as a JI or CDM project and, in the case of JI projects, the transfer of ERUs.

(8) Project Idea Note (PIN): a short initial description of the project, its organisational framework and the estimated ERUs.

(9) Project Design Document (PDD): the PDD is a detailed project description serving as the basis for approval within the framework of the programme and for validation.

(10) The Programme Manager, as defined herein, is – pursuant to Section 46 of the Environmental Support Act – Kommunalkredit Austria AG for the year 2003, and from January 1, 2004 an entity mandated by the Austrian Federal Minister of Agriculture, Forestry, Environment and Water Management.

(11) Submission entities, as defined herein, are – pursuant to Section 42 of the Environmental Support Act – Austria Wirtschaftsservice GmbH, Österreichische Kontrollbank AG and the Programme Manager.

(12) Immaterial services, as defined herein, are:

1. services relating to the preparation of project-related measures, such as planning services, studies (e.g. baseline studies), validation;
2. services relating to the performance of measures concerning plant and equipment, such as construction supervision, monitoring and verification;
3. services aimed at the identification and acquisition of JI and CDM projects;
4. services aimed at project-related local capacity building in developing countries.

Scope of the Programme

§ 3. The scope of the programme is as follows:

1. the purchase of ERUs or rights to ERUs from JI and CDM projects and Green Investment Schemes, and the participation in funds pursuant to Section 39, sub-section 3, of the Environmental Support Act;
2. support for immaterial services as defined in § 2 (12) of these Guidelines.

Guide

§ 4. The Guide for offerors (§ 5) contains the detailed rules governing the use of the mechanisms pursuant to the international conventions, as amended, and the Austrian programme, as well as a description of the project cycle. The Guide also contains forms for the description of the Project Idea (§ 10) and the Project Design Document (§ 11) to be used for the submission of individual projects. For justified reasons, forms corresponding to the international standard may also be used for the Project Design Document, provided any additional information required under the Austrian JI/CDM Programme is contained therein. If additional data sheets and forms for individual parts of the submission are made available by the Programme Manager, these have to be completed as well.

Offerors and Applicants

§ 5. Offers can be submitted by any Austrian or non-Austrian natural or legal person who is able to furnish prima facie evidence of eligibility for ERUs. Applications for recognition of a project as a JI or CDM project by the Republic of Austria can be submitted by any Austrian or non-Austrian natural or legal person.

Prerequisites for Recognition as a JI or CDM Project

§ 6. The prerequisites for recognition of a project as a JI or CDM project by the Federal Minister of Agriculture, Forestry, Environment and Water Management are as follows:

1. the project leads to reductions of anthropogenic emissions of greenhouse gases as defined in § 2 (3) which would not be possible if the project were not implemented;
2. the amount of reductions achieved can be clearly and unmistakably attributed to the project;
3. the project generates certifiable and/or verifiable emission reduction units;
4. the host country has ratified the Kyoto Protocol or acceded to the Protocol;
5. the project has been approved by the entity in charge nominated by the host country and meets the JI or CDM criteria of the host country, if such criteria exist;
6. the project gives due consideration to issues of sustainable development in the host country, ensuring the proper balance of its economic, ecological and social impact;
- 6a. the project, provided it is a project for the generation of electricity from hydro-power with a generation capacity of more than 20 MW, meets the relevant international criteria and guidelines, including those of the Concluding Report on "Large Dams and Development: a New Framework for Decision-Making" published by the International Commission on Large Dams in 2000;
7. the period in which ERUs are generated by the project is clearly defined; and
8. proof of payment of reasonable compensation to the Programme Manager, to be specified by the Programme Manager in agreement with the Federal Ministry of Agriculture and Forestry, Environment and Water Management, if the application for recognition of a project as a JI or CDM project by the Republic of Austria includes the issue of a Letter of Approval of the Republic of Austria for participation of an Austrian or non-Austrian natural or legal person in a JI or DCM project as defined by the Kyoto Protocol.
9. In the case of funds, these requirements are to be met mutatis mutandis by the terms and conditions of the fund and/or the participation or purchase agreement.

Prerequisites for the Purchase of ERUs

§ 7. The prerequisites for the approval of the purchase of ERUs or rights to ERUs resulting from a JI or CDM project by the Federal Minister of Agriculture, Forestry, Environment and Water Management are as follows:

1. the project has been recognised as a JI or CDM project pursuant to § 6;
2. the host country gives its binding consent to the project and - in the case of JI - to the transfer of ERUs;
3. the reduction units are creditable to Austria;
4. financing of the measures is ensured, taking account of the purchase of ERUs or rights to ERUs;
5. the purchase of ERUs or rights to ERUs is based on considerations of cost-benefit optimisation, with international market prices for comparable projects serving as a frame of reference;
6. the objectives and principles of Austrian development policy are taken into account, if the project is carried out in a developing country;
7. the offeror agrees to the following:

- a) the offeror's name, the fact that ERUs or rights to ERUs are to be purchased as well as the purchase price will be disclosed by the Federal Ministry of Agriculture, Forestry, Environment and Water Management or the Programme Manager after conclusion of the contract;
 - b) all data contained in the offer (PIN and PDD) as well as all relevant personal and computer-generated data gathered in the process of project management and control can be transmitted to the Federal Ministry of Agriculture, Forestry, Environment and Water Management, the Federal Ministry of Finance, the Federal Ministry of Economic Affairs and Labour, the Federal Ministry of European and International Affairs, the Austrian Federal Chancellery and the Austrian Court of Auditors for auditing purposes and for statistical evaluations.
- 7a. Offers for the purchase of ERUs from JI or CDM projects on the secondary market are to be examined by the Programme Manager for their compatibility with the requirements of §§ 6, 7 and 8.3, if applicable. A suitable procedure for the approval of the purchase of ERUs from JI or CDM projects on the secondary market by the Federal Minister of Agriculture and Forestry, Environment and Water Management, with due consideration given to the principles laid down in the Environmental Support Act, may be recommended by the Commission to the Federal Minister of Agriculture and Forestry, Environment and Water Management for adoption upon a proposal made by the Programme Manager.

Project Types

§ 8. (1) The following project types, in particular, are deemed to be potential JI/CDM projects:

1. construction (or retrofitting) of combined heat and power plants;
2. fuel switching in energy generation plants and production plants to renewable energy sources or from high-carbon to low-carbon energy sources, especially in existing district heating systems;
3. construction (or retrofitting) of electricity generating plants operated with renewable energy sources (especially wind power plants, biogas- or biomass-fired combined heat and power plants, and hydro-power plants),
4. projects designed to avoid the development of or recover energy from landfill gas;
5. waste management measures which contribute toward the avoidance of greenhouse gas emissions, especially through energy recovery from waste, preferably including waste heat utilisation;
6. projects serving the reduction of end-user energy consumption in residential buildings, buildings of public and private service providers as well as in industrial applications and processes, including the utilisation of waste heat potentials (energy efficiency projects).

(2) Projects not listed in § 8 (1) are eligible, if the project criteria specified in § 6 are met.

(3) Nuclear projects are not eligible.

(4) As regards sink projects, attention is drawn to the highly critical discussion on this issue. The Commission, acting in accordance with Section 45 of the Environmental Support Act, will devote special attention to §§ 6.3 and 6.6 when deciding on the recognition of sink projects.

Submission and Evaluation of the Project Ideas (PIN)

§ 9. (1) Offerors of ERUs from individual projects or applicants have to submit a description of the project idea (PIN), including a Letter of no Objection, in English, if the approval procedure of the host country concerned provides for such a Letter of no Objection. The PIN is to be submitted to the Programme Manager or one of the submission entities.

(2) The PIN is examined by the Programme Manager for completeness and correctness and for its basic eligibility as a JI or CDM project; if necessary, the Programme Manager may request the provision of additional information.

(3) In case the offeror of ERUs from individual projects or the applicant does not submit a Letter of no Objection, the Programme Manager will contact the potential host country within the framework of its evaluation according to § 9 (2) in order to obtain a Letter of no Objection or a binding statement by the competent authority of the host country as to whether or not there are any objections of principle against the project.

(4) The result of the evaluation is positive, if the prerequisites stipulated in § 9 (2) are met and a Letter of no Objection or binding statement by the competent authority of the host country is available, indicating that there are no objections of principle to the project, provided the approval procedure of the host country concerned requires such a Letter of no Objection or such binding statement.

(5) The Programme Manager advises the offeror or the applicant of the results of the evaluation in writing within 30 days of submission of the PIN. In the event of a positive evaluation, the offeror or the applicant is requested to present the PDD pursuant to § 10. In the event of a negative outcome, the results of the evaluation, including a reasoned opinion, have to be communicated to the offeror or the applicant in writing. The offeror or the applicant must be given an opportunity to comment thereon.

Submission and Evaluation of the Project Design Document (PDD)

§ 10. (1) Following receipt of the positive PIN evaluation, the offeror or the applicant has to submit the Project Design Document (PDD), drafted in English, to the Programme Manager or a submission entity, using the appropriate form pursuant to § 4. In justified cases, forms corresponding to the international standard can also be used for the Project Design Document, provided any additional information required under the Austrian JI/CDM Programme is made available. If necessary, the Programme Manager may demand additional information. If already available at the time of submission of the PDD, the validator's report for CDM or the report of the independent entity for JI is to be presented as well; otherwise, it is to be submitted at the earliest possible date. A final evaluation of the project by the Programme Manager will only be performed when the validator's preliminary report is available. If a PDD is already available at the time of first submission, the final evaluation of the project can be made according to the provisions of this § 10; in that case, evaluation according to § 9 is not required.

(2) The Project Design Document has to cover the following topics:

1. Project description:

- 1.1. a description of the project comprising at least the purpose of the project and a description of the activities and emission sources covered by the project;
- 1.2. details of the project partners, providing evidence that the project partners are capable of implementing the project in terms of financial and human resources;
- 1.3. details on the project location;
- 1.4. details regarding the project schedule, including the time of project launch and the period during which the project will generate certifiable or verifiable ERUs;
- 1.5. a technical project description;
- 1.6. details on the organisational structure of the project as well as economic data, including a financing plan and an ERU price offer as well as a reasonably transparent calculation; this item is not required, if only project recognition is applied for.

2. Presentation of the project impact:

- 2.1. a presentation of the ecological impact of the project, especially regarding air, water and soil, the consumption of natural resources and the production of waste, as well as social, economic and (for CDM projects) development-policy effects, during the period of project implementation and after its completion.

3. Presentation of comments from the public:

3.1. a presentation on how the local public was involved in project development and a summary of comments received.

4. Baseline and additionality:

4.1. a presentation of the baseline pursuant to § 2 (5) as well as factors identified as additional to the “business as usual” scenario in terms of the Kyoto Protocol;

4.2. a description of the methodology used for baseline calculation as well as a calculation of the emission reduction units to be expected.

5. Monitoring plan:

5.1. a presentation of the relevant factors and central project features to be measured and recorded by the project operator as well as a definition of responsibilities for these measuring and recording tasks.

(3) The Programme Manager evaluates the PDD on the basis of the standards contained in the relevant resolutions of the Conference of the Parties to the Framework Convention on Climate Change and/or the Kyoto Protocol and the criteria pursuant to § 6 and – if an offer for the purchase of ERUs has been made – § 7; if necessary, the Programme Manager also performs a ranking of the projects submitted. The offeror or the applicant must be given an opportunity to submit supplementary comments thereon.

(4) The Programme Manager communicates to the Commission a project evaluation, comments by the offeror or the applicant, if any, and, if necessary, a ranking of the projects meeting the requirements specified in the relevant resolutions of the Conference of the Parties to the Framework Convention on Climate Change and/or the Kyoto Protocol and complying with the criteria of § 6 and § 7, the latter applying to offers. At the same time, as regards offers, the Programme Manager presents a proposal regarding the type and scope of support for project preparation and the purchase of ERUs, including the purchase price negotiated with the offeror.

Support for Immaterial Services

§10 a. For justified reasons, support for immaterial services pursuant to § 2 (12) may also be granted after a positive evaluation of the PIN pursuant to § 9 or the PDD pursuant to § 10.

Participation in Funds

§ 11. Offers for participation in funds are to be examined by the Programme Manager for their compatibility with the requirements of §§ 6, 7 and 8 (3), if applicable. The Programme Manager communicates its assessment of the compatibility of the fund with these requirements and a proposal regarding the amount of a possible participation to the Commission.

Notification of the Offeror/Applicant

§ 12. The Programme Manager informs the offeror or the applicant of the decision taken by the Federal Minister of Agriculture, Forestry, Environment and Water Management regarding the offer or the application. In the event of a negative decision, the notification given to the offeror or the applicant has to include a reasoned opinion.

Purchase Contract and Agreement with the Host Country

§ 13. (1) Following a positive decision by the Federal Minister of Agriculture, Forestry, Environment and Water Management and based on the validation performed, the Programme Manager, provided

an offer for the purchase of ERUs has been made, prepares the following, depending on the preferences of the host country:

1. a contract between the Federal Minister of Agriculture, Forestry, Environment and Water Management, represented by the Programme Manager, and the offeror as well as the binding approval of the host country to the project and, in the case of JI, to the transfer of ERUs (LoA);
2. a contract between the Federal Minister of Agriculture, Forestry, Environment and Water Management, represented by the Programme Manager, the offeror and the host country.

The contract has to be concluded subject to registration of the project with the Executive Board for CDM projects or expiry of the deadline for submitting comments on the record of decisions by the independent entity for JI projects. In duly substantiated individual cases, the purchase contract can also be concluded subject to the final validation report and the LoA.

(2) The contractual provisions referred to in § 13 (1) always comprise:

1. for JI projects regarding the relationship between the Republic of Austria and the offeror:
 - 1.1. the exact project title,
 - 1.2. the amount of the advance payment,
 - 1.3. the price per ERU,
 - 1.4. specification of the minimum quantity of the ERUs to be transferred, if applicable;
 - 1.5. provisions regarding the partial or complete recovery of funds for project preparation and any advance payment;
2. regarding the relationship between the Republic of Austria and the host country:
 - 2.1. the exact project title,
 - 2.2. specifications of the quantity of the ERUs to be transferred (in absolute or relative terms, i.e. depending on the number of ERUs generated),
 - 2.3. the date of the first transfer of ERUs,
 - 2.4. the crediting period and/or the ERU transfer period for the project, and
 - 2.5. any rights of first refusal of the Republic of Austria for the ERUs for subsequent commitment periods.

(3) The seller is to be obliged to immediately advise the Programme Manager of any events resulting in a delay or making project implementation impossible as well as any circumstances leading to a change of the project design as outlined in the PDD.

(4) The contract is to contain provisions stipulating that Austrian law is applicable to any dispute arising under the contract and acknowledging the competent court of Vienna and the International Arbitral Centre of the Austrian Federal Economic Chamber as the places of jurisdiction. Upon consultation of the Commission, deviations from the provisions regarding the choice of law and the places of jurisdiction and arbitration are permitted.

Payment

§ 14. (1) As a matter of principle, payment of the purchase price is due annually after the transfer of the ERUs from the national registry of the host country for JI projects and/or from the registry of the Executive Board of the mechanism for environmentally compatible development for CDM projects to the national registry of the Republic of Austria. Exceptions are to be agreed separately in the purchase contract.

(2) As a matter of principle, any advance payment is made after conclusion of the ERU purchase contract. The maximum amount of the advance payment is 50% of the purchase price for the quantity of ERUs offered.

(3) In the case of participations in funds, payment is made according to the agreement concluded with the fund manager.

(4) As a matter of principle, funds for immaterial services are to be paid out after conclusion of the contract. In exceptional cases, payment can be made earlier, if this is necessary for project development.

Recovery

§ 15. (1) The seller is to be obliged to repay the funds already paid out fully or partially within 14 days upon written request, and/or claims to funds pledged for project preparation but not yet paid out will become null and void, if the project is not implemented or abandoned for reasons attributable to intent or gross negligence on the part of the seller.

(2) In the event of recovery, interest on the amounts to be repaid is payable for the period starting on the day of payment, the rate being 3% above discount rate of the European Central Bank as of that date.

Cooperation of the Programme Manager with Other Entities

§ 16. The Programme Manager enters into a cooperation agreement with other submission entities. Details of such cooperation are to be provided to the Commission upon request. The Commission may issue recommendations thereon.

Coming into Force

§ 17. The 2003 Guidelines for the Austrian JI/CDM Programme, as amended, enter into force on October 23, 2007.

Pröll

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