

Directive for the Austrian JI/CDM Programme

Based on paragraphs 13 and 43 of the Austrian Environmental Support Act (ESA) (Umweltförderungsgesetz UFG), Federal Law Gazette No. 185/1993 as amended, the following is ordered in consent with the Austrian Federal Minister of Finance, the Austrian Federal Minister of Foreign Affairs and the Austrian Federal Minister of Industry and Labour:

Objectives

§ 1. International projects shall be initiated by provision of public funds; such projects shall cost-effectively contribute to achieving the Austrian reduction commitment of 13 percent of emissions of greenhouse gases pursuant to the Kyoto Protocol within the framework specified in the conclusions of the European Council on May 17, 1999 by applying the flexible mechanisms of the Joint Implementation and Clean Development Mechanism. In so far as projects will be carried out in developing countries, the objectives and principles of the Austrian Development Policy pursuant to paragraph 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 stands for the joint carrying out of emissions reduction projects by two Annex I countries.

(2) Clean Development Mechanism (CDM) pursuant to article 12 of the Kyoto Protocol stands for carrying out of emissions reduction projects in a country not belonging to Annex I of the Framework Convention on Climate Change.

(3) Greenhouse gases stand for the gases specified in Appendix A to the Kyoto Protocol, 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 using the 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 as metric tonnes of carbon dioxide equivalent.

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

(6) Memorandum of Understanding (MoU) represents 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 project handling and especially the transfer of the ERUs.

(7) Letter of no Objection (LoNO): This written document represents the principal consent of the host country to the planned JI or CDM project.

(7a) Letter of Approval (LoA): this written document represents the final approval of the host country for the planned project as JI or CDM project and confirms, in the case of JI- projects, the transfer of the emission reductions.

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

(9) Project Design Document, PDD: the PDD is a precise project description and serves as the basis for approval within the programme's framework and for validation.

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

(11) Submission entities as defined herein are – pursuant to paragraph 42 ESA – Austria Wirtschaftsservice GmbH, the Österreichische Kontrollbank AG and the programme manager.

(12) Immaterial services pursuant hereto are:

1. services in the course of the preparation of project-related measures, especially plans, surveys (e.g. baseline study), validation;
2. services in the course of performing installation-related measures, especially construction supervision, monitoring and verification;
3. services serving the identification and acquisition of JI and CDM projects;
4. services serving the building up of project-related local capacities in the developing countries;

Subject Matter of the Programme

§ 3. The programme's subject matter is as follows:

1. Purchase of ERUs or rights to ERUs from JI and CDM projects and through participation in funds pursuant to paragraph 39, section 3 EDA;
2. Support of immaterial services pursuant to paragraph 2, section 12 ESA.

Guide

§ 4. The applicant's guide (§ 5) comprises the detailed presentation of the rules for using the mechanisms pursuant to international agreements in the current version and the Austrian programme as well as the project cycle. The guide also contains forms for the PIN (§ 10) and PDD (§ 11) to be used for submitting individual projects. If Additional data sheets and forms for individual parts of the submission are made available by the programme manager, they have to be used.

Offerer and Applicant

§ 5. Any Austrian and non-Austrian individual or legal entity who can furnish prima facie evidence of being eligible for ERUs can submit an offer. Applications for recognition of a project as a JI or CDM project by the Republic of Austria can be submitted by any Austrian and non-Austrian individual or legal entity.

Prerequisites for Recognition as a JI or CDM Project

§ 6. The prerequisites for recognising 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 pursuant to paragraph 2, section 3, which could not have been achieved if the project had not been implemented;
2. the amount of reductions can be unambiguously and understandably attributed to the project;
3. the project generates certifiable and/or verifiable emissions reduction units;
4. the host country has ratified the Kyoto Protocol or acceded to the protocol;
5. the project has the approval of the entity in charge nominated by the host country and complies with the JI or CDM criteria of the host country, if such criteria exist;

6. through the project sustainable development in the host country is taken into consideration in well-balanced proportions of economic, ecological and social effects;
7. the period in which ERUs are generated by the project is clearly defined;
8. In case of funds, these requirements are to be correspondingly met through funds terms and conditions.

Prerequisites for Purchasing ERUs

§ 7. The prerequisite for obtaining approval for purchasing ERUs or rights to ERUs resulting from a JI or CDM project from 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 paragraph 6;
2. the host country gives their 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 with consideration of the purchase of entitlement to ERUs or rights to ERUs;
5. the purchase of ERUs or rights to ERUs takes place on the basis of cost-benefit optimisation and is based on the international market price for comparable projects;
6. the objectives and principles of the Austrian Development Policy are taken into account, provided that the project is carried out in a developing country;
7. the offerer gives his consent to the following:
 - a) his name, the fact of purchasing ERUs or rights to ERUs and the purchase price can be announced by the Federal Ministry of Agriculture, Forestry, Environment and Water Management or the programme manager after concluding the contract;
 - b) all data contained in the offer (PIN and PDD) as well as all data accumulated, relevant private and automated computer processed data can be transmitted to the Federal Ministry of Agriculture, Forestry, Environment and Water Management; to the Federal Ministry of Finance; to the Federal Ministry of Industry and Labour; the Austrian Federal Chancellery and the Austrian Court of Auditors for verification purposes and statistical evaluations;

Project Types

§ 8. (1) The following project types are especially deemed as potential JI/CDM projects:

1. construction (or retrofitting) of combined heat and power coupling installations;
2. fuel switch projects in energy conversion installations and production plants to renewable energy sources or from energy sources with high carbon content to energy sources with lower carbon content, especially in existing district heating systems;
3. construction (or retrofitting) of generating plants operated with renewable energy sources (especially wind power plants, biogas or biomass combined heat and power coupling as well as hydroelectric power plants),
4. projects whose purpose is the avoidance or (energy) recovery of landfill gases;
5. waste management measures which contribute to avoidance of greenhouse gas emissions especially through energy recovery of waste, if possible under consideration of waste heat utilisation;

6. projects serving the reduction of end-user energy consumption in residential accommodation, public and private service office buildings as well as in industrial applications and processes (including waste heat potentials) (energy efficiency projects).

(2) Projects not listed in section 1 are permissible when the project criteria pursuant to paragraph 6 are fulfilled.

(3) Nuclear projects are impermissible.

(4) Regarding sink projects, attention is drawn to the very critical discussions. Recognition of sink projects can only be decided after the corresponding resolutions of the Conference of the Parties to the Framework Convention on Climate Change are present. However, the commission pursuant to paragraph 45 EDA will turn their special attention to paragraphs 6 (3) and 6 (6) regarding the question of sink project recognition.

Submission and Evaluation of the PIN

§ 9. (1) The offerer of ERUs originating from individual projects or the applicant are to present a description of the project idea (PIN) including a Letter of no Objection in English; the corresponding form pursuant to paragraph 4 is to be used. The PIN is to be submitted at the programme manager or one of the submission entities.

(2) The programme manager verifies the PIN for completeness and correctness and the principal eligibility of the project as a JI or CDM project; if required the programme manager may demand further supplements.

(3) In the case the offerer of ERUs does not submit a Letter of no Objection, the programme manager contacts the potential host country within its evaluation pursuant to section 2 to immediately obtain a Letter of no Objection or a binding information of the competent authority of the host country, that there are no exceptions against the project.

(4) The result of the evaluation is positive when the prerequisites stipulated in section 2 are satisfied and the Letter of no Objection or a binding information of the competent authority of the host country, that there are no exceptions against the project, is existent.

(5) The programme manager advises the offerer or the applicant of the results of the evaluation in writing within 30 days from the submission of the PIN. If the results are positive the offerer or the applicant are requested to present the PDD pursuant to paragraph 10. Negative evaluation results are to be advised to the offerer or applicant in writing along with substantiation. The offerer or applicant must be given an opportunity to give comments thereto.

Submission and Evaluation of the PDD

§ 10. (1) Following receipt of the positive PIN evaluation the offerer or the applicant can submit the Project Design Document (PDD) in English at the programme manager or a submission entity; thereby the appropriate form pursuant to paragraph 4 is to be used. If required, the programme manager may demand supplements. The validator's report for CDM or the report of the independent entity for JI is also to be presented, if such already exists, upon the point of PDD submission, otherwise it is to be subsequently filed at the earliest possible date. Final evaluation of the project through the programme manager only takes place when the validator's report is present.

(2) The PDD has at least to cover the following topics:

1. Project description:

1.1. a project description at least comprising the purpose of the project and a description of which activities and emission sources are covered by the project;

1.2. details of the project partners, providing evidence that the project partners are – in regard of finance and personnel – capable of realising the project;

- 1.3. details of the project location;
- 1.4. details regarding the project schedule; including the project start time and the period during which the project generates certifiable or verifiable ERUs;
- 1.5. a technical project description;
- 1.6. details of the organisational project structure as well as economic data including financing planning and an offer with the ERUs price as well as understandable calculation; this item can be skipped when only project recognition is being applied for.

2. Presentation of the project effects:

- 2.1. a presentation of the ecological project effects especially regarding air, water and soil as well as the consumption of natural resources and waste; as well as social, economic and (for CDM projects) development-political effects during realisation and after completion of the project;

3. Presentation of comments from the public:

- 3.1. a presentation of how the local public has been integrated into the project development and a summary of comments;

4. Baseline and Additionality:

- 4.1. a presentation of the baseline pursuant to paragraph 2, section 5 as well as factors which additionally identify the project in terms of the Kyoto Protocol in comparison with "business as usual";
- 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 which are to be measured and recorded by the project operator as well as the definition of responsibility for measurements and records;

(3) The programme manager evaluates the PDD based on the standards contained in the relevant resolutions of the Conference of the Parties to the Framework Convention on Climate Change or the Kyoto Protocol and the criteria pursuant to paragraph 6 and – if an offer on ERUs purchase exists – pursuant to paragraph 7; further, the programme manager performs ranking of the submitted projects if necessary. The offerer or applicant must be given an opportunity to give supplementary comments thereto.

(4) The programme manager passes on to the commission a project evaluation, possible comments of the applicant or offerer, the validator's report as well as, if required, a ranking for those projects which meet the standards specified in the relevant resolutions of the Conference of the Parties to the Framework Convention on Climate Change respectively satisfy the standards of the Kyoto Protocol as well as comply with the criteria pursuant to paragraph 6 and for offers – pursuant to paragraph 7. Simultaneously, the programme manager presents a proposal regarding the type and scope of support for project preparation and purchase of ERUs including the purchase price negotiated with the offerer.

Support of immaterial services

§10 a. A support of immaterial services pursuant to paragraph 2, section 12 ESA can, if reasonable, also take place after the positive evaluation of the PIN pursuant to paragraph 9.

Participation in Funds

§ 11. Offers for participation in funds are to be verified by the programme manager regarding their compatibility with the requirements pursuant to paragraphs 6, 7 and 8, section 3, as far as these apply thereto. The programme manager passes on to the commission an evaluation of the compatibility of the fund with these requirements along with a proposal regarding the amount of a possible participation.

Communication to the Offerer/Applicant

§ 12. The programme manager advises the offerer or the applicant on the decision of the Federal Minister of Agriculture, Forestry, Environment and Water Management on the offer or the application. A negative decision is to be communicated to the offerer or applicant along with substantiation.

Purchase Contract and Agreement with the Host Country

§ 13. (1) Following a positive decision of the Federal Minister of Agriculture, Forestry, Environment and Water Management and the performed validation, and when an offer on ERUs purchase is in place, the programme manager 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 offerer as well as the binding approval of the host country to the planned 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, and the offerer and the host country.

The contract has to be closed under the conditions of registration of the project with the executive board for CDM projects or after the period for submitting comments regarding the record of decision of the independent entity for JI projects.

(2) The contractual stipulations mentioned in section 1 always comprise:

1. for JI projects regarding the relationship between the Republic of Austria and the offerer:
 - 1.1. the precise name of the project,
 - 1.2. the amount of the advance payment,
 - 1.3. the price per ERU,
 - 1.4. in all cases a specification of minimum quantity of the ERUs to be transferred,
 - 1.5. stipulations regarding the partial or complete reclamation of funds for the project preparation and any advance payment, when applicable;
2. regarding the relationship between the Republic of Austria and the host country:
 - 2.1. the precise name of the project,
 - 2.2. specifications regarding the quantity of the ERUs to be transferred (can be either absolute or relative, i.e. depending on the generated number of ERUs),
 - 2.3. the date for the first transfer of ERUs,
 - 2.4. the crediting period respectively the ERUs transfer period for the project, as well as
 - 2.5. any possible options of purchase of the Republic of Austria for the ERUs for later commitment periods.

(3) The seller is to be obliged to immediately advise the programme manager of all events which delay or make the realisation of the project impossible as well as of all circumstances meaning a change of the project design as presented in the PDD.

(4) The contract is to provide that the seller acknowledges that Austrian law shall be applicable to, as well as a competent court of Vienna shall have jurisdiction for any dispute arising out of, or in connection with the agreement.

Payment

§ 14. (1) The payment of the purchase price is principally effected annually after the transfer of the ERUs from the national registry of the host country for JI projects respectively 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 separately agreed to in the purchase contract.

(2) Any possible advance payment is principally effected after conclusion of the ERUs purchase contract. It can amount to a maximum of 30 percent of the purchase price for the offered quantity of ERUs.

(3) In the case of participation in funds, the payment is effected according to the agreement with the fund manager.

(4) Funds for immaterial services are to be principally paid following contract conclusion. In exceptional circumstances, the payment can be effected earlier when necessary for project development.

Reclamation

§ 15. (1) The seller is to be obliged to refund the already paid funds fully or partially within 14 days upon written request; respectively extinction of a claim to payment of guaranteed but still unpaid funds for project preparation is to be provided when the project is not realised or aborted due to reasons which are attributable to intent or gross negligence of the seller.

(2) In the event of reclamation the monies to be refunded are to bear interest for the period starting on the day of the payment and amounting to 3 percent over the respective discount rate of the European Central Bank.

Cooperation of the Programme Manager with Other Entities

§ 16. The programme manager enters into a cooperation agreement with other submission entities. Details of the cooperation are to be provided to the commission on demand. The commission may express recommendations thereto.

Coming into Force

§ 17. The 2003 Directives for the Austrian JI/CDM Programme come into force on November 1, 2003.