

**NETHERLANDS NATIONAL GUIDELINES AND
PROCEDURES FOR APPROVING ARTICLE 6
PROJECTS,
INCLUDING THE CONSIDERATIONS OF
STAKEHOLDERS**

The Netherlands Government published on the 13th of April 2006 a Ministerial Decree for approval in JI and CDM projects (Staatscourant/79, 24 April 2005). This Decree serves as guidelines for approving article 6 projects including considerations of stakeholders as stipulated in decision 9/CMP.1 paragraph 20 b. The full text of the Decree is included in Appendix I.

Other legal provisions relevant for the implementation of the Decree are selected sections of Annex 1 of the 22 March 2006 Act amending the Environmental Management Act to implement Directive 2004/101/EC of the European Parliament and of the Council of the European Union of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms (OJ L 338), and to carry out the parts of the Kyoto Protocol to the United Nations Framework Convention on Climate Change concluded in Kyoto on 11 December 1997 (Treaty Series 1998, 170, and 1999, 110) relating to approval of project activities (EC Directive on Kyoto Project-Based Mechanisms Implementation Act). The relevant sections of the abovementioned act are included in Appendix II to this document.

APPENDIX I: Ministerial Decree for Approval of CDM and JI projects

Decree of the State Secretary for Housing, Spatial Planning and the Environment and the Minister of Economic Affairs of 13 April 2006, no. KVI2006247416, containing criteria for approval of participation in project activities within the framework of the Kyoto mechanisms (Ministerial Decree for Approval of Participation in Kyoto Project Activities)

The State Secretary for Housing, Spatial Planning and the Environment and the Minister of Economic Affairs,

Having regard to Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms (OJ L 338), the Kyoto Protocol to the United Nations Framework Convention on Climate Change, concluded in Kyoto on 11 December 1997 (Dutch Treaty Series 1998, 170, and 1999, 110), and section 16.46b, subsections 4, 7 and 8, and section 16.46c, subsection 3, in conjunction with section 16.46b, subsections 4, 7 and 8, of the Environmental Management Act;

Decree as follows:

Article 1

For the purposes of this Decree, the following definitions shall apply:

CDM project activity: project activity as referred to in section 16.46b, subsection 1, of the Act;

CDM Executive Board: executive board of the clean development mechanism, as referred to in article 12, paragraph 4, of the Kyoto Protocol;

JI project activity: project activity as referred to in section 16.46c, subsection 1, of the Act;

Act: the Environmental Management Act.

Article 2

1. Any application for approval of participation in a CDM project activity as referred to in section 16.46b, subsection 3, of the Act is to include the following information:

- a. in the event that the project activity has already been registered by the CDM Executive Board pursuant to decisions taken in accordance with the Kyoto Protocol: the name and the registration number of the project activity and the date of registration;
 - b. in the event that the project activity has not yet been registered by the CDM Executive Board: the name of the project activity, the website and the date on which the project design document was made publicly available for commentary, pursuant to article 27(h) of the modalities and procedures for a clean development mechanism as defined in article 12 of the Kyoto Protocol.
2. The following documents are to accompany the application:
- a. if the project participant is not a natural person: an extract from the commercial register giving the name of the project participant or, if the project participant is established outside the Netherlands:
 - 1°. an equivalent document or
 - 2°. if no document equivalent to the one described under (a) exists: another document giving the name of the project participant;
 - b. if the project participant is a natural person: a copy of a valid identity document;
 - c. if the project design document, as referred to in paragraph 1(b), or the registered project activity, as referred to in paragraph 1(a), does not yet contain the name of the project participant that has submitted the application for approval: a written declaration by all the participants referred to in the project design document endorsing this project participant's inclusion;
 - d. a declaration by the project participant that participation in the project activity will meet the requirements imposed on such participation under the terms of the Kyoto Protocol and the decisions taken in accordance with that Protocol;
 - e. where project activities for generating hydroelectricity with a capacity exceeding 20 MW are concerned: a declaration by the project participant that the recommendations of the World Commission on Dams referred to in article 11ter, paragraph 6, of the EC Emissions Trading Directive will be taken into account in both the project activity and its implementation.
3. The declarations referred to in paragraph 2(c), (d) and (e) may be in English. If the document referred to in paragraph 2(a)(1°) is not in English, an English translation of it by a sworn translator is to be submitted.

Article 3

1. With any application for approval of participation in a JI project activity as referred to in section 16.46c, subsection 3, of the Act, the documents referred to in article 2, paragraph 2, are to be submitted. The following information is also to accompany the application:
 - a. if the procedure referred to in section E of the guidelines for the implementation of article 6 of the Kyoto Protocol is applied to the project activity: the name of the project activity, the website and the date on which the project design document was made publicly available for commentary in accordance with article 32 of those guidelines;
 - b. if the procedure referred to under (a) is not applied to the project activity: the name of the project activity.
2. If paragraph 1(b) applies, the application is also to be accompanied by a decision indicating the approval of the competent authorities of the country where the project activity will take place.

Article 4

1. Applicants must pay a processing fee of €350 for any application for approval of participation in a project activity.
2. In the case of a CDM project activity, this fee is to be paid by transferring the amount due to the appropriate account of the Ministry of Housing, Spatial Planning and the Environment.
3. In the case of a JI project activity, this fee is to be paid by transferring the amount due to the appropriate account of the Ministry of Economic Affairs.

Article 5

The participation of a project participant in a project activity is deemed to meet the requirements referred to in section 16.46b, subsection 3(a), of the Act if he has submitted a declaration as referred to in article 2, paragraph 2(d). The first sentence is without prejudice to the authority referred to in section 16.46b, subsection 5, opening words and (b), of the Act.

Article 6

A project activity and its implementation are deemed to be in compliance with the guidelines referred to in section 16.46b, subsection 3(b), of the Act if the project participant has submitted a declaration as referred to in article 2, paragraph 2(e). The first sentence is without prejudice to the authority referred to in section 16.46b, subsection 5, opening words and (b), of the Act.

Article 7

This Decree will come into force at the same time as the Act implementing the EC Directive on the Kyoto Protocol's project mechanisms.

Article 8

This Decree is to be cited as the Ministerial Decree for Approval of Participation in Kyoto Project Activities.

This Decree and the explanatory memorandum are to be published in the Government Gazette.

The Hague, 13 April 2006

The State Secretary for Housing,
Spatial Planning and the Environment

The Minister of Economic Affairs

Explanatory memorandum

I. General

1. Background and objective

This Decree sets out criteria for the approval of participation in project activities in the framework of the Kyoto mechanisms. These mechanisms are the Clean Development Mechanism (CDM) and Joint Implementation (JI). The first signatory bears primary responsibility for CDM, and the second signatory bears primary responsibility for JI. These flexible Kyoto Protocol mechanisms make it possible, through projects outside the Netherlands, to bring about and purchase reductions in greenhouse gas emissions.¹ These reductions generate 'credits'. Credits generated by CDM project activities are referred to as certified emission reductions (CERs). Credits generated by JI projects are called emission reduction units (ERUs) (section 1.1, subsection 1, Environmental Management Act). CERs and ERUs may be used to meet the obligations that companies have under the system of tradable greenhouse gas emissions on the basis of 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 ("EC Directive on greenhouse gas emissions trading").² In addition to the greenhouse emission allowance they receive from the national authorities, companies may surrender CERs and ERUs to cover their emissions under the greenhouse gas trading system. The EC Directive on greenhouse gas emissions trading has been amended accordingly. The Directive effecting that amendment,³ also known as the Linking Directive, has been transposed into chapter 16 of the Environmental Management Act by means of the Act implementing the EC Directive on the Kyoto Protocol's project mechanisms. The present Decree is based on part 16.2.7 of the Environmental Management Act ("Approval of participation in project activities"). Provision is made for the use of CERs and ERUs elsewhere in chapter 16 of the Environmental Management Act, namely in sections 16.37a and 16.37b.

¹ Dutch Treaty Series (*Tractatenblad*; Trb.) 1998, 170, and 1999, 110.

² OJ L 275.

³ Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms (OJ L 338).

Companies wishing to take part in a project activity in the framework of a Kyoto project mechanism must secure the approval of one or more States Parties to the Kyoto Protocol. For further information, see the explanatory memorandum to the Bill to implement the EC Directive on the Kyoto Protocol's project mechanisms (Parliamentary Papers, House of Representatives, 2004/5, 30 247, no. 3, pp. 8-12).

Until mid-2008, CERs may be forwarded at issuance to the national registry of the country, for instance the Netherlands, that has approved participation in the project (the forwarding from the CDM Executive Board registry to the national registry is part of the issuance). The CERs then may not leave the Dutch registry until 2008: surrender and transfer may take place only within the Dutch registry. The same applies to the national emissions allowance registries of other industrial EU member states. This is because it is anticipated that in 2008 the EU and its member states will meet the eligibility criteria for participation in the flexible mechanisms of the Kyoto Protocol. From 2008 onwards, trade in CERs between the national registries of industrial countries will be possible. It will then be possible to transfer and surrender ERUs as well.

The Interim Policy for Approval of Participation in CDM Project Activities was established in anticipation of the Act implementing the EC Directive on the Kyoto Protocol's project mechanisms.⁴ That policy will cease to apply when this Act comes into effect (see article 5, paragraph 2, of the interim policy).

In developing Kyoto project activities, companies can on a voluntary basis make use of the international Guidelines for Multinational Enterprises on corporate social responsibility of the Organisation for Economic Cooperation and Development (OECD).⁵ When developing CDM project activities, they can also refer to the Gold Standard (www.cdmgoldstandard.org), ISO 14000 (www.iso14000.nl) and the GHG Protocol of the World Business Council for Sustainable Development (www.wbcsd.org).

2. Administrative burden

In this case, the administrative burden relates to the information and documents that must accompany an application for approval. This Decree imposes only a small administrative burden.

⁴ Government Gazette (*Staatscourant*; Stcrt.) 2005, 241.

⁵ Annex I to the OECD Declaration on International Investment and Multinational Enterprises, DAF/IME(2000)20.

The following information and documents are required: an extract from the commercial register (or an equivalent document), certain factual information and at most three declarations by the project participant. It should be added that to obtain approval it is not necessary to have an account with the Dutch registry for trade in greenhouse gas emissions.

During the preparation of the relevant Act, due consideration was given to the administrative burden imposed by the implementation of the Linking Directive. Paragraph 5 of the general part of the explanatory memorandum to the Act implementing the EC Directive on the Kyoto Protocol's project mechanisms (Parliamentary Papers, House of Representatives, 2004/5, 30 247, no. 3, pp. 13-14) dealt with this administrative burden. For that reason, this Decree was not submitted separately to the Dutch Administrative Burden Advisory Board (ACTAL).

II. Individual articles

Article 1

This article includes a definition of the term "CDM Executive Board". This board is responsible for ensuring that the Kyoto Protocol is properly implemented with regard to CDM.

Article 2

This article specifies the information and documents that must accompany an application for approval.

The first paragraph, under (a) and (b), distinguishes between the following situations.

- The project activity in question has already been approved by (i.e. registered with) the CDM Executive Board. In this case, the name of the project activity must be given, along with the registration number and the date on which it was registered with the CDM Executive Board.
- The project activity in question has not yet been approved by the CDM Executive Board. In this case, the project can only be approved if the project design document (PDD) has officially been made publicly available for commentary by the designated operational entity in accordance with article 27(h) of the modalities and procedures for a clean development mechanism as defined in article 12 of the Kyoto Protocol ("CDM guidelines").⁶ PDDs are to be made publicly available either on the website of the secretariat for the United Nations Framework Convention on Climate Change (<http://unfccc.int>) or on the website of the

⁶ Annex to COP Decision 17/CP.7.

designated operational entity. In the latter case, the website in question, the date of publication and the name of the project activity must be submitted.

It should be noted that the assessment of the application for approval does not involve a substantive evaluation of the project itself in the light of the requirements of the Kyoto Protocol and the decisions taken pursuant to it. That is the task of the designated operational entity and the CDM Executive Board.

The official name of the project participant must be given on the extract from the commercial register referred to in paragraph 2(a). It suffices to submit a copy of the information displayed on the website of the chamber of commerce, including the trade name, the business address, the place of business, the chamber of commerce number and the type of registration. Companies domiciled in another country can submit the foreign equivalent of such an extract, accompanied by an English translation by a sworn translator (paragraph 3). If the project participant is not registered in any equivalent of a chamber of commerce register, its official name must be demonstrated in some other way. For instance, an international organisation could submit a copy of its statute showing its official name.

If a natural person participates in a project in that capacity, he must submit a copy of a valid identity document (paragraph 2(b)).

In the event that a project participant has not yet been mentioned in the PDD, the request for approval should be accompanied by a declaration of no objection signed by the other participants mentioned in the PDD (paragraph 2(c)).

The declaration referred to in paragraph 2(d) states that the project participant will meet the requirements of the Kyoto Protocol and comply with the CDM guidelines and the decisions based on them.

With regard to the guidelines of the World Commission on Dams referred to in paragraph 2(e), see the remarks on article 6 below.

The declarations mentioned in paragraph 2(c),(d) and (e) may be in English (paragraph 3).

Article 3

Article 3 provides that article 2, paragraph 2, is applicable *mutatis mutandis* to requests for approval of participation in JI project activities. In the declaration referred to in article 2, paragraph 2(d), the project participant undertakes to meet the requirements of the Kyoto Protocol and the guidelines for the implementation of article 6 of the Kyoto Protocol (“JI guidelines”).⁷

JI does not, however, involve registration of the project activity with a central entity such as the CDM Executive Board referred to in article 2, paragraph 1(a). There are two JI procedures: a simple one for Parties that meet all the eligibility requirements (track 1; article 23 of the JI guidelines) and a procedure with more detailed rules for Parties that as yet do not (track 2; article 24). Track 2, like the CDM procedure, involves making the PDD publicly available for commentary on a website. The host country itself determines the track 1 procedure. In track 2, the project participant must submit the name of the project activity, the date on which the PDD was made publicly available for commentary and the website on which it was posted (paragraph 1(a)). In track 1, the project participant submits the name of the project activity (paragraph 1(b)) and a copy of the decision indicating the approval of the competent authority in the country where the project activity is to take place (paragraph 2).

The address to which the request must be sent can be found on the CDM website of the Ministry of Housing, Spatial Planning and the Environment (VROM) or the JI website of the Ministry of Economic Affairs (EZ).

Positive decisions are conveyed in the form of a letter in English approving the participation of a specific participant in a specific project, pursuant to section 2:6, subsection 2, of the General Administrative Law Act. This provision allows administrative authorities to use a language other than Dutch if it is more efficient to do so.

Article 4

To cover the costs of preparing the decision to approve participation in a Kyoto project activity, section 16.46b, subsection 8, of the Environmental Management Act makes it possible to provide by Ministerial Decree that a fee will be charged. The amount reflects the actual costs of

⁷ Guidelines for the implementation of Article 6 of the Kyoto Protocol, annex to COP decision 16/CP.7.

approval and is based on the average processing time for a request and the level of the relevant activities. It is assumed that half a day to an entire day is needed for each request.

In the case of a CDM project activity, the fee is paid by transferring the amount due to the appropriate account of the Ministry of Housing, Spatial Planning and the Environment (paragraph 2). In the case of a JI project activity, the fee is paid by transferring the amount due to the appropriate account of the Ministry of Economic Affairs (paragraph 2). The relevant account numbers can be found on the CDM website of the Ministry of Housing, Spatial Planning and the Environment (www.cdminfo.nl) and the general website of the Ministry of Economic Affairs (www.minez.nl).

Article 5

Article 5 states that, by submitting a declaration stating that participation in the project activity will meet the requirements of the Kyoto Protocol and the decisions taken pursuant to that protocol, one can satisfy the requirement stated in section 16.46b, subsection 3(a), of the Act, thus making it possible to approve the request (as long as the conditions of subsection (b) of that same section have also been met, if applicable). Article 5 is without prejudice to section 16.46b, subsection 5(b) of the Environmental Management Act. Approval can thus be denied if it is found that in the implementation of another project activity in which the project participant is or was involved, for which approval was granted earlier, the relevant requirements were not met.

Article 6

Article 6 provides that, by submitting a declaration stating that the project activity and its implementation will meet the recommendations of the World Commission on Dams referred to in section 16.46b, subsection 3(b) of the Environmental Management Act, one can satisfy the requirement for obtaining approval included in that provision. The recommendations of the World Commission on Dams focus on core values and strategic priorities, and also include 26 recommendations on the assessment and approval of projects in a phased decision-making process. Hydroelectric power stations with a generating capacity exceeding 20 MW generally serve a national rather than local interest. To take proper account of these guidelines, and in accordance with the World Bank's policy in this area, which the Netherlands endorses, final decisions on the outcome of local consultation processes and the use of natural resources are made at national level. Article 6 is without prejudice to section 16.46b, subsection 5(b) of the Environmental Management Act. Approval can thus be denied if it is found that in the

implementation of another project activity in which the project participant is or was involved, for which approval was granted earlier, the relevant guidelines of the World Commission on Dams were not followed.

The State Secretary for Housing,
Spatial Planning and the Environment

The Minister of Economic Affairs

APPENDIX II: Selected Sections of Annex I to the Environmental Management Act relevant for the implementation of the Ministerial Decree for Approval of of CDM and JI projects

Part 16.2.7. Assent to participation in project activities

Section 16.46a

For the purpose of this part and the provisions based on it, “project participant” shall be interpreted as meaning: a person who has submitted a request for assent as referred to in section 16.46b, subsection 3, or section 16.46c, subsection 3 in conjunction with section 16.46b, subsection 3.

Section 16.46b

1. This section applies to project activities in the framework of the clean development mechanism (CDM) as defined in article 12 of the Kyoto Protocol.
2. Our Minister of Economic Affairs will assent to participation in project activities as referred to in article 12, paragraph 5 (a) of the Kyoto Protocol and the decisions adopted pursuant to that Protocol.
3. Assent will be granted at the project participant’s request, if:
 - a. the project participant’s participation satisfies the requirements laid down in the Kyoto Protocol and the decisions adopted pursuant to that Protocol;
 - b. in so far as the project activity is intended to generate electricity by means of hydroelectric power with a generating capacity exceeding 20 MW: its implementation respects the criteria and guidelines of the World Commission on Dams referred to in article 11b, paragraph 6 of the EC Directive on greenhouse gas emission allowance trading.
4. Further rules pertaining to subsection 3 can be laid down by ministerial order.
5. Assent can be refused if:

- a. the requirements referred to in subsection 3 (a), or, where applicable, subsection 3 (b), have not been met;
 - b. the implementation of other project activities in which the project participant is or was involved, to which Our Minister previously assented, did not satisfy the requirements laid down for implementation purposes in subsection 3.
6. Assent, once granted, includes authorisation of the project participant concerned, in so far as such authorisation is required by article 12, paragraph 9 of the Kyoto Protocol and the decisions adopted pursuant to that Protocol. If the first sentence applies, the decision on the request shall indicate that assent includes authorisation.
 7. Rules can be laid down by ministerial order concerning requests for assent and the data and documents to be submitted with such requests.
 8. It can be determined by ministerial order that payment of a fee is required for assent to be granted. In that case the order shall also lay down further rules on the amount of the fee and the manner in which it must be paid.
 9. Our Minister shall make the information deposited with him about project activities that he has assented to available to the public. Section 10 of the Government Information (Public Access) Act applies *mutatis mutandis*.

Section 16.46c

1. This section applies to project activities in the framework of the joint implementation (JI) mechanism referred to in article 6 of the Kyoto Protocol that are implemented outside the Netherlands or outside the Dutch exclusive economic zone.
2. Our Minister of Economic Affairs can assent to participation in project activities as referred to in article 6, paragraph 1 (a) of the Kyoto Protocol and the decisions adopted pursuant to that Protocol.
3. Section 16.46b, subsections 3 to 9 apply *mutatis mutandis*, provided that for the purposes of section 16.46b, subsection 6, "article 12, paragraph 9 of the Kyoto Protocol" should be read instead as: article 6, paragraph 3 of the Kyoto Protocol.

In **section 18.16e, subsection 3**, "the number of greenhouse gas emission rights that the operator of the establishment concerned has surrendered for that year in accordance with section 16.37, subsection 1", shall be replaced with: the number of greenhouse gas emission

rights, emission reduction units or certified emission reductions that the operator of the establishment concerned has surrendered for that year in accordance with section 16.37, subsection 1 or section 16.37a, subsection 1.