

DOE/AE Forum | *Werner Betzenbichler* | *October 2011*

EB-64

Relations with Designated Operational and Applicant Entities







Topics

- Further Comments to the Annotated Agenda
- Draft Procedure on Significant Deficiencies

Further Comments to the Annotated Agenda

- Policy Dialogue (Annex 1)
 - We express our interest in participating in that process
- Implementation plan for Standards (Annexes 5/6)
 - Setting sharp dates creates difficulties in reporting;
 - Switch of report templates cannot be made at one day but by a deadline

Significant deficiencies

- Key elements of the DOE's position as presented in Quito:
 - 'Significant deficiencies' should be related to cases of fraud and gross negligence 
recent versions refers to professional negligence, limitation
 - No involvement of a second DOE 
 - No automatism in conclusions (like suspension in case of fraud) 
 - Inclusion of an appeals process 
 - Commensurateness of measures (principle of proportionality) 
 - Restrict the procedure to exceptional cases ? 

Significant deficiencies (2)

- General Comments
 - New draft accommodates the position of the DOE/AIE Forum to some extent
 - Still a need for various adjustments
 - Insufficient time for evaluating all implications (we wish to include legal expertise)
 - Practical application of the draft procedure is questioned

Significant deficiencies (3)

- Definitions section
 - Definitions in the draft are still open for diverging interpretations
 - Intention of application needs to be clear from the early beginning
 - Reputational risk to the whole CDM, if this is not the case
 - Avoid intention to deliver accurate compensation of excess issuance

 - We recommend an emphasize the role of the DOEs and the expectations in their professional operation in this section (professional care, duty of care)

Significant deficiencies (4)

- Cap on Liability / Determination of Excess Issuance
 - Commensurateness of fines and relation to potential income (from service fees)
 - Excess issuance as trigger to request the payment of fines
 - Ex-post determination of „real emission reduction“ will be illusory for most cases --> decisions on estimations --> a challenge to stand legal disputes
 - Avoid the requirement to prepare corrected reports (creating confusion and questionable outcome)
 - Procedures to close further issuance have already been established

Significant deficiencies (5)

- Appeals process
 - EB sets regulation, decides on the execution of a review and makes final judgment (not considered as a fair and due process)
 - End of process
 - a) in case DOE admits a fine
 - b) by forwarding to a legal court in case a DOE appeals the decision
 - Most likely this will require further guidance or a decision by CMP

We strongly recommend a cooperative, constructive approach (e.g. as for sampling standard) resulting in approval at EB-65 or EB-66 to close that continuously spreading issue of concerning that has the potential to shy away even very competent active DOEs.

Thank you for your attention!

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on behalf of TÜV NORD

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