



Input on issues included in the annotated agenda and annexes 6 and 7 of the eighth meeting of the Article 6.4 Supervisory Body

October 27, 2023

The International and Comparative Law Research Center (ICLRC) thanks the Article 6.4 Supervisory Body (SB) for the continued work on the operationalization of the Article 6.4 mechanism and for the consideration of stakeholder inputs. This input document contains views of the ICLRC experts on the issues covered in the annotated agenda and annexes 6 and 7 of the eighth meeting of the SB.

General comments on the Draft Procedure: Article 6.4 mechanism activity cycle procedure for projects, (A6.4-SB008-AA-A06), v.04.0 (the “Draft AC Procedure”) and the Draft Standard: Article 6.4 mechanism activity standard for projects (A6.4-SB008-AA-A07), v.04.0 (the “Draft AC Standard”)

1) It should be noted that the Parties to the Paris Agreement undertake certain endeavors and implement activities related to the Parties' commitments under the Paris Agreement in order to reach its goals. The implementation of such activities, whether directly or through authorized entities, may directly affect the level of endeavors a Party must undertake, the ability of the host Party to reach its NDC, and other significant aspects of the Party's state of affairs.

Therefore, it is important that, whenever possible, a Party's (especially a host Party's) approval or authorization is obtained as a mandatory requirement for any implementation, or material change, of an activity under Article 6.4 of the Paris Agreement (“Article 6.4 activity”). For instance, no material changes to the registered Article 6.4 activity (in particular, those relating to NDC-related commitments, nature or design of the proposed Article 6.4 activity, the composition of the activity participants, etc.) should be made unless it has received preliminary approval from a Party (particularly the host Party). A Party should have access to the maximum available information about the proposed Article 6.4 activity and the activity participants before the Parties make any decision to approve the Article 6.4 activity and/or authorize activity participants. Consequently, it seems reasonable that a Party (especially a host Party) should be able to establish and enforce its national rules and procedure leading to the approval of an Article 6.4 activity and the authorization of the entities involved in such an Article 6.4 activity. The Parties should be able to collect and examine documents and information about the proposed activity and the involved entities as they consider appropriate and reasonable.

The proposed documents may be considered as lacking a focus on that important role of a Party. For example, (a) the procedure for the approval of an Article 6.4 activity may be interpreted as indirectly limiting a Party's rights to require and examine more documents



and information from potential Article 6.4 activity participants than proposed in the documents (see, e.g., Clause 4.4 of the proposed Draft AC Procedure); and (b) the procedure for making changes in the registered Article 6.4 activity may be considered as structured in a way not requiring any approval from a Party at all (see, e.g., Options 1 and 2 of Clause 7.3.3.5 of the Draft AC Standard), despite the fact that such changes may, among other things, affect the Party's NDC-related commitments.

Therefore, it is recommended that the proposed documents strengthen the role of the Parties in the activity cycle (particularly concerning those elements of the activity cycle that may result in affecting Parties and their NDCs), and provide the Parties with more flexibility in terms of establishing national rules and procedures leading to a Party deciding on the approval of an Article 6.4 activity and/or authorizing activity participants.

2) It is important to avoid using the term "project" in the proposed documents (and other documents by the Supervisory Body) when referring to the Article 6.4 activity. This is because, as follows from clause A.31(b) of RMP, a "project" constitutes only one of the possible types of an Article 6.4 "activity" (the other two being "program of activities" and "other type of activity approved by the Supervisory Body") and, therefore, may not represent the entirety of an Article 6.4 activity (as seems to be the intention of the proposed documents).

Comments on particular clauses of the Draft AC Procedure

- Sections 4.4-4.5

The proposed regulation may be interpreted as limiting the Parties, and in particular, the host Party, of the right to establish their national rules and procedures required for approving the proposed Article 6.4 activity and authorizing activity participants. It is recommended that the proposed regulation of the said Sections consider the right of a Party to establish and apply its national rules and procedures to be followed by the potential activity participants, as well as establish the Party's specific requirements to be met by the potential activity participants in order for the Party to decide on approving the Article 6.4 activity and authorizing the activity participants.

Among other positive effects, exercising such rights by a Party might facilitate the Party's improved selection of Article 6.4 activities and the fulfillment of its reporting obligations (including, inter alia, those set forth in Section IV of Decision 2/CMA.2).

- Section 4.5

Given the crucial role of the host Party and the potential impact on its NDC resulting from the implementation of the Article 6.4 activity, it is recommended that the proposed regulation considers the host Party's right to exercise the "final say." In particular, the host Party should have the option to consider other participating Parties' approval/authorization



before making its own decision on the approval of the Article 6.4 activity and/or the authorization of activity participants.

- Section 5.1

We suggest that the procedure requires more than one SB member or alternative member to trigger a review of request for registration to ensure objectivity and decrease the risks to rapid implementation of the mechanism. Requiring two or three requests (as it was implemented in the CDM) from members or a Party will increase confidence in the procedure on behalf of private sector participants.

- Section 6.4.2

It is recommended that not only “insolvency” and “disputes”-related issues be considered in the context of the proposed regulation, but also any other events (such as, e.g., the liquidation of an activity participant for any reason, etc.) which may lead to the same consequences.

- Section 8.2

We suggest that the procedure requires more than one SB member or alternative member to trigger a review of request for issuance to ensure objectivity and decrease the risks to rapid implementation of the mechanism. Requiring two or three requests (as it was implemented in the CDM) from members or a Party will increase confidence in the procedure on behalf of private sector participants.

Comments on particular clauses of the Draft AC Standard

- Section 6.3

It appears more effective in terms of avoiding potential double counting and other negative results, if an activity registered as the Article 6.4 activity has no other registrations, is not being pursued for registration under, nor included in a programme under any other international, regional, national, or subnational GHG mitigation crediting scheme. If this logic is to be followed, Option 1 set forth in Para. 15 seems to be the most appropriate.

- Appendix 2

The proposed modalities of local stakeholder consultations seem to lack a unified approach. For example, it leaves it to the activity participants to decide on the major elements of the methods of conducting such consultations. Such an approach may, among other things, lead to a lack of conformity and complications in determining whether the consultations have indeed been conducted properly.

Simultaneously, the proposed regulation imposes certain obligations on the activity participants, which, on one hand, may be challenging to fulfill (e.g., obtaining correct



addresses for local stakeholders) and, on the other hand, may be impossible to verify (e.g., confirming that invitations have been sent using the correct addresses of local stakeholders).

It may, therefore, be worth considering the standardization of this process by channeling local stakeholder consultations through the DNA and its public resources (e.g., the DNA's website with information about the proposed Article 6.4 activity being published) and inviting local stakeholders to submit their inputs through those resources.



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