

COP28 – SBSTA 59 Article 6 progress summary

IMPORTANT: Legal Response International (LRI) acts as an intermediary in obtaining legal advice from third parties on the query you have raised. That advice is provided to LRI but we are able to share it with you. The third-party advisers have accepted certain duties to LRI but have not and do not accept any duty to you. LRI itself does not and cannot provide legal advice. As a consequence, LRI takes no responsibility for the content of any advice that it forwards, nor does it accept any responsibility for any delay either in obtaining or sending copies to you of the advice it receives.

In forwarding the advice to you, LRI does not intend to create a lawyer-client relationship with you and to the extent permitted by law, any liability of LRI to you (including in negligence or for any damages of any kind) is excluded. Any dispute between you and LRI shall be governed by English Law, and the English Courts will have exclusive jurisdiction. In consideration of LRI sharing the advice with you, you agree to the terms set out above.

*This advice is provided in response to **Query 75/23***

Query:

Please provide a high-level summary of the state of play at the end of week one of COP28/SBSTA59 on Article 6 negotiations.

Summary:

SBSTA 59 concluded on 6 December with draft Article 6 texts being forwarded to the CMA for further work over the coming week. Set out below is a general summary of negotiations during the SBSTA session (first week of COP28).

Frustration was expressed by some Parties during negotiations and in statements at the SBI/SBSTA closing plenary on 6 December. It is broadly acknowledged that significant work remains on each Article 6 text for the upcoming week of work under the CMA.

Article 6.2 (cooperative approaches)

- Defining cooperative approaches – there is divergence in relation to whether and how cooperative approaches may be defined (and whether any definition should be placed in the context of authorisation). The some Parties and groups have been firmly in favour of defining cooperative approaches, while others prefer no definition, as it may constrain flexibility and/or have implications for cooperative approaches that are being implemented by some countries.
- Authorisation – there is divergence regarding the process and timing for authorisation of: (A) cooperative approaches; (B) ITMOs; and (C) entities, as well as whether, when and how any changes or revocations can be made to these authorisations.
The use of templates has also been discussed, with some potential convergence on the development of authorisation templates for voluntary use, where Parties elect to use them.
- Registry – please see the comments below regarding the joint Article 6.2 and Article 6.4 session regarding cross-cutting matters, which focused on registry interactions. There

remains divergence about whether Article 6.4ERs may be transferred to the Article 6.2 international registry (if Article 6.4ERs are transferred internationally as ITMOs).

- Other items – options and square brackets need to be resolved in other areas of the Article 6.2 text, including the application of first transfers, agreed electronic format, tables for submitting annual information, sequencing and timing, and correcting inconsistencies in data on the Article 6 database or identified in technical expert reviews.

Article 6.4 (centralised mechanism under the supervision of the Supervisory Body)

- Emissions avoidance and conservation enhancement activities – most Parties opposed reference to emissions avoidance and supported concluding this issue at this session. However, three options remain in the text, with some Parties noting on 6 December that their preference for ‘no reference’ is not clearly reflected. At least one Party (Philippines) prefers inclusion of these activities under Article 6.4. This will be an ongoing issue requiring convergence in the coming week (including whether a decision is made to conclude consideration of emissions avoidance and conservation enhancement activities at this session (or postpone this to a future session)).
- Authorisation - in relation to authorisation of Article 6.4ERs, Parties discussed options regarding timing, with some streamlining (timing for statements of authorisation before the first request for issuance, or at any time). Some Parties appear keen to ensure flexibility in relation to later authorisation of mitigation contributions/mitigation contribution units (MCUs – emissions reductions not authorised for use towards achievement of NDCs and/or other international mitigation purposes).
in addition, Parties have differing views on what information will be included in a statement of authorisation, and whether there can be changes, with options remaining in the text.
- Mechanism registry – please see the comments below regarding the joint Article 6.2-Article 6.4 session regarding cross-cutting matters, which focused on registry interactions. There remains divergence about whether Article 6.4ERs may be transferred to the Article 6.2 international registry.
 - A joint session of Article 6.4 and Article 6.2 was held during the week (in two parts) and there remains divergence between the parties on the nature and extent of interaction or ‘interoperability’ between the Article 6.2 international registry and Article 6.4 mechanism registry. Some Parties consider that units may be transferred between registries, however other Parties are of the view that information should only be viewed or pulled into the international registry (as they consider the Article 6.2 registry is for tracking and tracing only). These issues will remain for discussion.
 - Other items raised during this joint session included a request for clarity about whether the Article 6.4 mechanism could be considered a cooperative approach.

Parties closed the SBSTA session noting that the current texts forwarded to the CMA do not reflect consensus and some Parties are unwilling to continue to discuss some options repeatedly.

Article 6.4 – CMA agenda item 14(b) (consideration of the annual report and recommendations of the Article 6.4 Supervisory Body)

- The annual report of the Article 6.4 Supervisory Body contains recommendations about a number of items including activities involving removals and the development and assessment of methodologies. These two matters were the primary focus of interventions from groups and Parties.
- Several Parties noted gaps and issues associated with the recommendations, some of which were expressed to be very significant (generally with respect to removals). Also, several Parties expressed concern over the lack of reference to environmental and social safeguards.
- Parties acknowledged remaining areas of work include the Article 6.4 sustainable development tool, a procedure for appeals and grievances and matters associated with methodologies and removals (including post-crediting monitoring and reversals). Also, Parties acknowledge the implications of not adopting the recommendations as proposed, including potential delay to operation of the mechanism.
- Some Parties proposed acceptance of the recommendations, noting that while they are not perfect they provide an acceptable basis on which to operationalise the Article 6.4 mechanism and should continue to be improved over time.

Some Parties are concerned about proposals for host countries to be responsible for reversals and Parties discussed whether nature-specific removals should be subject to more bespoke arrangements.

Positions in relation to the Supervisory Body report and recommendations include: adopting the recommendations as presented; deferring adoption with further guidance to the Supervisory Body; allowing split-adoption (e.g.: adopting methodologies recommendations, but not removals).

Article 6.8, Glasgow Committee on Non-Market Approaches. (Non-market approaches)

The 4th meeting of the Glasgow Committee on Non-Market Approaches (**GCNMA**) was held during the subsidiary body meeting period in week one.

Parties participated in an in-session workshop and spin off group discussions, including in relation to forests and forest ecosystems.

A proposal for reference to 'carbon pricing' to be included in text was resisted by some Parties, as it was seen to bring a market consideration into non-market approaches. However, it was supported by a developed country group who considered this reference may be useful in capturing non-market approaches to matters such as taxes/levies etc. which are not tradeable instruments.

There is some divergence in relation to the proposal for a non-market approaches readiness programme.