

## **Call for Input 2025 -Ownership of account holdings in the A6.4 mechanism registry Article 6.4 compliant emission reduction credits**

The Institute for Agriculture and Trade Policy (IATP)<sup>1</sup>, an accredited observer organization, appreciates the opportunity to respond to the Supervisory Body's (SB) Call for Input on the "Ownership of account holdings in the A6.4 mechanism registry."<sup>2</sup> Our most recent communication to the SB is a September 30, 2024 letter concerning the draft Sustainable Development Tool.<sup>3</sup> The SB, having begun to improve the quality of Emission Reduction (ER) credits in the Paris Agreement Crediting Mechanism (PACM), now begins to specify the legal parameters of the PACM registry that will hold the accounts of ER credits for buyers and sellers of the improved credit types.

*A SB dilemma: how to persuade ER account holders that their ER credits are financially secure without registry confirmation of credit ownership*

The secretariat has written to the SB, "it is important that the secretariat is protected from potential legal disputes resulting from any recognition of ownership" (paragraph 41)<sup>4</sup> of ER credits in the PACM. These protections will be stipulated in proposed forthcoming "Terms and conditions for entity account holders" and the "Important information for Party account holders". They will include requirements that any disputes be resolved directly between the parties involved in the transaction; designation of a dispute resolution process, including a recognized arbitrator which the registry administrator [i.e., the secretariat] would accept instruction from; and indemnification clauses to protect the secretariat from third-party liabilities, thereby limiting the secretariat's legal exposure." (paragraph 25) The secretariat proposes that although it will operate the PACM registry and keep a record of its transactions, disputes about the transactions should be settled between the parties to the transaction through an arbiter who will be able to instruct the secretariat about how to treat the ER credits according to the arbiter's ruling.

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<sup>1</sup> The Institute for Agriculture and Trade Policy is a non-governmental, non-profit organization headquartered in Minneapolis, Minnesota (United States of America) with offices in Washington, DC and Berlin, Germany. Our work on the United Nations Framework Convention on Climate Change is at <https://www.iatp.org/unfccc-cops>

<sup>2</sup> <https://unfccc.int/process-and-meetings/the-paris-agreement/paris-agreement-crediting-mechanism/a64-calls-for-input/call-for-input-2025-ownership-of-account-holdings-in-the-a64-mechanism-registry>

<sup>3</sup> <https://www.iatp.org/comment-article-SDTool>

<sup>4</sup> "Analysis of pros and cons related to framing user's rights with regard to control versus confirming ownership of account holdings," Version 01.0. <https://unfccc.int/sites/default/files/resource/A6.4-SBM015-AA-A11.pdf>

The proposed protections, in isolation, may appear to be merely self-serving for the secretariat. But in the context of the broader purpose of Article 6.4—"To deliver an overall mitigation in global emissions [OMGE]," (subparagraph d) the control of ER credits by the account holders may deliver OMGE and other Article 6.4 objectives more rapidly and transparently, assuming that improvements to ER credit quality can be comprehensively agreed, implemented and enforced. The SB should frame its decision about whether to authorize the secretariat to develop control measures for account holders of ER credits in terms of whether such measures will optimize the realization of the OMGE and other Article 6.4 objectives.

The secretariat recommends that the SB "proceed with the development of the mechanism registry framing users' rights with regard to control rather than seeking to confirm ownership of account holdings." (paragraph 46) The secretariat's "Information Note" provides examples of the terms and conditions of Verra and the Universal Carbon Registry for the control of credits. These terms and conditions exempt those private registries from liabilities and responsibilities resulting from disputes involving registry account holders. (paragraphs 13-16) As a result of the exemptions, credit holder account disputes are resolved in the jurisdictions of the ER credit holder or in the jurisdiction of the host Party of the projects of the account holders, depending on where an alleged violation occurs in the ER credit flow.

The exemptions do not mean that Verra or other credit registries can operate with impunity. For example, Verra was obliged to cooperate with U.S. authorities in both civil and criminal cases involving Verra's methodologies for validating and verifying emissions reductions resulting from clean cookstove projects.<sup>5</sup> However, Verra's terms and conditions that exempt the registry from liabilities and responsibilities generally from an account holder violation of Verra standards allows the registry to continue to operate with its standards compliant account holders. Likewise, the secretariat could continue to operate the PACM registry without becoming the subject of litigation, even if there was a dispute between or among PACM account holders, e.g. concerning whether an emissions reversal affecting the price of a transaction price was avoidable or unavoidable.

*Argument for and against ER credit ownership in a PACM registry that emulates financial market structure*

The argument for requiring the PACM registry to stipulate the ownership of ER credits is stated forthrightly by the International Emissions Trading Association (IETA):

Option 2 [stipulating ownership] is also consistent with the registry models used to facilitate investment and trading by regulators and standards around the world. It is most likely to facilitate the necessary financial flows by non-state actors

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<sup>5</sup> Steve Suppan, "The UN carbon trading negotiations and carbon market fraud," Institute for Agriculture and Trade Policy, October 8, 2024. <https://www.iatp.org/un-carbon-trading-negotiations>

contemplated in the Baku Decisions including investment banks and other financial market participants.<sup>6</sup>

IETA makes the plausible argument that prospective ER credit buyers and sellers, such as investment banks, will be more likely to participate in the PACM registry if the terms and conditions of the registry are very much like those of the financial markets with which they are already familiar. Less plausible, and certainly not proven, is the contention that project investments and the Share of Proceeds from the trading of ER credits under terms and conditions of ownership will scale to make a timely and significant contribution to the much-criticized (relative to the Needs Determination Report<sup>7</sup>) New Collective Quantified Goal for Climate Finance negotiated at the Conference of Parties in November 2024 in Baku.<sup>8</sup>

IATP agrees with the secretariat's recommendation to pursue further work on control of ER credits because within the United Nations Framework Convention on Climate Change (UNFCCC), as an international entity, the secretariat does not have jurisdictional authority or resources to resolve disputes among Parties and PCAM credit account holders and activity participants. IETA is not indifferent to dispute resolution about PACM credit transactions, but it assumes that a financial market type ownership structure for the PCAM registry will expedite dispute settlement:

IETA acknowledges that the Mechanism Registry is likely to provide for such rules and requirements [for dispute settlement], without liability for the Mechanism Registry and that the RO [Registry Operator, i.e. the secretariat] will not act as a decision-maker should an ownership related dispute arise. Nonetheless, Option 2 and its clear ownership rules will assist with the avoidance, and timely and efficient resolution, of disputes.<sup>9</sup>

IETA, in its zeal to protect the rights of investors in ER credits and projects, does not consider how the type, scale and frequency of ER credits disputes might affect the PACM registry's operability. Whether the SB decides to heed IETA's or the secretariat's recommendation about PACM account holder ownership vs. control of ER credits, the SB should consider the types, scale and frequency of disputes that are likely to arise even if ER credit and project quality, implementation and enforcement improve under the SB's standards. The legal

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<sup>6</sup> "Ownership of the A6.4 ERs in the Paris Crediting Mechanism," International Emissions Trading Association, January 2025, page 3, [https://ieta.b-cdn.net/wp-content/uploads/2025/01/PACM-PP.Jan\\_.25.V4.pdf](https://ieta.b-cdn.net/wp-content/uploads/2025/01/PACM-PP.Jan_.25.V4.pdf)

<sup>7</sup> <https://unfccc.int/topics/climate-finance/workstreams/needs-determination-report>

<sup>8</sup> E.g., Denali Hussin and Cindy Nyugen, "Climate 101: NCQG: The Key Climate Goal Behind the Acronym," Rocky Mountain Institute, November 8, 2024. <https://rmi.org/climate-101-ncqg-the-key-climate-goal-behind-the-acronym/>

<sup>9</sup> "Ownership of the A6.4 ERs in the Paris Crediting Mechanism," page 4.

structure of the PACM will influence not only Party and non-Party investments in the PACM, but also how and in what jurisdiction disputes about those investments will be settled.

The potential sources of disputes are myriad and varied. For example, the erroneous claims about ERs by credit buyers in the voluntary carbon market are a rich source of litigation.<sup>10</sup> It is unlikely that such claims would disappear concerning transactions on the PACM registry even after A6.4 ER credit improvements. A Science Based Targets Initiative (SBTi) methodologically rigorous review of 406, mostly academic, articles, concluded “The limited selection of empirical and observational evidence in Tiers A and B [of evidence] suggests that various types of carbon credits are ineffective in delivering their intended mitigation outcomes. . . The vast majority of evidence submissions [to SBTi] (84%) argue that treating carbon credits as fungible with other sources, sinks, or reductions of emissions is inadvisable, illogical, or damaging to global mitigation goals, with the other submissions not providing a strong view.”<sup>11</sup> The SB is not obliged to heed SBTi research but it would be imprudent to ignore the consequences of that research for PACM registry related disputes.

The fungibility of financial commodities is a fundamental regulatory assumption that enables the “slicing and dicing” of financial contracts into new financial products, e.g., mortgages securitized by derivatives products. However, the heterogeneity of carbon credits and projects to reduce or remove emissions makes them ill-suited to fit into the fungibility logic of financial markets. Article 6.4 removals and methodologies expert groups are working to improve the environmental and social quality of the ER credits permitted to be listed on the PACM registry. Ensuring the integrity of the PACM registry itself is as important as the quality of PACM credits.

*Challenges to design a PACM registry that enables control of ER credits to protect investor rights*

The secretariat’s research for its “Information Note” concludes “that a system enabling the recognition of a third-party interest [in safeguarding their investment in an ER project] may be possible without a recognition of ownership.” (paragraph 11) The focus of the secretariat’s proposal about account holder control of PACM registry credits is the corporate due diligence that prospective buyers of those credits or their agents will perform prior to credit transactions:

If rights in the mechanism registry were framed around control and if A6.4ERs were covered by relevant regulations, corporate due diligence might focus more on verifying corporate information in the registry, verifying sources of funds, tracking the proceeds of trading activities, screening against United Nations Security Council

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<sup>10</sup> Keir F. Adamson, “Sabin Center Expands the U.S. Climate Litigation Database with New Carbon Offsets Case Category,” Columbia Law School, September 17, 2024. <https://blogs.law.columbia.edu/climatechange/2024/09/17/sabin-center-expands-the-u-s-climate-litigation-database-with-new-carbon-offsets-case-category/>

<sup>11</sup> Emma Borjigin-Wang, Scarlett Benson and Piera Patrizio, “Evidence Synthesis Report: Part 1: Carbon Credits,” version 0.1, July 2024, p. 66. <https://sciencebasedtargets.org/resources/files/Evidence-Synthesis-Report-Part-1-Carbon-Credits.pdf>

sanction lists, and establishing and maintaining basic entity authentication and system access rights. (paragraph 31)

The secretariat contends that corporate due diligence about Know Your Customer (KYC), Anti-Money Laundering (AML), fair distribution of credit transaction proceeds to ER credit activity participants and other due diligence checks can be facilitated through a PACM structure of control of user rights. For example, KYC and AML controls would prevent PACM transactions that could finance terrorism (paragraph 34). A control structure would enable comprehensive corporate due diligence without the litigation exposure for the secretariat that would come with account holder ownership of those rights. Finally, the “Information Note” states, “publicly available information [of PACM activities on UNFCCC website] may already suffice to support a claim of possession, and therefore ownership, where applicable.” (paragraph 40)

### *Conclusion*

Whether Parties will agree to provide the budget for standing up and maintaining a PACM registry with robust and accessible KYC and AML functionalities and other corporate due diligence requirements is yet to be decided. Even a highly specified, legally sound and technologically feasible PACM registry design presented by the SB to Parties may not secure their support and funding. However, as the cost and impacts of the climate momentum accelerate, wealthy Parties and corporations should be persuaded that climate finance “realism” should include the financing for personnel and computer technology required for a robust PACM registry. The secretariat has made a good initial case for such a registry. IATP believes the SB should heed the secretariat recommendation and “proceed with the development of the mechanism registry framing users’ rights with regard to control rather than seeking to confirm ownership of account holdings.” (paragraph 46)

Respectfully submitted,

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