



Input on the issues covered in the annotated agenda and related annexes of the Sixth Meeting of the Article 6.4 Supervisory Body

July 3, 2023

The International and Comparative Law Research Center (ICLRC) thanks the Article 6.4 Supervisory Body 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 agenda and related annexes available for comments with the deadline of July 3rd, 2023.

With regards to the document titled ***Draft Recommendation. Requirements for the development and assessment of mechanism methodologies. Version 04.0 (A6.4-SB006-AA-A08)*** we note the following:

1. We welcome the proposals for consolidation and grouping of options to implement the different elements through a common option. Such an approach should be taken to all operationalization options, not only to the baseline contraction factor (BCF). An illustrative overview of which instruments are used to implement which options should be presented and preferably as few options as possible should implement as many elements as possible. This overview could ensure that each RMP requirement is operationalized in way that would allow demonstrating compliance only once and that participants have a clear picture of how each of those requirements will be assessed by the 6.4SB.
2. Para 33 of the RMPs states that “*Mechanism methodologies shall (...) be real, transparent, conservative, credible, below business as usual (...)*”. It is clear that the adjectives in the operative part of this sentence refer to different elements of the methodologies and of the A6.4 activities. ‘Real’ refers to *emissions reductions and removals*, while ‘transparent, conservative, credible, below business as usual’ refers to *baselines*. These distinctions should be made across the recommendation. Specifically, para 19 of the Draft Recommendation should be adjusted accordingly so as to not introduce an obligation to demonstrate that baselines are ‘real’, since they are conceptually not. The requirement to demonstrate the ‘reality’ of the emissions reductions is already set in other parts of the RMPs and the Draft Recommendation.
3. For sections 4.4 and 4.5 we suggest regrouping the requirements so that the demonstration of how methodologies are aligned with the long-term goals of the Paris Agreement and the long-term temperature goal of the Paris Agreement are considered together, since the former clearly includes the latter. We also note that the Draft Recommendations currently do not contain any options for elaboration of how the methodologies are to be aligned with the long-term goals of the Paris Agreement other than the temperature goal.



4. **Para 31.** We note that the requirement to ‘*avoid activities that lead to locking in levels of emissions, technologies or carbon-intensive practices incompatible with paragraph 33 of the RMP*’ is already provided as the third additionality requirement and should not be repeated as a tool to ensure alignment with the long-term temperature goal. If the 6.4SB believes that this requirement of para 33 of the RMPs is automatically implemented by any activity that passes the additionality test of para 38, then the requirement should be operationalized as such in the recommendations and participants should only have to demonstrate additionality.

5. **Para 31.** It is unclear how methodologies are to ‘*consider*’ emission reductions and removals that deliver mitigation in this decade when demonstrating alignment with the long-term temperature goal, especially given that for many activity types there may not be much time left in this decade after the A6.4 mechanism is operationalized and activities begin. The operative verb could be changed to ‘*incentivize/encourage*’ and a clearer timeframe should be given. The para could thus read: “*Mechanism methodologies shall align with the long-term temperature goal of the Paris Agreement by [incentivizing/encouraging] emission reductions and removals that deliver mitigation before [2030] [2035]*”.

6. **Para 36.** Since best available technologies (BATs) and benchmark approaches may vary significantly across host countries and industries we recommend that BCFs – if the 6.4SB decides that they are indeed the preferred option to implement the requirements of para 33 of the RMPs – may be applied to adjust emissions downwards for all three approaches. The choice of the approach based on existing actual or historical emissions applied by the methodology does not make it automatically unaligned with para 33 and may not require a downward adjustment to ensure such alignment¹ and vice versa – the two other approaches are not automatically aligned with para 33 of the RMPs. The operationalization of the requirements of para 33 of the RMPs (through BCFs or otherwise) together with the ‘justification for the appropriateness of the choices, including information on how the proposed baseline approach is consistent with paragraphs 33 and 35 [of the RMPs]’ should be sufficient.

7. **Section 4.7.** We would suggest that not only the methodologies themselves should encourage broad participation by the means laid out in para 39, but the process of their development and assessment should be simple, clear and avoid complexities as well. This implies clear and concise guidance, options that address more than one element of para 33 of the RMPs at once (see para 1 of this input document), additional guidance consolidated in fewer guiding documents (as opposed to elaborating new guiding documents for each new requirement), plain language, preferably already used in crediting mechanisms and well-understood in the market, broad-reaching capacity-building efforts and extensive public outreach.

¹ Examples could include activities in alternative waste treatment and wastewater treatment.



8. **Paras 69 and 72.** Referring to ICLRC's input for SB002, we reiterate that the key criteria for including an activity into a positive list should not be the mitigation potential, but the certainty with which additionality could be demonstrated through robust assessment. Activities could have limited mitigation results, but still be additional with a high degree of confidence. We also note that positive or negative lists for additionality are distinctly separate from positive or negative lists for 'lock-in' levels of emissions, technologies or carbon-intensive practices incompatible with paragraph 33 of the RMPs.

9. Views regarding specific issues of additionality, including 'lock-in', as well as additional views on BCFs are presented in the next section of this input document.

With regards to the document titled *Concept Note. Proposals and options to operationalize baseline contraction factor, avoid 'lock-in levels of emissions' and address leakage in the draft recommendation on requirements for the development and assessment of mechanism methodologies. Version 01.1 (A6.4-SB006-AA-A07)* we note the following:

10. A fundamental challenge to introducing baseline contraction factors (BCFs) is how to take into account the bottom-up principle of the Paris Agreement while delivering on mitigation ambition. If Article 4 of the Paris Agreement is implemented by Parties in good will and NDCs do represent the highest possible ambition and are duly ratcheted up, then in conjunction with the requirement of the RMPs for methodologies to align with host country NDCs, the contraction of baselines and enhanced ambition over time would be a direct consequence. Leveraging requirements for the development and assessment of methodologies to compensate for the lack of Parties' ambition may be seen as overreach on behalf of the mechanism and prove to be disincentivizing for participation. The development of net-zero pathways for host countries and the setting of net-zero targets for those countries that don't have them will hardly be seen as something within the remit of the mechanism.

11. At the same time, given the diversity of NDCs, other targets and especially Parties' net-zero goals, expressed in a variety of ways, levels of detail and legal implementations, directly corresponding baselines and contraction factors to these instruments may prove inefficient and imposing. A balance should be struck between taking into account national circumstances, local practices and ensuring uniform and ambitious conditions for crediting under the mechanism. The rules should be drafted in such a way that would allow reasonable certainty of the quality of reductions whatever national frameworks are in place.

12. **Para 40.** As described previously in the Concept Note and in the Draft Recommendation (A6.4-SB006-AA-A08) BCFs are not intended only to provide downward adjustment to ensure alignment with para 33 of the RMPs for methodologies that chose approach (iii) from para 36 of the RMPs. Para 39 of the Concept Note lists six elements of para 33 of the RMPs that could be addressed by BCFs and these elements apply to all mechanism methodologies, not only those that use approach



(iii). This means that BCFs, if implemented, should apply to all methodologies. Alternatively, periodic updates and demonstration of conservativeness could be applied for all three approaches.

13. **Para 57.** This paragraph requires specific guidance from the Supervisory Body with regards to its key conclusion that the concept of lock-in is to be understood specifically in relation to para 33 of the RMPs. Taken as such, the requirement would mean that the third element of the additionality test consists in demonstrating alignment with para 33 of the RMPs with the addition of a temporal element to it, i.e., that the approach taken will ensure that incompatible technologies and carbon-intensive practices do not have their lifecycle expended beyond commercial viability taking into account climate-related goals, NDCs and developing regulation. We note that this does not prejudice against reductions with the use of such technologies and practices per se, but only to their lock-in.

14. Additional elaboration is needed on the specific relation of the lock-in element of the additionality test to the notion that the activity *'would not have occurred in the absence of the incentives from the mechanism'*. It is unclear how avoiding lock-in of the described technologies and practices makes an activity additional, though it certainly makes it more ambitious and increases its contribution to mitigation efforts. An alternative approach would be to consider the requirement to demonstrate lock-in avoidance not to be the third element of the additionality test, but as one of the broader requirements for methodologies and one additional element that ensures alignment with para 33 of the RMPs.

15. **Para 55.** If lock-in avoidance is agreed to be considered as an element of additionality demonstration, then one option to address lock-in would be to incorporate guidance for assessment of lock-in in the additionality tool as an alternative to developing a separate tool.

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