INTERNATIONAL
AND COMPARATIVE
LAW RESEARCH CENTER

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

October 23, 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 some of the issues covered in the annotated agenda and related annexes of the eighth meeting of the SB.

Regarding the Draft Standard Article 6.4 Mechanism Accreditation (A6.4-SB008-AA-A11), v.03.0

1) General comments on the proposed document

According to a possible interpretation of the RMP, designated operational entities (DOEs) are entities which have obtained accreditation from their respective national authorities (in compliance with the Party's arrangements as described in clause B.24(a)(viii) of Annex I to the RMP) and subsequently, in their status as "operational entities", obtained accreditation from the Supervisory Body as "designated operational entities" (as per clause 5(e) of the RMP).

If that interpretation is to be followed, it is imperative, and absent in the proposed document, to:

(a) Establish the requirements and process relating to the approval and supervision of a Party national arrangements for accreditation of operational entities, as required by clause B.24(a)(viii) of Annex I to the RMP.

(b) Establish a direct connection between the term "applicant entity (AE)" and the term "operational entity" to ensure that only entities accredited by a relevant Party as "operational entities" can apply for and be accredited by the Supervisory Body as DOEs.

Otherwise, it is important that the proposed document (i) clarifies the RMP provisions relating to the procedure of accreditation of designated operational entities; and (ii) clarifies the requirement of clause B.24(a)(viii) of Annex I to the RMP.

2) Comments on particular clauses of the proposed document

- Para 2.1.4

According to the general comment above, it is essential to establish a direct connection between the term "applicant entity (AE)" and the term "operational entity" to ensure that only eligible entities can apply for and be accredited by the Supervisory Body as DOEs.

- Paras 3.6(b), 5.10, etc.

It is important to avoid using the term "project" in the proposed document (and other documents by the Supervisory Body) when referring to the activity under Article 6.4 of the Paris Agreement. 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" and, therefore, may not represent the entirety of an Article 6.4 "activity" (as seems to be the intention of the proposed document).

- Para 4.2.8(e)

It is important to clarify the nature of a "coordinating/managing entity" and their connection with an activity participant, or avoid using such terms to avoid any risk of different interpretations.

- Para 4.2.8(i)

This para seems to violate RMP and needs to be corrected. A DOE is not "designated" by CMA. According to RMP, DOEs are those "operational entities" that have been accredited by the Supervisory Body as "designated operational entities". Please also refer to the general comment above.

- Para 4.2.8(x)

This para may be interpreted as limiting an operational entity / DOE on having other experts save for those expressly listed in the proposed provision. It is recommended that the provision is rephrased to avoid any such risk.

- Para 4.3.9(d)

It is not clear what the "client organization"-related risks may be. It is important to either clearly define such risks, or avoid including a reference to them in the proposed documents to avoid any mis-interpretations.

- Paras 5.10, 6.11 etc.

Due to the fact that the so-called "AEs" are not, and may not be considered as, "DOE" (as they have obtained no accreditation as such), the proposed document should use both terms

(namely, "AE" and "DOE") where it is supposed that relevant requirements apply to AEs and to DOEs. Using the term "DOE" in the meaning of "AE" is incorrect.

- Para 6.11

Please refer to the general comment and comment on para 4.2.8(i) above. It should be made clear in the proposed document that only entities that have obtained accreditation as "operational entities" in accordance with the RMP, may be then accredited as DOEs.

- Para 8.1.20

Due to the ambiguity of the proposed regulation and the lack of clarity as to how the proposed requirement should be achieved and confirmed by the AE/DOE (not to mention, audited by the Supervisory Body), it is recommended that the proposed regulation be clarified as per above or excluded from the proposed document.

- Para 9.1.28

The meaning of a term "part of a larger organization", as well as its interrelation and/or connection with the term "related body" requires clarification. Otherwise it is recommended that this regulation is excluded from the proposed document to avoid any risk of its mis-interpretation.

- Para 9.3.37

There appears to be a risk that the requirement may be unlikely to be achieved in real life. It is recommended that this requirement of the Supervisory Body observing meetings of the impartiality committee be replaced with the requirement of the Supervisory Body reviewing the minutes of meetings of impartiality committee.

- Paras 10.1.3.1 (57, 58, and 60), 10.3.1.76

It is recommended that there is a clear indication of what particular functions are referred to in this para.

Regarding the Draft Procedure. Article 6.4 Mechanism Accreditation (A6.4-SB008-AA-A12), v.02.0

1) General comments on the proposed document

According to a possible interpretation of the RMP, designated operational entities (DOEs) are entities which have obtained accreditation from their respective national authorities (in compliance with the Party's arrangements as described in clause B.24(a)(viii) of Annex I to the RMP) and subsequently, in their status as "operational entities", obtained accreditation from the Supervisory Body as "designated operational entities" (as per clause 5(e) of the RMP).

If that interpretation is to be followed, it is imperative, and absent in the proposed document, to:

(a) Establish the requirements and process relating to the approval and supervision of a Party national arrangements for accreditation of operational entities, as required by clause B.24(a)(viii) of Annex I to the RMP.

(b) Establish a direct connection between the term "applicant entity (AE)" and the term "operational entity" to ensure that only entities accredited by a relevant Party as "operational entities" can apply for and be accredited by the Supervisory Body as DOEs.

Otherwise, it is important that the proposed document (i) clarifies the RMP provisions relating to the procedure of accreditation of designated operational entities; and (ii) clarifies the requirement of clause B.24(a)(viii) of Annex I to the RMP.

2) Comments on particular clauses of the proposed document

- Para 2.1.4

To avoid any risk of mis-interpretation it would seem necessary to amend the proposed wording reflecting that it relates to the accreditation of the operation entity as designated operation entity by the Supervisory Body in accordance with clause 5(e) of the RMP. Please also refer to the general comment above.

- Paras 2.1.5, 5.2.12, etc.

It seems essential to establish a direct connection between the term "applicant entity (AE)" and the term "operational entity" to ensure that only eligible entities which have obtained accreditation as "operational entities" can apply for, and be accredited by, the Supervisory Body as DOEs. Please also refer to the general comment above.

- Para 5.1.9(e)

The proposed format of using the terms "AEs" and "DOEs" may create the risk of functions that may only be fulfilled by DOEs to be attributed to AEs as well.

- Paras 5.4.21, 7.1.83, etc.

It is important to avoid using the term "project" in the proposed document (and other documents by the Supervisory Body) when referring to the activity under Article 6.4 of the Paris Agreement. 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" and, therefore, may not represent the entirety of an Article 6.4 "activity" (as seems to be the intention of the proposed document).

- Sections 13 and 14

If the interpretation of the RMP as described in the general comment above is to be followed, Section 14.2 of the proposed document should address the issue of a DOE's status of "operational entity" being suspended or withdrawn in accordance with a Party's national arrangements.

- Section 16

If the interpretation of the RMP as described in the general comment above is to be followed, Section 16 of the proposed document should address the issue of a new entity obtaining accreditation as "operational entity" in accordance with a Party's national arrangements.

- Annex I, Table 1, Item 14 and Annex I, Table 1, Item 14(c)

The meaning of a term "part of a larger organization", as well as its interrelation and/or connection with the term "related body" requires clarification. Otherwise it is recommended that this regulation is excluded from the proposed document to avoid any risk of its mis-interpretation.

Regarding the Draft recommendation. Requirements for the development and assessment of mechanism methodologies (A6.4-SB008-AA-A14), v. 08.1

As a general comment on the draft recommendation, we note that there are numerous instances where the document does not serve as the ultimate guidance to develop and assess mechanism methodologies, but rather defers to further work, to the development of tools and additional guidance. It is particularly notable that in some cases, like in Section 4.8, the recommendation presents approaches/methods to operationalizing para 33 of the RMP which need ever further elaboration in guidance. Although it is expected that tools, being facilitative documents, will be developed and updated, we suggest that further guidance or any other normative requirements are provided in this recommendation and not deferred to any further work, so as to not delay the operationalization of the mechanism.

- Section 4.1. (Encouraging ambition over time)

In its current iteration the section, namely paras 17-19, create three requirements that would all have to be satisfied simultaneously. We suggest that these requirements are presented as a non-exhaustive menu for activity participants, along with the option in para 20. In para 17, we are of the view that crediting levels should be the subject of reduction, as the requirement to directly reduce the amount of credited reductions will serve as a disincentive to market activities, while addressing crediting levels will incentivise innovation and scale.

- Section 4.3. (Establishing that the selected baseline if below BAU)

This section should clearly state what is it exactly that shall be demonstrated by the estimation of the difference between BAU and baseline emissions. Since the section currently does not elaborate on what the difference should be, in quantitative or qualitative terms, it follows that simply demonstrating that there is a difference would suffice.

- Para 38

This requirement repeats the requirements of the third additionality test ('avoiding lock-in') and does so in terms that are different from draft guidance on demonstrating additionality. It would seem in this current iteration of the guidance that any activity passing the additionality test would automatically fulfil this requirement and vice versa, which would make one of the two redundant.

- Para 43

We are of the view that downward adjustment could be applied to all approaches in para 36 of the RMP to ensure alignment with para 33 of the RMP. However, it should be made clear that other elements of a methodology could collectively or individually provide for such alignment and thus additional downward adjustment may not be required, regardless of the baseline approach chosen. We suggest that the guidance is clear on this.