CARBON MECHANISMS REVIEW

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Time to Decide

Will the Baku climate summit finally deliver for Article 6?

Framing the Claims

Climate Neutrality Claims in the Courts

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Winter 2024

Source: Fredes / UNFCCC / CDM 1229

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editorial

Dear Reader!

It's COP time again. And while the overall global political climate is shaken by turbulences in the Global North, chances are high that the negotiations on Article 6 will be conducted in "fresh start" mode after the standstill of the recent years with the prospect of finding consensus on crunch issues such as authorization, registries, or the role of removals. 'Time to decide', as we called our cover feature – please read the adjacent opener.

We then present a report on an innovative capacity building format, the Community of Practice for Article 6 Implementing Countries. This is followed by an analysis of recent court rulings on climate neutrality claims by companies, which included offsetting components.

And finally, we report on success and impact of the Nitric Acid Climate Action Group's recent activities. Our debate series on REDD+ in Article 6, however, takes a break and will be taken up in the next issue again.

On behalf of the editorial team, I wish you an informative read!

Christof Arens, Editor-in-Chief

Wuppertal Institut

Carbon Mechanisms Review (CMR) is a specialist magazine on cooperative market-based climate action. CMR covers mainly the cooperative approaches under the Paris Agreement's Article 6, but also the broader carbon pricing debate worldwide. This includes, for example, emission trading schemes worldwide and their linkages, or project-based approaches such as Japan's bilateral offsetting mechanism, and the Kyoto Protocol's flexible mechanisms CDM/JI. CMR appears quarterly in electronic form. All articles undergo an editorial review process. The editors are pleased to receive suggestions for topics or articles.

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Time to Decide

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Reflections on Article 6 and its impact on mitigation activities

A short Q&A on the eve of the Baku COP on future use of Article 6 from a non-compliance buyer perspective

Questions by Christof Arens
Answers by Malin Ahlberg and Thomas Forth, Germany

Negotiators in the carbon market usually need more time than expected, planned or provided for at conferences. This may also be necessary again in Baku. A brief review: the Paris Agreement rulebook part on Article 6 was finalized late at COP26 in Glasgow, but only with the caveat of many technical mandates. After difficult CMA negotiations in Sharm El-Sheik and Dubai, negotiators appear to be better prepared this time than in previous years. However, negotiations on Article 6 are so complicated because these technical mandates are politically charged, if a group or Party wishes to do so. Now, three years after Glasgow, COP29 in Baku offers a unique opportunity to fulfill these mandates, so that Article 6 market mechanisms can play their role as a voluntary option to achieve otherwise unattainable mitigation outcomes and enable progress over time as NDCs are updated.

It should be stressed once again that Article 6 is not simply a trading mechanism, it is not a zero-sum game, it is about ambition raising globally and enabling host countries to accelerate their mitigation activities. As the negotiations in Baku will begin shortly, we will not speculate about their outcome here. We notice a growing readiness of project developers and investors to implement mitigation activities at a high-quality level of action and integrity. We also see preparations of host countries to engage in Article 6 advancing substantially. Therefore, with this very condensed Q&A format, we would like to draw attention to the expected impact on applications and usages, while some negotiations topics are more than less addressed implicitly.

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Future levels of finance in need of private sector investments

Q: *The upcoming COP29 in Baku has been dubbed "the finance COP" with negotiations focusing on the new collective quantified climate finance goal (NCQG) as the key topic. In the context of the discussions on international climate finance, catalyzing and mobilizing private capital for climate change mitigation will be crucial. What role could carbon pricing in this context play, be it in the form of domestic carbon pricing instruments, such as emissions trading systems and carbon taxes in domestic policy schemes on the one hand and international carbon markets to catalyze private resources on the other?*

A: Article 6 is not thought of as a mandatory element in the Paris Agreement architecture that provides means of implementation to Parties for achieving the Paris goals on CBDRRC basis. However, inscribed as a voluntary set of mechanisms for contributing to progress over time, visible in the updating processes of NDCs, international carbon markets were designed to play an enabling role for host countries.

Several aspects are decisive to ensure that the international carbon market does not end as a zero-sum game. There are internationally defined elements such as the subtraction of mitigation outcomes for the OMGE-contribution (overall mitigation in global emissions), the subtraction of mitigation outcomes for the contribution to adaptation finance and – only to be defined on a bilateral basis – the sharing of mitigation outcomes. The bilateral sharing of mitigation outcomes has a political component regarding the CBDRRC principle, which should result in leaving a very limited part of the mitigation outcomes in the host country – but the main reason for sharing the mitigation or removal outcomes should find its reasoning in the practical involvement of the host country on investments, maintenance and other costs and resources. All these elements contribute de facto to international finance transfers, which are not accountable to climate finance or official development assistance (ODA). There should be no need to say that this is correct and should not change – but better to say this explicitly.

Source: UN Climate Change on Flickr, https://flic.kr/p/2piMjZM, CC BY-NC-SA2.0

Now, turning to the financial accountability: Under Article 6.4, Parties created a new "use track" with the option of issuing mitigation contribution units, which are not used for international compliance purposes of NDCs or 'other international mitigation purposes' (OIMP) – such as ICAO's CORSIA offsetting or neutrality targets of corporates or other entities. This new "use track" is still politically underexplored. The incentive system seems not to be working when there is no transfer.

Why not systematically develop this option for mitigation purposes under climate finance? The advantages for good mitigation activities under Article 6.4 are obvious. With the performance of these activities under Art. 6.4, the additionality of the underlying mitigation activity, including the localization outside the unconditional NDCs will be proven based on accepted methodologies, and finally, the

mitigation potential could be addressed in a more precise manner by accepting international oversight by the Supervisory Body of the mechanism (SBM). Of course, this is a political direction which may emerge from the UNFCCC decisions, already taken and to be taken, which must be reflected upon by Parties. Therefore, from this perspective some more reflection should be integrated in capacity building measures and programs, the domestic carbon market frameworks for international cooperation and the long-term strategies. This is a chance for climate finance providers and receiving countries.

Growing coverage of emissions makes carbon market turn to removals

Q: *COP29 will also discuss aspects of international market-based action. This includes the role of removal activities and setting reliable baselines. It is common sense that removal activities will play more and more a dominant role in the upcoming decades. What is needed for Article 6 of the Paris Agreement to deliver mitigation action and raise ambition in these changing areas of application?*

A: It seems very likely that the latest SBM decisions on methodologies in general and removals as special case can find consensus among Parties. Nevertheless, it would be good to agree on further technical work by SBM, so that the outcome of these new mandates helps practitioners to prepare better Art. 6. 4 activities. Permanence, reversals, buffers might require further very specific support for a well-guided removal activities.

The recent SBM outputs also show that one can rely on this body's capability to deliver on technical mandates. However, as everyone knows, there are limitations to standards and guidelines. They can instruct practitioners and apply safeguards to finally stop poor project realization. For COP29, we need to answer whether the SBM standard setting delivers on these functions or not. What Article 6 cannot deliver is the readiness of host countries to strengthen the enabling environment for removal activities, to define goals and policy instruments under the NDC, reflecting the long-term perspective for contributing to net zero for themselves and potentially for other Parties or companies.

The international carbon market needs parameters indicating the quality of implementation of removal activities, including the host country's practical commitments. However, we should add the responsibility of buyers to the broader picture of removal activities. Buyer countries need to engage in the long-term strategy of host countries, because it is not very likely that host countries would undertake these activities only for the purpose of international carbon markets, which they cannot calculate financially well-enough in advance. This is true for removal activities, prepared for transferring mitigation outcomes, but let us reflect a little bit on the buffer solution for the reversal risk. How can the availability of these buffers be guaranteed for each activity, but also at macro-level for the total buffer supply, which a host country needs to manage – including the impacts for own NDC achievement. Apparently, technical support for this process is needed, but the SBM can only support on an activity level and cannot substitute the responsibility of political framing of collaborating countries and companies. The conclusion is that the SBM could provide further assistance, but the challenges must be taken up by implementing countries.

Greenwashing risks led to reduced commitment from companies

Q: *Carbon Markets have been subject to criticism from the beginning on, but with the recent scandals, overall trust in the market to deliver climate benefits has been damaged. Especially the voluntary carbon market has recently attracted a lot of criticism with regard to integrity and credibility. Companies using carbon credits to claim carbon neutrality have faced allegations of greenwashing. But not only that, carbon credits from several project types are also often of poor quality. The crucial question from an EU perspective is, what is needed in order to rebuild trust in international carbon markets?*

A: If the interplay of the demand and supply side of the carbon market can transparently and credibly demonstrate that it contributes to the goals of the Paris agreement, trust will be rebuilt! This requires the following things: It requires that the emission reduction credits traded in this market are highly trustworthy, that the crediting towards climate neutrality targets is justified and that this market does not replace or delay companies' own initiatives to reduce emissions.

Since companies within the EU may not use carbon credits to comply with obligations under the emissions trading system, the core question for European companies using these carbon credits is how they best use them for public relations purposes. Of course, we do want to avoid greenwashing. EU legislation therefore stipulates that there is no climate-neutral way to sell petrol, nor can there be any climate-neutral fossil-based gas. Therefore, climate claims on products based on credits have been prohibited within the EU.

However, companies can still strive for certain climate-related claims, and with the Green Claims Directive the EU would like to provide legal security for claims at the company level. We also see that past scandals have led companies to fear significant damage to their reputation. Especially when it comes to forest protection projects, we have seen an over-inflated number of carbon credits issued, without seeing corresponding ability to prove that emission reductions have been achieved. These kinds of credits can undermine climate action instead of driving it forward. We must urgently work to remove bad carbon credits from the market.

Source: ENB / IISD / Kiara Worth

Engagement on Article 6 and what does the EU-NDC really mean

Q: *The EU has a clear standpoint on the importance of well-functioning and robust international carbon markets. Germany has been a long-time supporter of international market-based climate action. As part of the EU it is, however, not buying any Article 6 credits for own compliance and therefore Germany is up to date not creating public demand of relevant size for Article 6 credits. Yet Germany is very active on fostering carbon markets and supporting other countries in using market-based instruments in their net-zero transition. What are the most important activities Germany is undertaking and what is the reasoning behind them?*

A: IGermany is not a "compliance buyer" of Article 6 credits, as the EU decided not to use international emission credits to fulfil its climate action targets. However, many German companies are voluntarily committed to more climate action and would like to procure high-grade carbon credits. The Federal Government wants to support this corporate commitment and steer it into the right direction in order to ensure that the international carbon market does contribute to reaching thegoals of the Paris Agreement. Public funds alone will not suffice to reach and to finance the global transition: we also need committed involvement and resources from the private sector. Here the voluntary carbon market can play an important role.

Quality and integrity on both the demand and supply side is key to promoting climate action. To attract investments on the supply side, the implementing country needs a transparent and reliable framework ensuring that credits are of high quality and serve to generate additional reductions. For this reason, consultation and capacity building are key measures in supporting developing countries as they make use of the carbon market in an effective and high-integrity manner.

We think that countries should develop a strategy around this question: how can the various carbon pricing instruments – such as national pricing and international cooperative mechanisms under Article 6 – best support the fulfilment of the National Determined Contributions (NDCs) in order to increase ambition and incentivize the private sector. As part of the Supporting Preparedness for Article 6 Cooperation (SPAR6C) project, which Germany is funding via the International Climate Initiative (ICI), we are for example supporting the development of an Article 6 toolbox with 6 guidelines to aid host countries with this undertaking. We also support countries in developing a project portfolio and piloting activities, including, for example, the Cooling Program for Southern Africa project.

The Federal Government aims to ensure that almost all international market activities of the voluntary carbon market are registered under Article 6.4 in order to ensure both transparency and quality in the global carbon market and to build capacities for national CO_2 pricing instruments in developing countries by establishing legal frameworks and infrastructure for Art.6 and enhancing data quality for the national emissions inventory.

Driving Transformation

Highlights from SPAR6C's Annual Practitioners Meeting

by Marshall Brown, Allison Jay Sterling, and Kimon Chalkidis, GGGI

The Supporting Preparedness for Article 6 Cooperation (SPAR6C) is a five-year initiative funded by Germany's International Climate Initiative (IKI) to support Colombia, Pakistan, Thailand and Zambia in preparing for effective participation in international carbon markets under Article 6 of the Paris Agreement. SPAR6C provides capacity building, technical support, and knowledge exchange to enhance these countries' ability to engage in Article 6 transactions.

A core global workstream of SPAR6C is the Community of Practice for Article 6 Implementing Countries (CoP-ASIC), which serves as the program's platform for knowledge exchange. The CoP-ASIC convenes stakeholders such as government policymakers, student and profes-

Source: all images © GGGI

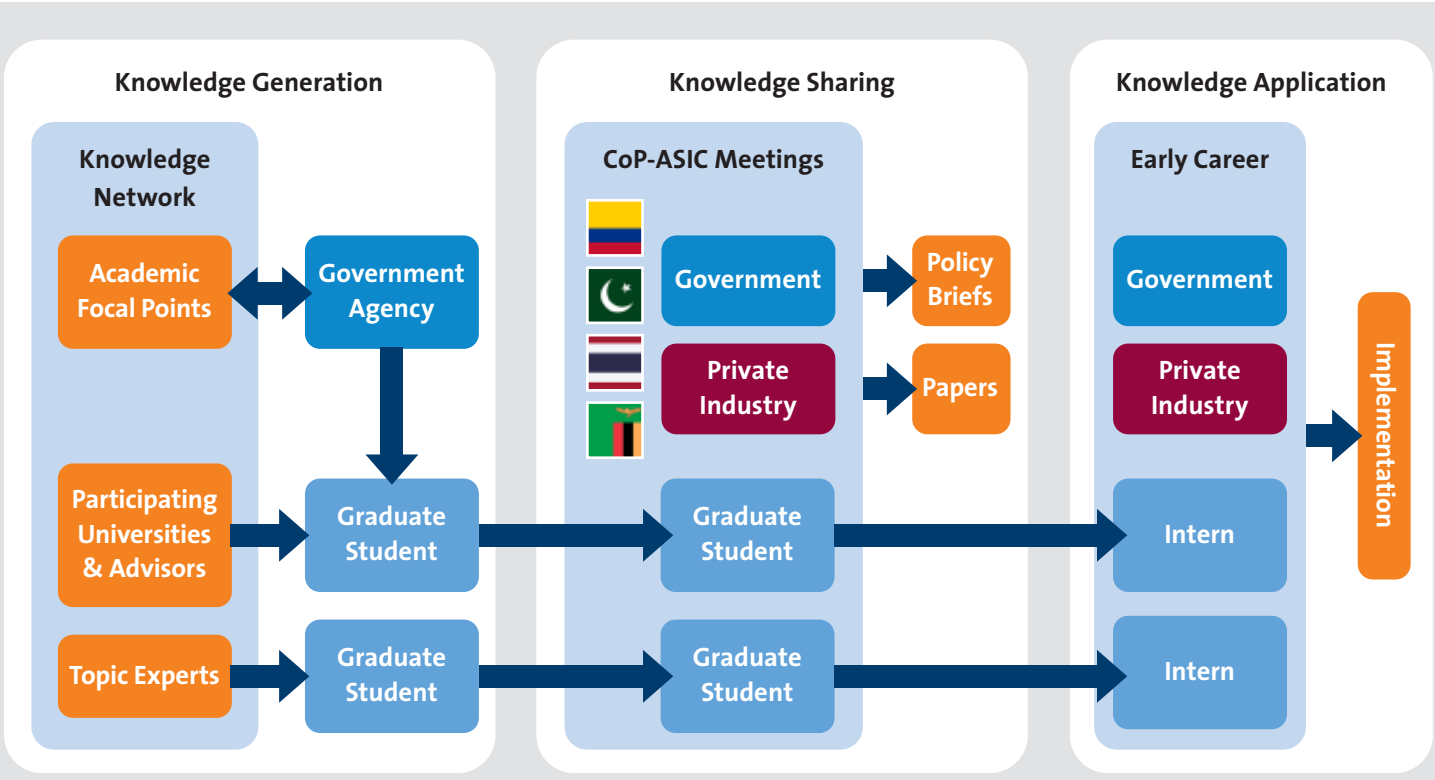
sional researchers, and other experts in a collaborative environment to exchange experiences, integrate academic exploration, and then inform national practices. By expanding local expertise in this diverse array of stakeholders – training students and creating forums for exchange between local academic community, government and private sector – the CoP-ASIC aims to address the core challenge of sustainability of implementation of carbon market activities in developing countries.

Objectives of CoP-ASIC

CoP-ASIC as a standalone work package within the larger SPAR6C program is a comprehensive knowledge exchange program with three goals (cp. figure 1):

1. Generate Knowledge: Through its mentorship program (RMP, see below) and linkages to the SPAR6C Article 6 Implementation Toolbox and in-country support, CoP-ASIC facilitates the creation of new knowledge related to Article 6 policies, strategies and mitigation activities.
2. Share Knowledge: SPAR6C hosts one major annual CoP-ASIC event, several local academic network events and online discussions. These events serve as key platforms for knowledge sharing among national stakeholders and the wider international community.
3. Apply Knowledge: CoP-ASIC actively supports the integration of the research findings and best practice from experiences shared into national policies and strategies on carbon market implementation, helping partner countries translate research findings into tangible policy outcomes.

Figure 1: SPAR6C's Community of Practice for Article 6 Implementing Countries concept.



Source: GGGI

Research Mentorship Program: Cultivating Expertise in Carbon Markets

One of the most unique elements of SPAR6C is the CoP-ASIC's Research Mentorship Program (RMP). The research mentorship experience is designed to shape early-career practitioners who can play a role in carbon market implementation in their respective countries and serve as the foundation of an Article 6 global network. Students undertake independent research linking their areas of study to important questions salient to Article 6 implementation. Their findings are shared both domestically and internationally, ensuring that lessons learned can contribute to the broader development of Article 6 mechanisms.

The students are selected by national CoP-ASIC networks composed of representatives from government and academic institutions, which disseminate the call and evaluate the applications in close collaboration with SPAR6C consortium.

Once selected, the students' experience is structured into two main phases. First, the research phase allows them to learn about and explore Article 6 and carbon market concepts. This is primarily done through a seminar series and a "buddy system" that partners one of SPAR6C's Article 6 experts with each student. This support will inform their research, which they can also apply to their master's or PhD over the six-month period. The second phase is "knowledge application" in which students are given the opportunity to apply their newly acquired expertise through sponsored internships of their choice. In the first cohort, some students, such as those in Zambia, chose to work for the government institution responsible for Article 6. In other cases students have chosen to work for non-profits, research institutes, or the private sector.

As they continue their research and participate in national and international knowledge exchange events, these young professionals will be well-positioned to become future leaders in carbon market participation and climate policy development. By the end of the program in 2027, the RMP aims to have enabled at least 40 graduate students across the four partner countries.

National Knowledge Networks: Bridging Academia and National Priorities

The national CoP-ASIC networks that select students for the mentorship program create important strategic linkages between academia and government institutions which can extend beyond the RMP, for example, into designing a national climate change research agenda. Annual national CoP-ASIC workshops held by these networks serve as platforms for exchange and discussion, which strengthen ties between academia and policymakers and link this to SPAR6C activities.

In the longer term, SPAR6C aims to create an enabling mechanism for breaking down silos across academic disciplines and institutions in order to incorporate expertise from various fields to address the multifaceted challenges of climate mitigation and carbon markets. This also opens new opportunities for conducting novel, transdisciplinary research.

CoP-ASIC Annual Event Strengthening Global Collaboration for Article 6 Implementation

The largest and most impactful knowledge exchange activity within the CoP-ASIC is the annual event, in which government partners, SPAR6C's experts, academic advisors and students come together to reflect on the past year's developments. This includes sharing lessons learned from national implementation efforts and knowledge generated through the RMP. The annual event provides a forum for disseminating SPAR6C's toolbox guides and technical resources aimed at addressing knowledge gaps in carbon finance. The event also serves as a dialogue for comparing strategies, policies and methodologies used by each country in implementing Article 6 mechanisms.

The 2nd Annual Event of the CoP-ASIC was co-hosted by SPAR6C partners and the Government of Thailand and held in Bangkok across three days in September 2024. The event brought together 66 attendees, including government officials, academics, experts and students. Representatives from the German Federal Ministry for Economic Affairs and Climate Action also attended to share insights from their ongoing efforts and to gather lessons learned for future activities. Over the course of three days, participants engaged in a series of interactive sessions, workshops and knowledge exchange activities that examined SPAR6C implementation, key technical questions around carbon markets, and the findings of the student research from the RMP.

Day 1

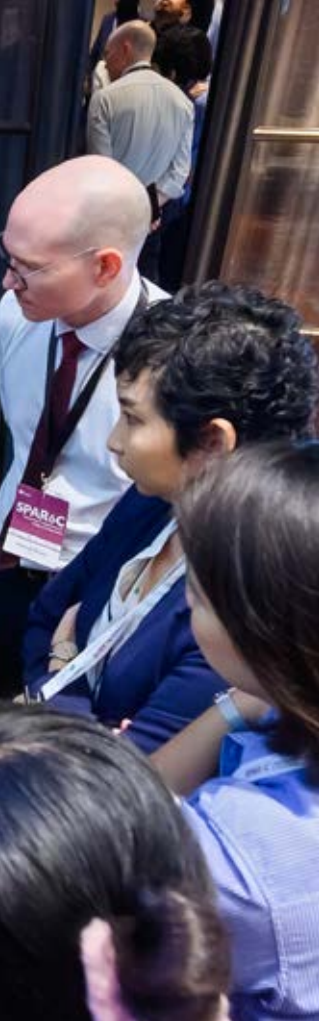
Day 1 provided government partners from Colombia, Pakistan, Thailand, and Zambia the opportunity to reflect on their progress in implementing Article 6. The session included discussions on successes, challenges, and best practices learned thus far.

Compared to the previous year's meeting, significant advancements have been made in establishing governance structures and frameworks for carbon markets. For example, the Ministry of Green Economy and Environment of Zambia has approved its Carbon Market Framework, while Colombia has made substantial progress toward the development of an Article 6 regulation. In the case of Thailand, which is a first mover in the Article 6 market, most of the focus has been on building upon the existing carbon market guidelines to develop a more comprehensive governance approach. Pakistan, which is still at an early stage in developing its governance framework and is faced with high levels of decentralization, also shared progress updates and found the lessons from other countries particularly useful.

Similarities and differences in approach were also noted by stakeholders. For example, Colombia and Thailand have both taken a more conservative and sector-focused approach to identifying potential mitigation opportunities. Under SPAR6C, Thailand is exploring potential mitigation opportunities in the innovation and SME sectors. In Colombia, studies have been undertaken in the forest restoration and green hydrogen sectors to better understand whether Article 6 eligible activities could be found. Such sector-focused deep-dives can help countries better managing overselling risk.

Another conclusion reached after sharing in-country experiences was the need for government agencies to share more information on carbon market implementation with external stakeholders – both private sector and the broader public. Each country has proposed creating a space within their government website to serve as a "one stop shop" of information on Article 6.

Following these reflections, stakeholders participated in an interactive evaluation and strategic planning workshop aimed at reviewing SPAR6C's results framework and proposing course corrections, which will be formalized in a post-event action note for each country's work packages.



Day 2

On Day 2, the focus shifted toward two critical concepts underpinning Article 6: ambition and transformational change. These themes are central to the global effort to continuously raise climate ambition, especially as countries update their Nationally Determined Contributions (NDCs). The day was structured around two modules.

The first module was a capacity-building exercise centered on SPAR6C's newly published guide, which outlines strategies for increasing ambition and achieving transformational change through Article 6. Some options included developing Long-Term Low-Emissions Development Strategies (LT-LEDS), facilitating investment in priority technologies, implementing governance frameworks that promote sustainable development, and strengthening transparency and accountability via MRV. This session aimed to equip government officials with the knowledge to integrate these concepts into their Article 6 activities, enhancing their ability to meet more ambitious climate targets.

In this module, representatives from the Norwegian Ministry of Climate and Environment and the Swedish Energy Agency, which represent potential ITMO-buying countries, shared their approach to ambition raising and their experiences with Article 6 implementation. Sweden has engaged in partnerships with multiple nations to understand their energy strategies and check their interest in Article 6 initiatives. Similarly, Norway supports projects that align with both NDCs and broader international climate actions.

To facilitate collaboration under Article 6, Sweden and Norway both noted the importance of adopting modalities that emphasize country ownership and capacity. Sweden's approach involves developing comprehensive Memoranda of Understanding (MoUs) that lay the groundwork for future collaborations, while Norway's financial mandate allows for flexibility across sectors. Germany highlighted the necessity for long-term strategies that extend beyond short-term carbon market gains, advocating for integrated climate finance solutions that align with both domestic and international goals.

The second module facilitated a knowledge exchange session, bringing together SPAR6C government representatives, consortium members from the CoP-ASIC and non-SPAR6C climate experts from Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and the Article 6 Implementation Partnership (A6IP). Through small group discussions, participants examined their respective NDC updating processes and explored strategies for more meaningfully integrating Article 6, alongside concepts of ambition raising and transformational change, into upcoming NDC updates. After the discussions with Norway and Sweden, a consensus emerged on the importance of aligning NDC's with the strategies of buyer countries, which is essential for scaling up climate action and ensuring successful Article 6 trading, and the need for greater coordination within government institutions responsible for NDC updates and carbon market decision making.

Day 3

On the final day, the SPAR6C Research Mentorship Program took center stage, with the first cohort of eight students from partner countries presenting their research findings.

The research covered various thematic areas, including the integration of carbon markets into sector-specific strategies, community impact and sustainable development. For example, one student examined how Colombia's carbon market could support a just energy transition away from fossil fuels, while another explored the potential for carbon trading to facilitate e-bike integration in Lusaka's central business district. Other projects focused on decarbonization efforts in key industries such as Pakistan's textile and cement sectors, as well as Thailand's waste management strategies.

Some students also addressed the broader social and environmental impacts of carbon market projects. One study from Zambia investigated the costs and benefits of carbon projects on local communities, while another from Colombia analyzed the role of land-use change in carbon storage and sequestration. A further study from Thailand looked at the effect of globalization on Thailand's emissions and how that would shape the strategy for engaging in carbon markets. Through these diverse research topics, the students demonstrated how carbon markets can drive both immediate emissions reductions and long-term, sustainable transformations across various sectors and communities. Table 1 summarizes the research titles of the 2024 cohort.

During the annual CoP-ASIC event, the students were engaged in a parallel workshop session to synthesize their policy-relevant findings into general recommendations for host countries developing an Article 6 strategy and

presented it to the consortia and government representatives.

Government representatives and other participants engaged with the students, providing feedback and discussing the practical applications of their findings, underscoring the importance of linking academic research to their internships, and, in the longer term, to real-world policy implementation. The RMP was praised for its role in fostering a new generation of experts capable of advancing carbon finance solutions, with several participants suggesting it could serve as a model for other international programs aimed at building long-term capacity for climate action.

Table 1: Research papers of the 2024 SPAR6C Research Mentorship Program cohort

Student country	Research paper title
Colombia	Advancing a Just Transition through Colombia's carbon market
Colombia	Impact of land use change on carbon storage and sequestration and CO_2 emissions in forests dominated by Quercus humboldtii in Santa Isabel, Tolima, Colombia
Pakistan	Evaluating Carbon Markets as a Strategy for Reducing Emissions in Pakistan's Textile Industry
Pakistan	Towards Net-Zero Emissions: Decarbonization of Pakistan's Cement Industry
Thailand	The Impact of Economic, Social, and Political Globalization on Carbon Emissions in Thailand: A Non-Linear Approach
Thailand	Opportunities from the Adoption of Article 6 to Enhance the Climate Ambition of Thailand's NDC target in Waste Management
Zambia	Carbon Trading and E-Bike integration in Lusaka CBD
Zambia	The Costs and Benefits of Hosting Emerging Carbon Market Projects on Local Communities: Lessons From Luangwa Community Forest Project In Zambia

Survey Results: Strong Satisfaction and Tangible Impact

The feedback from participants through the event satisfaction and capacity-building surveys paints a positive picture of the CoP-ASIC Annual Event in Bangkok. Attendees rated the event highly, with an overall satisfaction score of 4.75 out of 5 (with 5 being the highest score and 1 the lowest), while the quality of the event received an even higher rating of 4.81. Nearly all participants (97.25%) agreed that the event met their expectations in facilitating dialogue on Article 6 implementation under the Paris Agreement. Additionally, 89.25% of attendees reported making valuable professional connections, underscoring the effectiveness of the CoP-ASIC event in building up a community.

A recurring highlight mentioned in the survey responses was the student presentations, which many participants perceived as one of the most engaging and insightful sessions. This shows the great interest that exists in country specific research on Article 6 and in nurturing young talent in this area.

The capacity-building sessions on day 2 also yielded significant results. Pre- and post-event surveys were conducted and indicated notable improvements in participants' confidence levels, which is a key performance indicator for the SPAR6C program. For instance, confidence in discussing NDC ambition and transformational potential through Article 6 rose from 3.11 to 4.06 on a 5-point scale. Similarly, participants felt more capable of supporting NDC ambition through Article 6 implementation, with confidence increasing from 3.27 to 3.78.

One of the most interesting gains was in participants' familiarity with buyer-side approaches and expectations under Article 6, which increased from 2.89 to 3.75. This improvement is largely attributed to the insights shared by Norway and Sweden during the event, emphasizing the interest of host countries for aligning their strategies with the evolving demands of carbon market buyer countries.

Moreover, 81% of attendees indicated plans to apply the knowledge gained during the capacity-building sessions in their current work, reflecting the practical value and long-term impact of the sessions and training held at the event.

Looking Ahead: Building on Success for 2025

As the 2024 CoP-ASIC Annual Event concluded on a high note, the positive momentum carries forward to the next gathering in 2025. Over the coming year, national networks are expected to growth as well as the RMP, which will double in size in 2025. SPAR6C will continue to seek ways to integrate its network into broader carbon market initiatives and further empower participants with collaborative tools, shared platforms and resources. These efforts ensure that the knowledge exchange and interactions fostered under SPAR6C will continue to thrive and engage with other carbon market initiatives well beyond the project's duration. The 2025 event promises to be another key milestone toward a sustainable and resilient future, with an aim to increase private sector participation and explore efforts to speed up implementation.

Framing the Claims

Source: gettyimages.de/querbeet

Climate Neutrality Claims in the Courts and in Regulation: Examples from Germany and the EU

by Klaus Tim Bröcker, Partner at Herbst Bröcker, and Moritz von Unger, Atlas Environmental Law Advisory and Silvestrum Climate Associates

Advertising environmental features in products and services has become common practice in markets across the globe, with the combat against climate change dictating many marketing strategies. Companies are responding to consumer interest in sustainable, climate-friendly consumption by offering goods and services that are advertised as "green", "environmentally friendly", "carbon neutral" or "CO_2 neutral". Jams, sweets, garbage bags, even products whose use obviously implies the release of climate-damaging gases, such as candles and petroleum products, are touted as "climate neutral", as are the activities of companies, event organizers, sports clubs, and so on.

The range of corporate initiatives supporting the "climate neutrality" claim is wide and there is currently no authoritative protocol or standard vetting the diversity of claims. Many of them rely on emissions trading whereby credits are purchased from carbon projects to offset the GHG emissions associated with the lifecycle of a corporate product.

The veracity of these claims and their underlying ambition are increasingly challenged by consumer organizations. Over the past two years, Germany has become a hotspot for litigating climate-neutrality claims. "From our point of view," writes the NGO **Deutsche Umwelthilfe** on its homepage, "trade and industry are increasingly using advertising claims about alleged 'climate neutrality' to conceal the actual climate impact of their products and services and still sell them as green." Arguing that consumers need to be shielded against the non-transparent and possibly false advertising promises, organizations such as **Deutsche Umwelthilfe** and **Wettbewerbszentrale** increasingly turn to the courts for protection.

Challenges under German law

Under German law, the legal entry point for challenges of what is perceived as misleading or inaccurate advertising information is provided in competition law, namely the Act against Unfair Competition (AUC). Importantly, German competition law does not recognize a specific authority that would check compliance with the AUC (the same applies to the nation's antitrust law). Instead, violations of competition law are enforced only in cases where market participants – in particular competitors, consumers, as well as chambers of commerce, professional bodies, unions, etc. – raise a claim.

Environmental Claims Before the German Courts

The debate by German courts about environmental claims in advertising – "green claims" – is not new. Decisions date back to the 1980s, when German courts examined the veracity or integrity and effect of a variety of green claims, including the claim that a certain product was "made from recycled paper". According to the established case law of the Federal Court of Justice (Bundesgerichtshof),[1] Germany's highest court of civil and criminal jurisdiction, special requirements must be placed on the admissibility of advertising with environmental claims and symbols. As with health claims in advertising, advertising with environmental protection claims and symbols is subject to strict rules of accuracy, unambiguousness, and clarity.

Noting the increased interest among consumers in the meaning and the concepts used when making environmental claims, the Court has long stressed the dangers of ambiguous or misleading information. If detailed information on what carries the environmental claim is not provided or is not clearly visible, there is a particularly high risk that consumers will be given false ideas about the nature of the goods on offer and that they will be unduly influenced in their purchasing decision.

According to German procedural law,[2] each party bears the burden of proof for the actual requirements of the norm that is favorable to them, i.e. the plaintiff would have to demonstrate and prove that the challenged claim of climate neutrality is misleading because it is incorrect. Since the plaintiff generally has no insight into the advertiser's internal business conditions, while the advertiser knows the decisive facts and can easily provide the necessary clarification, there are numerous exceptions to this principle in the AUC, as well as in certain constellations of general civil law. The defendant is burdened with a so-called secondary burden of proof, so that it must demonstrate and prove the correctness of its advertising claim.

1 GRUR 1991, 546 para. 26 – "... aus Altpapier", GRUR 1996, 367 – "Umweltfreundliches Bauen" and GRUR 1997, 666, 668 – "Umweltfreundliches Reinigungsmittel"; most recently GRUR 2024, 1122 LS 1., para. 21 et seq. – Admissibility of advertising with environmental protection terms – climate neutral.

2 Cf. Köhler/Bornkamm/Feddersen/Bornkamm/Feddersen, UWG, 41st edition 2023, Section 5 para. 1.245 et seq.

Case Law on Climate Neutrality

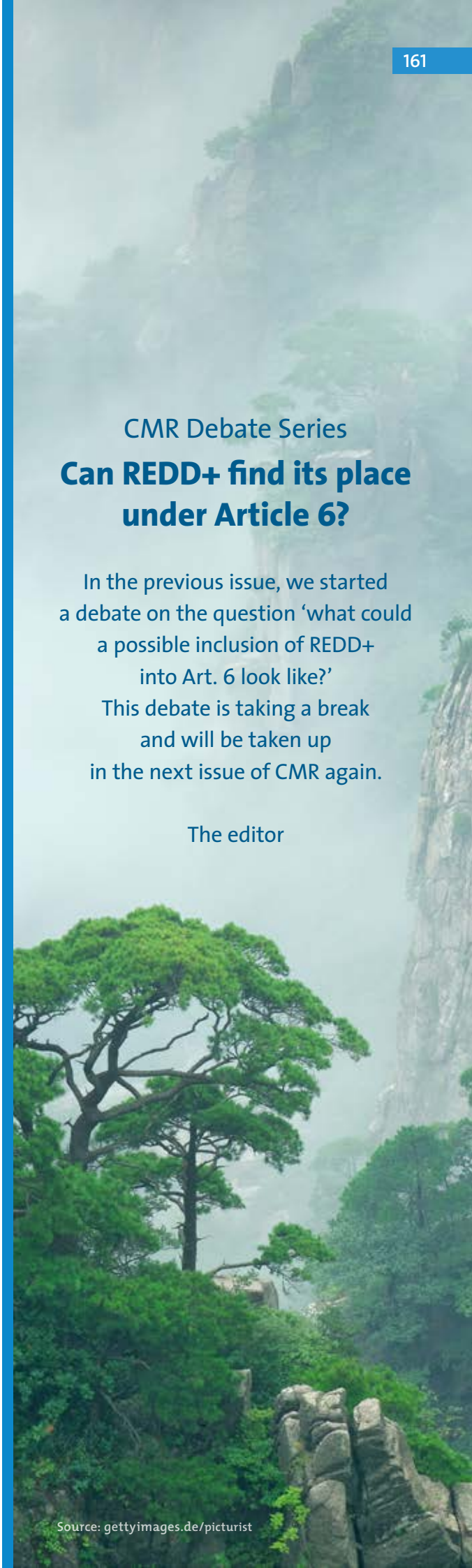
Earlier decisions by German courts held that consumers might be inclined to understand "climate neutral" to mean "emission-free", which would obviously amount to a misleading claim, as the production process in most cases will have led to the release of greenhouse gas emissions.[3] Over time, however, most decisions by German courts have come to concede that that both experts and the average consumer do not equate "climate neutral" with "emission-free" and that they are aware that climate-neutral claims may rely on compensation or "offsetting". As the district court (Landgericht Kleve)[4] explained in 2022:

"The advertising statement: 'Since 2021, ... has produced all products in a climate-neutral manner.' is not untrue, because climate-neutral is not the same as emission-free and can also be achieved through compensation. This does not imply any deception about production, because the specialist audience addressed by the advertising knows that climate neutrality can be achieved through compensation."

According to this case law, the average consumer understands "climate neutrality" in the sense of an accounting of the CO_2 emissions of a product. The consumer would be aware that this can be achieved both through emission-reducing and compensating measures.

3 LG Düsseldorf, BeckRS 2013, 18721 – Klimaneutrale Kerzen: "The catchphrase 'Klimaneutrale Kerzen' (climate-neutral candles) used in the headline makes the assertion that such [emission-free] candles exist according to the usual rules of grammar and comprehension"; OLG Frankfurt a. M., judgment of 31 May 2016 – 3-06 O 40/15, juris para. 28 – Climate-neutral frozen croquettes: "The advertising '100% CLIMATE neutral' is understood by the relevant public to mean that the company's products are completely climate neutral and therefore do not have a harmful effect on the climate..."

4 GRUR-RS 2022.



CMR Debate Series

Can REDD+ find its place under Article 6?

In the previous issue, we started a debate on the question 'what could a possible inclusion of REDD+ into Art. 6 look like?' This debate is taking a break and will be taken up in the next issue of CMR again.

The editor

Source: gettyimages.de/picturist

The matter was appealed however, and ultimately brought before the Federal Court of Justice which, in its decision from July 2024,[5] by contrast, argued for a middle way. It considered the concept of climate neutrality to be conceptually "ambiguous [...] because it can be understood on the one hand as the avoidance of CO_2 emissions and on the other hand in the sense of a balanced balance of the company's CO_2 emissions."

The court argued, nonetheless, that a climate neutrality claim is not deemed misleading information per se. Rather, it depends on whether "the advertising itself clearly and unambiguously explains which specific meaning is decisive" and how it is supported. In other words: the advertising must clarify – in the advertisement itself – whether CO_2 emissions are completely avoided during the manufacture of the advertised product or whether the statement implies the use of compensation credits. This is even more important, the court found, because "the reduction and compensation of CO_2 emissions are not equivalent measures for achieving climate neutrality... [rather], the principle of the priority of reduction over compensation applies". While the court does not provide any details for its claim that the climate mitigation hierarchy "applies", it is probably meant in the sense that the court considers the mitigation hierarchy a consumer expectation.

5 BGH, 27.6.2024 – I ZR 98/23, BB 2024, 2448 ff.

Source: gettyimages.de/janniswerner

The court, then, rejected the argument that the reference – made in the advertisement – to a "climate partner" would clarify that climate neutrality is achieved through carbon credits: "Based on real-life experience, it seems equally possible that commissioning a partner company for the purpose of climate protection can – at least – also include the installation of filter systems in production, support in establishing climate-friendly manufacturing processes, the supply of climate-optimized raw materials or a combination of these measures to avoid CO_2 emissions during the production process."

Overall, while the decision by the Federal Court of Justice reveals some reservations concerning the use of carbon credits to support green claims, it does not reject the notion of using carbon credits as a marketing strategy to claim climate neutrality. Its focus is on securing transparency behind the claim.

High-Quality Carbon Credits

On the other hand, the case did not provide an opportunity for the court to discuss whether compensation or offsetting claims require the use of specific carbon standards or "high-quality" credits. A new string of lower court decisions argues that certain climate projects or types of projects – specifically forest projects – are per se not eligible for compensation given the risk of non-permanence. The Karlsruhe Regional Court, for instance, recently held:[6]

"For fundamental reasons, climate neutrality cannot be achieved through compensation using forest protection projects. This is because the greenhouse gas emitted by the product is not permanently neutralized in the balance sheet. Corresponding product advertising is therefore misleading."

The court also saw other "significant and unresolved obstacles" in the specific case. It ventured on to assess compliance with what it saw as general carbon crediting requirements, namely the concept of additionality – a benchmark characteristic in carbon crediting, according to which a measure is implemented precisely because of the financial incentive from crediting (and not 'anyway') – and – in the case of forestry projects – the calculation of the reference case scenario (i.e. the situation in which the project area would find itself without the project being implemented). It concluded that the project(s) in question were failing to meet these requirements and, thus, that advertising a carbon neutrality claim based on them was misleading and that the corporation in question violated the principles of fair competition.

It is worth noting that the German courts – when discussing the concept and meaning of climate neutrality – mentioned the German Climate Protection Act and the European Climate Law, if at all, only in passing, even though both statutes conceptualize climate neutrality. The Paris Agreement and its specific provisions on carbon markets are not referenced at all. The same applies for the concept of double counting and the question to what extent emission reductions, as opposed to removals, are ultimately suitable for compensation.

6 Judgment of 26 July 2023 (case no. 13 O 46/22 KfH) (appeal pending).

Source: gettyimages.de/FooTToo

EU Regulatory Developments

The fresh jurisprudence signals an uncertain path for the corporate use of carbon credits to support green claims. In a parallel development, the EU has been drawing up legislation that would ban the use of certain green claims altogether, notably the claim "based on the offsetting of greenhouse gas emissions, that a product has a neutral, reduced or positive impact on the environment in terms of greenhouse gas emissions" (Empowering Consumers for the Green Transition Directive, **"ECD Directive" 2024**).

Another statutory instrument – the Green Claims Directive – is under negotiation by EU legislators. The directive will install vetting requirements for eco-labels and provide disclosure rules for corporations when making carbon-credit based green claims. It is expected that corporations will be able to use carbon credits – including for the purpose of offsetting emissions from their entire business activities – on the condition that they are transparent about the fact that credits are used, the type of credits (GHG emissions reductions vs. removals), and the standard by which they are certified. The directive complements other legislative instruments meant to strengthen environmental accountability, including the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSRD). The link to another piece of legislation to be released shortly – the Carbon Removals and Carbon Farming Certification ("CRCF") Regulation, meant to create the first EU-wide voluntary framework for certifying carbon removals – remains unsettled, however. The European Parliament has put forward its negotiation position whereby future claims based on carbon credits would need to be made in accordance with the recently agreed regulation establishing an EU certification framework for carbon removals and credits would need to be retired in the EU registry (under development).[7]

7 European Parliament, first reading (12 March 2024), at https://www.europarl.europa.eu/doceo/document/TA-9-2024-0131_EN.html.

The Future of the International Carbon Markets

As carbon offset claims are increasingly litigated and in the face of an increasingly restrictive regulatory framework and combative media coverage, it is little surprising that the demand for international credits has stalled for some time now. This is alarming given the magnitude of the gap between the needs and the reality of international investments in climate action.

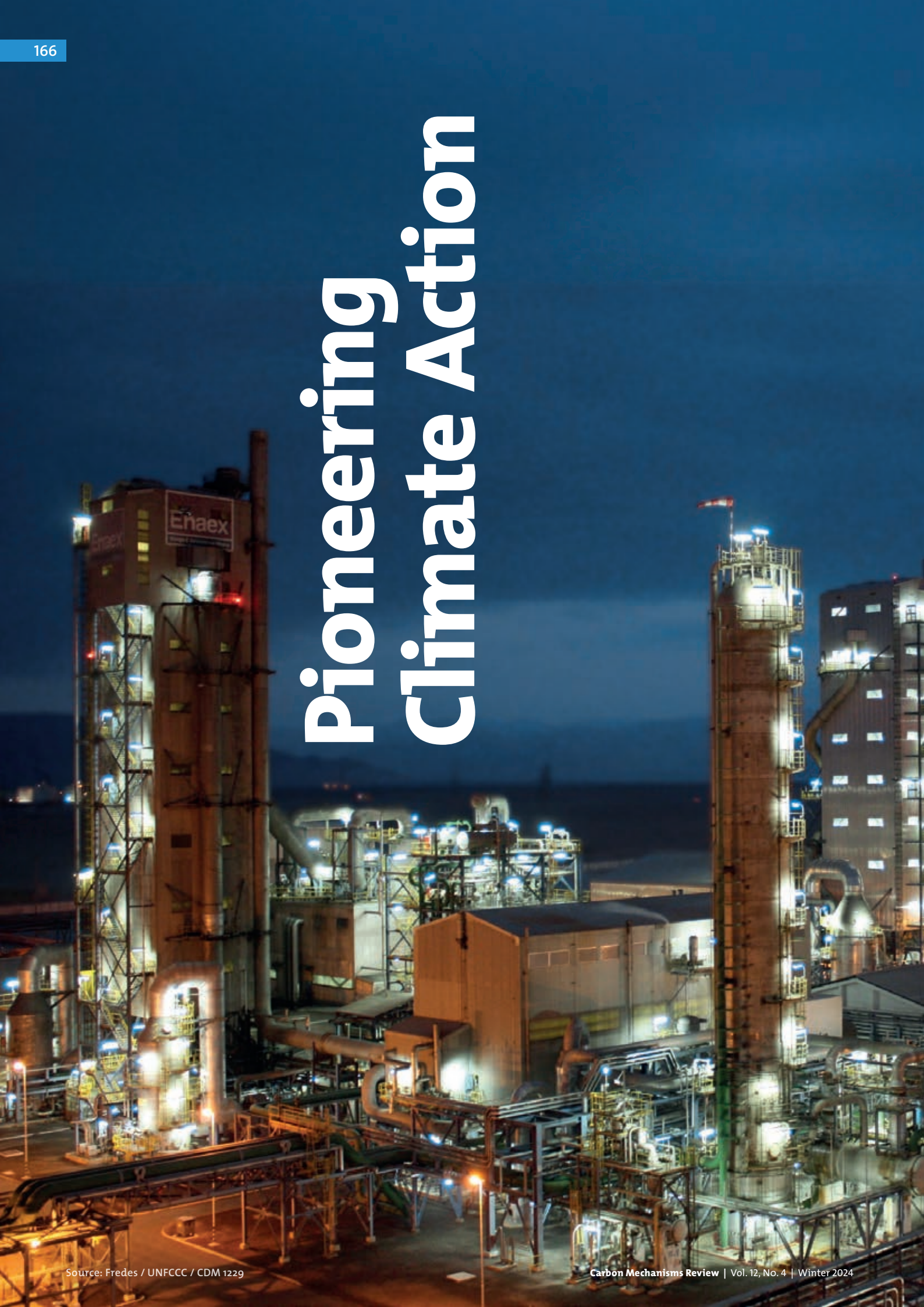
It is important, therefore, to shape the regulatory tools both from the overall objective – to mobilize finance and innovation for a green transition – as well as from the needs of a fair market and the expectations of the consumers. This exercise had better start with a thorough investigation into the different pathways that can ensure that engaging in international carbon crediting is safe, transparent, beneficial for the climate, and a non-contentious steppingstone for an ambitious corporate net-zero strategy. One option may be to follow the regulatory push for corporate disclosures and the definition of benchmarks for green claims, though it is difficult to see how this approach can remove uncertainty in the absence of a definition of what is considered a reliable ("high-quality") carbon credit.

Another option is provided by the EU's attempt to establish a removal certification framework, the **Joint Statement on Voluntary Carbon Markets** by several EU member states, or recently the US Joint Policy Statement on Voluntary Carbon Markets. The three initiatives are meant to strengthen the robustness and trust in the use of carbon markets, even though for the CRCF, dedicated credit use options are yet to be legally defined.

Under a third option, governments and non-state actors could turn to the mechanisms and crediting approaches offered by the Paris Agreement to guide and mainstream international carbon markets more broadly. Defining credits and crediting within the frameworks of Article 6 of the Paris Agreement might allow to define a robust, transparent and reliable trading environment that could pair government action with private sector engagement and walk a middle way of voluntary and regulated markets, while avoiding double-counting and creating real mitigation benefits at all accounting levels.

A strong Article 6-backed market, then, might not do away with the Voluntary Carbon Markets but, on the contrary, reinvigorate them by providing a standard against which they could be measured. This, in turn, could open the perspective for scale and higher corporate ambition to unlock the deep emission cuts needed to achieve the net-zero future.

Pioneering Climate Action



Source: Fredes / UNFCCC / CDM 1229

NACAG's Global Efforts to Tackle Nitrous Oxide Emissions

by Oksana-Ivanna Melnyk, Enrico Rubertus, Emilio Martin Rodriguez, GIZ

Since its inception by the German government in 2016, the Nitric Acid Climate Action Group (NACAG) has made significant strides in addressing the often-overlooked challenge of nitrous oxide (N_2O) emissions. With 11 countries now part of this international climate initiative, NACAG's mission is to secure the permanent abatement of N_2O emissions from nitric acid and caprolactam production, both major sources of this potent greenhouse gas. As of October 2024, NACAG´s abatement potential in these two sectors stands at around 4,5 million tonnes of CO_2 equivalent per year – a reduction comparable to the amount of CO_2 absorbed by approximately 195 million trees over a year.

Why Focus on N_2O, Nitric Acid and Caprolactam?

Nitrous oxide (N_2O), with a global warming potential (GWP) of 273, is a significant but often underestimated contributor to climate change. N_2O is also the most relevant anthropogenic ozone-depleting gas. It persists in the atmosphere for over a century and contributes to ozone depletion. Key sources include agriculture, fossil fuels, wastewater treatment, and the industrial production of adipic acid, nitric acid, and caprolactam.

During nitric acid and caprolactam production, N_2O is produced as unwanted byproduct. However, N_2O emissions can be reduced by up to 90% using affordable and proven technologies, costing $1-3 per ton of CO_2 equivalent.

NACAG's Comprehensive Approach

To address the significant abatement potential, NACAG, commissioned by the Federal Ministry for Economic Affairs and Climate Action – offers technical, financial, and political support to participating countries, industries, and organizations. NACAG's technical assistance includes advising on the installation, operation, and maintenance of N_2O abatement and monitoring technologies, while its financial support covers the procurement and installation of these systems and is reserved for ODA countries.

NACAG's financial backing comes with a key condition: recipient countries must commit to securing permanent N_2O emission reductions through the signing of a Statement of Undertaking (SoU). This political commitment ensures long-term regulatory measures.

Status

- Countries that signed the NACAG declaration
- Countries that signed the SoU committing to climate-friendly nitric acid production

Bosnia and Herzegovina
Uzbekistan
Georgia
Tunesia
Jordan
Pakistan
Vietnam
Thailand
Indonesia
Zambia
Zimbabwe
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A Group of Climate Policy Frontrunners

By November 2024, Argentina, Colombia, Georgia, Jordan, Mexico, Pakistan, Peru, Thailand, Tunisia, Uzbekistan, and Zimbabwe had signed the Statement of Undertaking. These nations are now working on N_2O regulations, and their nitric acid producers are eligible for NACAG-funded abatement technology and monitoring equipment. Countries such as Vietnam, Cuba, Indonesia, as well as Bosnia and Herzegovina have also expressed support for NACAG's objectives by signing the NACAG Declaration.

In Peru, Pakistan, and Georgia, partner plant operators financially support abatement efforts. For example, ENAEX in Peru and Fatima Group in Pakistan independently installed N_2O reduction systems, while JSC "Rustavi Azot" in Georgia significantly invests in abatement technology.

NACAG represents a coalition of climate policy frontrunners, supported and accelerated by the International Climate Initiative (IKI) of the German government. All members of the action group have mutually committed to taking proactive measures to reduce N_2O emissions within their countries, in alignment with NACAG's goals and in collaboration with other group members.

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Core provisions of the Statement of Undertaking

We undertake to design and implement suitable policies, regulations and/or incentive mechanisms such as those based on emissions trading to ensure that, within three (3) years of execution of this NACAG Statement of Undertaking:

a. all nitric acid production installations (henceforth referred to as "Installations") located in [add country] – whether existing or new and whether owned or operated by public or private entities – be continuously equipped with state-of-the-art technology to effectively remove N_2O emissions from their production cycles; and that

b. adequate processes for comprehensive monitoring and reporting of nitrous oxide (N_2O) emissions at all Installations be established, so as to permanently achieve an optimum in emission mitigation results in the nitric acid production sector of [add country]

NACAG partner countries have also committed those emissions reductions achieved with NACAG support, as well as future reductions in the entire sector, will not be subject to any form of international offsetting.

Colombia, Jordan, Mexico, Pakistan, Peru, Tunisia, Uzbekistan, Vietnam, and Zimbabwe have already integrated the nitric acid sector into their Nationally Determined Contributions (NDCs), with a combined mitigation potential of nearly 5 million tonnes of CO_2 equivalent annually.

Due to low abatement costs and well-proven abatement technologies, these reductions represent "low-hanging fruit" for climate action and should be included in the unconditional commitments of Nationally Determined Contributions (NDCs) worldwide, rather than being subject to international carbon market mechanisms, such as the Voluntary Carbon Markets (VCM) or Article 6 of the Paris Agreement. The low costs of avoiding N_2O emissions highlight their potential for easy and affordable mitigation, making them ideal candidates for national policies such as domestic emissions trading systems or carbon taxes.

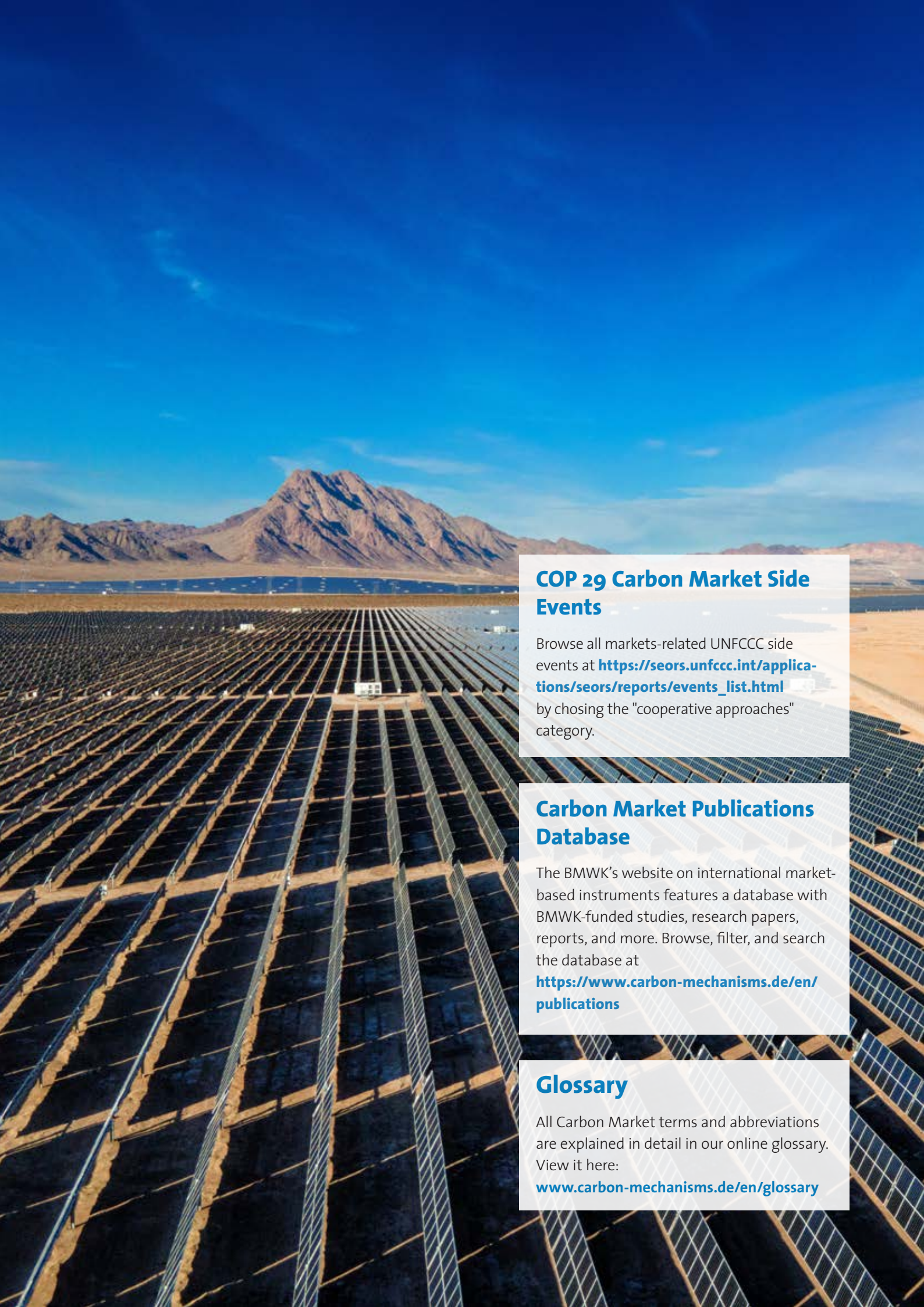
While NACAG partner countries recognized the "low-hanging fruit" potential of N_2O emissions reductions, there is also hope that other ODA and industrial countries will use this potential for their national climate goals and use the opportunity to cover these emissions in national Emission Trading Systems (ETS) or carbon taxes.

Leading by Example: NACAG's Impact

NACAG's partner countries are playing a pioneering role in their regions, showcasing the practical feasibility of industrial N_2O abatement and setting a global benchmark in climate policy. Through a unique blend of financial support, technical expertise, and political commitment, NACAG is making significant strides in curbing N_2O emissions worldwide. As of November 2024, 11 countries have signed the NACAG Statement of Undertaking (SoU), and the initiative is already providing financial support for the procurement of N_2O abatement and monitoring technologies at 12 plants within these countries. While several more are expected to join, NACAG's primary focus in the coming years will be on implementing financial agreements and assisting partner governments in fulfilling their commitments under the SoU.

As the urgency of climate change intensifies, initiatives like NACAG offer a beacon of hope, promoting a collaborative, science-driven approach to reducing industrial emissions while aligning with sustainable development and global climate goals. NACAG exemplifies a successful sectoral approach to climate policy, where countries and industry representatives unite in a coordinated effort to combat climate change together.

For more information, please visit:
www.nitricacidaction.org



COP 29 Carbon Market Side Events

Browse all markets-related UNFCCC side events at **https://seors.unfccc.int/applications/seors/reports/events_list.html** by chosing the "cooperative approaches" category.

Carbon Market Publications Database

The BMWK's website on international market-based instruments features a database with BMWK-funded studies, research papers, reports, and more. Browse, filter, and search the database at **https://www.carbon-mechanisms.de/en/publications**

Glossary

All Carbon Market terms and abbreviations are explained in detail in our online glossary. View it here: **www.carbon-mechanisms.de/en/glossary**