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## **Article 6.2 and the Transparency Framework Analysis of the Katowice Outcome and of the Need for Further Decisions**

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# **Article 6.2 and the Transparency Framework**

## **Analysis of the Katowice Outcome and of the Need for Further Decisions**

Nicolas Kreibich and Wolfgang Obergassel

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# Summary

Parties at COP24 adopted the “Katowice Climate Package” (UNFCCC Website 2019), a set of decisions that operationalizes the Paris Agreement. This includes the Modalities, Procedures and Guidelines (MPGs) of the Transparency Framework, which can be regarded a cornerstone of the agreement. A rulebook for voluntary cooperation under Article 6, by contrast, was beyond reach in Katowice. The last round of negotiations in Bonn in June 2019 also did not lead to a convergence of views. Despite this governance gap, some observers maintain that Parties can proceed in developing their cooperative approaches even without there being a UNFCCC guidance for Article 6.2.

Against this backdrop, this paper asks the following: Is there a need for a guidance on Article 6.2 at all? Or can the Transparency Framework, which does not only contain relevant reporting provisions but also includes accounting rules for international transfers, be used as a “backstop” for cooperative approaches? This question is explored by looking at the three objectives of voluntary cooperation under Article 6 as per Article 6.1:

- Promote environmental integrity
- Allow for a higher ambition of Parties
- Promote sustainable development

The analysis of the Katowice Climate Package indicates that while Parties at COP24 have agreed on an important regulatory framework for the operationalization of the Paris Agreement, the applicability of these provisions for cooperative approaches under Article 6.2 remains limited. For instance, while Parties are required to promote environmental integrity, there is no requirement specifying that addi-

tionality of crediting activities under Article 6.2 must be ensured or that units transferred must have quality.

Moreover, while the Transparency Framework’s MPGs can be considered an important step forward as it requires Parties to also report on how each cooperative approach has contributed to promoting environmental integrity and sustainable development, it also contains serious gaps: there is no provision requiring Parties to report on *how* their use of Article 6.2 has contributed to ambition raising and the existing reporting requirements often remain vague and generic. Accounting is where the Katowice Climate Package makes the largest contributions. It is, however, questionable whether the provisions can be considered sufficient for promoting environmental integrity and foster ambition of Parties, as there are still numerous open issues regarding whether and how to implement corresponding adjustments.

There is hence still an urgent need to establish robust provisions that guide the implementation of cooperative approaches and the operationalization of Article 6.2. The paper identifies the following approaches for closing remaining regulatory gaps that build on existing elements of the Paris regime:

- Build on and expand existing principles of the Paris Agreement and the Katowice Climate Package, such as the promotion of environmental integrity, and use them as a basis for a legally binding Article 6.2 guidance. The outcome of SBSTA 49 seems to suggest that the application of the guidance will be binding, as it requires that each participating Party “shall ensure its participation in the cooperative ap-

proach and its use of ITMOs towards NDCs is consistent with this guidance“ (UNFCCC 2018b, Annex, para 4). While the guidance as such would be legally binding, bindingness and prescriptiveness of individual provisions contained therein could vary. Provisions aimed at preventing adverse impacts could be characterized by a higher level of bindingness and prescriptiveness. Provisions that are intended to foster positive impacts, by contrast, could provide Parties with more leeway, allowing them to adjust their cooperative approach to their national circumstances.

- Take the accounting rules from Katowice as a starting point for elaborating a robust accounting framework that inter alia specifies how corresponding adjustments must be implemented by answering questions such as how to deal with ITMOs generated beyond the scope of NDCs or which accounting methodology to use. In addition, the infrastructure required for the operationalisation of these accounting processes such as registries will have to be provided.
- Expand the mandate of the Technical Expert Review to include a voluntary NDC review process that assesses the ambition level of Parties willing to participate in Art. 6.2. The NDC review would be voluntary, as is the use of Article 6 more generally, and only be applied to NDCs of Parties willing to engage under Article 6.2. While several Parties might be reluctant to introduce such a review process, Parties with ambitious and robust NDCs could be interested in having their NDCs reviewed as well as the NDCs of Parties they are wanting to engage with under Article 6.2.
- Expand the scope and prescriptiveness of the reporting provisions agreed in Katowice as part of the Transparency Framework which are currently too limited in their

scope and too generic. In terms of scope, an additional requirement to report on how cooperative approaches contribute to ambition raising should be established. Similarly, ex-ante provision of information on impacts could be made a precondition for being eligible to transfer ITMOs. In order to enhance transparency and accountability, the prescriptiveness of the reporting provisions should be increased. Since the Paris Agreement builds on naming and shaming, transparency and precision of the information reported are key. If the reporting provisions remain too generic, the naming and shaming function of the regime is put at risk, potentially limiting Parties' political commitment.

- Establish do no harm safeguards to ensure that activities have no negative social and environmental impacts.
- Explore the introduction of limits. By building on the proposed voluntary NDC review process, Parties with NDCs that contain hot air could be excluded from the use of Article 6.2. Similarly, ITMOs from activities not covered by NDCs could be excluded, given the environmental integrity risks associated to them. In addition, the introduction of quantitative limits on the generation and use of ITMOs could be explored in order to reduce environmental integrity risks and address ambition raising concerns.

While the development and adoption of these provisions will require additional time, Parties interested in using Article 6.2 could continue piloting their cooperative approaches in order to inform the international process. Adopting a precautionary and conservative stance will increase the chances that their cooperation are in line with the final guidance of Article 6.2.



# 1 Introduction

After the rapid ratification of the Paris Agreement and its entry into force on 4 November 2016, Parties to the UNFCCC had agreed in 2016 that the details on the implementation of the agreement should be adopted in December 2018 at the latest (Decision 1/CMA.1, para 5, UNFCCC 2017a). To the surprise of many, Parties in Katowice were able to deliver and agreed on the “Katowice Climate Package” (UNFCCC Website 2019). This set of decisions operationalizes the Paris Agreement by laying out clear provisions on how to implement its various components. Notably, Parties adopted the Modalities, Procedures and Guidelines (MPGs) of the Transparency Framework, which can be regarded a cornerstone of the agreement and was hence one of the most contentious issues in the negotiations.

However, agreement on a rulebook for Article 6 was beyond reach in Katowice, despite considerable progress made in the negotiations. Agreement was hampered by differing views on a number of technical issues, in particular concerning the question of corresponding adjustments (see: Obergassel et al. 2019; Marcu / Rambharos 2019). At the last round of negotiations in Bonn in June 2019, disagreement prevailed and many areas remain unresolved. While Parties agreed on a text to serve as basis for negotiations at COP25, the negotiations did not lead to a narrowing down of options. Instead, the text became much longer than the texts that had come out of Katowice as Parties re-inserted their favourite options.

This governance gap can be expected to lead to a standstill in the development of activities to be implemented under the Article 6.4 mechanism, as the mechanism requires the adoption of the full rules, modalities and pro-

cedures to become operational. For activities under Article 6.2, by contrast, some observers maintain that Parties can proceed in developing their cooperative approaches even without there being a UNFCCC guidance for Article 6.2 (e.g. Hood 2018).

Taking these observations as a starting point, this paper asks the following: Is there a need for a guidance for the implementation of cooperative approaches at all? Or can the Transparency Framework, which does not only contain relevant reporting provisions but also includes accounting rules for international transfers, be used as a “backstop” for cooperative approaches?

The present paper will explore this question by first analysing what elements are needed for the appropriate implementation of cooperative approaches. For this purpose, the three objectives of voluntary cooperation under Article 6 as per Article 6.1 are used as a starting point:

- Promote environmental integrity (section 2)
- Allow for a higher ambition of Parties (section 3)
- Promote sustainable development (section 4)

For each of these objectives we identify the adverse impacts that must be avoided and the positive effects that should be fostered to then determine the approaches required for this to be achieved. By looking at the Katowice Climate Package we explore which of the approaches identified are already part of the legal architecture of the Paris Agreement. In each section we also discuss whether the elements contained in the legal architecture suf-

face to meet the objectives of Article 6.1 and whether there is a need for additional provisions. In section 5 we look at possible ways forward by exploring options on how to close the regulatory gaps identified. Section 6 concludes.

## 2 Environmental Integrity

Despite being one of the three goals of Article 6, there is neither a commonly agreed definition of environmental integrity nor clarity regarding how it could be promoted. For the purpose of the subsequent analysis, we will understand a market-based cooperation to have preserved environmental integrity when it does not lead to an increase of global emissions. Hence, global aggregate emissions levels are equal or lower compared to a situation where the cooperation did not take place.

Building on this definition, the following section will first discuss key environmental integrity risks. The section first identifies three overarching issues:

1. additionality,
2. climate quality of ITMOs
3. accounting

and discusses how each of them can be addressed in principle. Subsequently, the existing provisions of the Paris Agreement and the Katowice Climate Package are analysed and gaps identified. This analysis is followed by a discussion on whether the existing provisions can be considered a backstop to promote environmental integrity.

### 2.1 Environmental Integrity Risks and Effects

#### 2.1.1 Additionality

Reductions achieved under the Article 6.4 mechanism are to be “additional to any that would otherwise occur” (Decision 1/CP.21, Para 37(d)). While there is no explicit analogous requirement for Article 6.2, additionality is a

key concept for safeguarding environmental integrity in the context of crediting. By contrast, the concept of additionality does not apply to cooperative approaches that involve the linking of climate policies across Parties or direct government to government transfers. Additionality is about assessing causation, describing the causal relationship between the mitigation activity and the policy intervention that is supposed to have triggered it (Gillenwater 2012). Following this definition, a mitigation activity would only be deemed additional if it would not have been implemented in the absence of the overarching policy intervention.

Lack of additionality can adversely influence environmental integrity to varying degrees, depending on the relationship between the mitigation activity and the host Party’s NDC: If the mitigation activity is within the scope of a sufficiently ambitious NDC and the host Party robustly accounts for the ITMOs exported, the non-additional mitigation activity may not adversely impact environmental integrity as the host Party would have to make up for each ITMO exported. If, however, the mitigation target can be reached easily even after the host Party has accounted for these exports, environmental integrity is threatened by non-additional activities.

*How to address the issue of non-additionality?*

First, additionality could be made a key **principle** and requirement for mitigation activities that are used for crediting under Article 6.2. To ensure application of the principle, uniform **reporting provisions** could require Parties to provide evidence that their activities are in line with the principle. To make the infor-

mation reported comparable and ensure a minimum quality of the reports, **common reporting formats** could be established. Reports could further undergo an **independent review process** to assess the information reported.

To further reduce the likelihood of the activity being non-additional, common activity-level **additionality determination processes** could be established. The processes could vary by scale and type of mitigation activity and may include investment tests for project-based activities and use of pre-defined threshold for domestic carbon pricing schemes (see: Michaelowa / Butzengeiger 2017; Kreibich / Obergassel 2018). Adherence to the regulation could be overseen by an (international) **supervisory body**, requiring a fully fledged governance system.

As suggested by (Michaelowa et al. forthcoming), activities that are within the scope of an NDC could be allowed to sidestep the additionality determination process if an international **NDC review process** finds that the host Party's NDC is ambitious and baseline emissions are not overestimated. The host Party would hence have to agree to having its NDC and the baseline assumptions reviewed. Activities in countries (and sectors) that are susceptible to hot air would have to undergo activity-specific additionality determination processes.

Another option is to establish **eligibility criteria** for Parties and activities. Parties with NDCs that have hot air could be excluded from participating as host Parties. Applying such eligibility criteria would require the existence of a supervisory body as well as a NDC review process.

At the activity level, activities with a particularly high risk of being non-additional could be excluded. Whether to take this option may depend on the design of the other components of the system. If, for instance, there will be no international governance of Article 6.2

and the rules only require host Parties to account for ITMOs from activities covered by an NDC, activities outside of NDCs could be excluded from the outset.

### 2.1.2 Climate quality of ITMOs

Apart from lacking additionality, there are also other factors that can undermine the environmental (or climate) quality of ITMOs (Kreibich / Hermwille 2016).

Setting the baseline that is used as a reference level for determining the mitigation outcomes resulting from the cooperation is a critical step of cooperative crediting approaches. If the baseline is set above business as usual levels (**inflated baseline**) and used as a reference level for calculating the mitigation outcomes achieved, the latter will also be overestimated, undermining environmental integrity.

When determining the mitigation outcomes, other effects such as carbon leakage must be taken into account. **Carbon leakage** refers to the situation when carbon dioxide or another GHG are transferred in time or space outside the scope of the mitigation activity. Hence, global emissions are not reduced but only their origin is shifted.

Another risk is **wrong attribution**. It describes a situation in which mitigation outcomes attributed to activity addresses have been triggered by other factors, such as other mitigation activities or general circumstances beyond the control of the mitigation activity.

A similar phenomenon is the so-called **rebound effect**. It refers to a situation where the implementation of a mitigation activity leads to a reduction of GHG emissions associated to a specific activity, which are, however, countered by changes in behaviour and consumption that lead to higher emissions.

Environmental integrity might also be at risk if **activity emissions are underestimated**, while



the risk of **non-permanence** is in particular linked to GHG sequestration activities, for instance in the forestry sector.

#### *How can quality be ensured?*

What provisions are needed to ensure that the ITMOs transferred under Article 6.2 have quality? One first step would be to agree on common **principles** that define the characteristics ITMOs shall meet. For instance by requiring that ITMOs must be real, measurable, permanent and be attributable to the mitigation activity.

By establishing **monitoring methodologies and reporting provisions** some of the integrity risks identified could be addressed, in particular the underestimation of activity emissions. The risks of rebound effects, carbon leakage and wrong attribution could be minimized by expanding the scope of the monitoring and reporting activities beyond the boundaries of the mitigation activity itself. The information provided by Parties could then be assessed through **verification**. This could either be done through third parties or organized centrally.

To address the risk of inflated baselines, common **baseline-setting methodologies** could be established and their application be required through commonly agreed rules. By requiring proponents of individual mitigation activities to regularly update their baseline and to also monitor parameters that are relevant for the baseline, the robustness of the baseline could be increased and the risk of inflated baselines mitigated.

In order to ensure the adherence to principles and to oversee the implementation of these processes at activity level, an independent **supervisory body** will however be required.

### **2.1.3 Accounting**

If a voluntary cooperation involves the transfer of mitigation outcomes, robust accounting is critical for ensuring that these transfers do not result in globally higher emissions. One potential risk is **double counting**, a risk that can occur in different ways (Schneider / La Hoz Theuer 2018). The most pertinent of these double counting risks is double claiming. It refers to a situation when two Parties claim one mitigation outcome for achieving their individual climate change mitigation targets: the Party where the emission reduction occurred and another Party.

An entire set of issues can be subsumed under the heading of **flawed accounting** (Kreibich / Hermwille 2016). Flawed accounting can occur if Parties transfer mitigation outcomes without their NDCs being fully compatible. For example, if a Party with a single-year target exports a mitigation outcome generated in a year preceding the target year to a Party with a multi-year target. the value of the mitigation outcome is not the same for both Parties and it is unclear how these two different values could be properly reflected when accounting for the transfer (Lazarus et al. 2014).

#### *How to ensure robust accounting?*

One first (yet insufficient) step is to establish robust accounting and the avoidance of double counting as basic **principles** for all types of cooperation that involve transfers of mitigation outcomes.

Accounting for internationally transferred mitigation outcomes requires a greenhouse gas (GHG) accounting system with Parties' NDCs lying at its centre. Such a **GHG accounting system** requires information on several aspects of Parties' NDCs, such as sectoral scope, reference level, timeframe and ambition level (for details see: Kreibich / Obergassel 2016). With such a system in place, a genuine **ITMO ac-**

**counting framework** can be established, allowing Parties to account for the ITMO transfers. The **accounting framework** must be equipped with clear rules that are sufficiently detailed to cover the different types of cooperation among Parties and the diversity of their individual NDCs. To ensure a minimum of conformity of participating Parties' NDCs and reduce complexity of the ITMO accounting framework, **eligibility criteria** could be applied. Eligibility could for instance be limited to Parties that have adopted a NDC with a quantitative GHG mitigation target that is economy-wide and has a certain ambition level.

In order to address the risk of double issuance and allow for tracking of units, each Party participating in a cooperative approach must have established a national **registry** or have an account in a centralized UNFCCC registry. National registries must be able to communicate with one another. In addition, a **settlement platform** with individual accounts for each participating Party will be required to track transfers.

## 2.2 Existing provisions to promote environmental integrity

**Principles** are a key component of the Paris Agreement and do also feature in the Katowice Climate Package. Article 4.13 of the Paris Agreement requires Parties to “promote environmental integrity, transparency, accuracy, completeness, comparability and consistency, and ensure the avoidance of double counting” (UNFCCC 2016 Article 4.13). The modalities, procedures and guidelines (MPGs) for the transparency framework contain a total of eight guiding principles. In the context of environmental integrity, the principles d, g and h

are of particular relevance (Decision 18/CMA.1, Annex, para 3 UNFCCC 2019a) :

- (d) Promoting transparency, accuracy, completeness, consistency and comparability;
- (g) Ensuring that double counting is avoided;
- (h) Ensuring environmental integrity.

While **eligibility criteria** have not been adopted explicitly, Para 77 d) (i) of the Transparency Framework's MPGs requires Parties participating in cooperative approaches to detail “the annual level of anthropogenic emissions by sources and removals by sinks covered by the NDC on an annual basis reported biennially”. Parties are further required to provide an emissions balance adjusted on the basis of corresponding adjustments. This effectively excludes Parties that have adopted an NDC that is not GHG-based and not quantified.

The Transparency Framework does not contain references to specific mitigation activity types and no **positive or negative lists** are being used. By the same token, the Transparency Framework does not introduce any **MRV processes at the mitigation activity level** nor **baseline-setting methodologies** that could be used to ensure the quality of ITMOs.

With reporting lying at its core, the Transparency Framework contains some **reporting** provisions that are relevant in the context of environmental integrity: It requires Parties to provide “[i]nformation on how each cooperative approach (...) ensures environmental integrity.” (UNFCCC 2018a, para 77d). It is worth highlighting that Parties are required to provide this information for each cooperative approach they are participating in. It can hence be considered the operationalisation of the generic principles contained in para 3 of the MPGs.

Parties must submit this and other information as part of their biennial transparency report (BTR), which undergoes a Technical Ex-

pert Review (TER). The TER is followed by a facilitative, multilateral consideration of progress (FMCP) with a written question and answer phase and a working group phase. If a Party does not comply with its reporting obligations or does not participate in the FMCP, the Compliance Committee for the Paris Agreement's compliance mechanisms (Article 15) can intervene. Its mandate is, however, limited as it does only assess *if* a Party complies with its reporting obligations and not *how* (Sharma et al. 2019). If a Party fails to meet its reporting obligations, the committee may take non-punitive measures, such as engaging in a dialogue with the Party and assisting it in finding solutions.

The Transparency Framework further introduces a **GHG accounting framework** by requiring each Party from 2024 onwards to biennially submit a Transparency Report (and an inventory report) providing a detailed description of its NDC and the information necessary to track progress made towards achieving it. **National ITMO registries** are introduced with para 61 of the MPGs, which requires Parties to provide information on the institutional arrangements in place to track progress made towards NDC achievement, including on those used for tracking ITMOs (Decision 18/CMA.1, Annex, para 61 UNFCCC 2019a).

Additional provisions that are relevant for ITMO accounting are contained in para 77 (d) of the MPGs. The paragraph requires Parties to provide the following information in the structured summary of the Transparency Report:

*“(i) The annual level of anthropogenic emissions by sources and removals by sinks covered by the NDC on an annual basis reported biennially;*

*(ii) An **emissions balance** reflecting the level of anthropogenic emissions by sources and removals by sinks covered by their NDC **adjusted on the basis of***

***corresponding adjustments** undertaken by effecting an addition for internationally transferred mitigation outcomes first-transferred/transferred and a subtraction for ITMOs used/acquired, consistent with decisions adopted by the CMA on Article 6;*

*(...)*

*(iv) Information on how each cooperative approach (...) applies **robust accounting to ensure inter alia the avoidance of double counting**, consistent with decisions adopted by the CMA on Article 6.” (Decision 18/CMA.1, Annex, para 77d, UNFCCC 2019a, emphasis added).*

As the expression “to provide specific types of information” indicates, this paragraph is merely about reporting. The reference contained in para 77 d (ii) to an emissions balance clarifies that an emissions-based approach will be used for accounting. This indirectly addresses the question of metrics, effectively limiting cooperative approaches to transfers of GHG-based units. A detailed guidance on how corresponding adjustments are to be implemented and how to deal with remaining differences of Parties' NDCs, such as different timeframes (single year vs. multi-year), is lacking (see also: Marcu / Rambharos 2019). It therefore does not establish a fully fledged **ITMO accounting framework**.

By the same token, a global **platform for the settlement of ITMO transfers (e.g. transaction log)** among Parties is not introduced.

As for additionality, Parties in Katowice have not agreed on any specific **additionality determination processes** and additionality is not explicitly referred to as a principle in the Katowice Climate Package. Therefore, additionality is only indirectly covered by the reporting provisions that require Parties to provide “[i]nformation on how each cooperative ap-

*proach (...) ensures environmental integrity” (Decision 18/CMA.1, Annex, para 77d UNFCCC 2019a).*

Regarding an **NDC review process**, the Transparency Framework provides for two processes that could be relevant in this regard: The technical expert review and the facilitative, multilateral consideration of progress.

The Technical Expert Review is to review the biennial transparency reports and national inventory reports submitted by Parties in order to check their compliance with the reporting provisions of Article 13 and whether Parties have implemented and achieved their NDCs. The adequacy or appropriateness of a Party’s NDC and the adequacy of a Party’s domestic actions are, however, explicitly not part of the review process (Decision 18/CMA.1, Annex, paras 146 and 149, UNFCCC 2019a).

The facilitative, multilateral consideration of progress relates to the Parties’ implementation and achievement of its NDC and builds on the Technical Expert Review report. The process allows other Parties to raise questions in

writing which the Party concerned shall make best efforts to respond to. The written question and answer phase is followed by a working group session phase (Decision 18/CMA.1, Annex, paras 191-193 UNFCCC 2019a). While this format may allow individual Parties to raise relevant questions regarding, for instance the NDC development process and baseline setting approaches, no formal assessment of the NDC’s ambition level will be made.

### 2.3 Katowice as a backstop to promote environmental integrity?

Figure 3 provides an overview of the components that could be used for promoting environmental integrity and highlights the elements found in the Katowice Climate Package in red. The dashed lines indicate that only some rudimentary elements were found. As can be seen, the Katowice Climate Package



**Figure 1:** Provisions for addressing environmental integrity risks (existing provisions highlighted in red)



and the Paris Agreement only contain some provisions for promoting environmental integrity, while significant gaps remain.

First, the existing rulebook does not contain any provisions that explicitly address **additionality**. The issue is only indirectly covered by the requirement for Parties to report on how the cooperative approach contributes to environmental integrity.

Similarly, **ITMO quality** is only covered indirectly by this generic reporting provision. Provisions to ensure the accuracy of the information reported are limited. The Paris Agreement has established the Technical Expert Review as a process for reviewing Parties' Biennial Transparency Reports and the Compliance Committee can intervene if Parties fail to meet their basic reporting requirements. The mandates of both bodies, however, remain limited. It is therefore questionable whether they will be able to appropriately deal with Parties that fail to submit how the cooperative approach has promoted environmental integrity (see: Voigt 2019).

**Accounting** is the area where the Paris Agreement and the Katowice Climate Package make the largest contributions. It is, however, questionable whether these provisions can be considered sufficient to ensure robust accounting as there are still numerous open issues regarding the implementation of corresponding adjustments. One is timing: It is unclear *when* Parties are to make these corresponding adjustments. Will adjustments be made at the moment of issuing ITMOs, at the moment when they are exported or at a later point in time? Another open question is the scope: Para 77 d (ii) refers to emissions and removals covered by Parties' NDCs. Does this implicitly exclude cooperative approaches that involve mitigation outcomes from outside the NDC? It could also be read to indicate that mitigation outcomes not covered by the NDC

are unaffected by the need to implement corresponding adjustments.

Yet another open issue is the question of how to deal with different timeframes. While para 77 d requires Parties to provide information on an emissions balance that is adjusted on the basis of transfers made, it is unclear how Parties with different timeframes (or with different target years) are to make such adjustments. For instance, how should corresponding adjustments be implemented if a Party with a single-year target for 2030 imports emission reductions with a vintage of 2025 generated by a Party with a multiyear target? Much more explicit guidance will be required to ensure such adjustments are robust.

In addition to these open issues that are not addressed by paragraph 77d, there is another caveat: The decision text from Katowice on Article 6 states that the requirements of Article 77d on the information to be provided in structured summaries will be "without prejudice" to the Article 6 negotiations outcomes (Decision 8/CMA.1, para 4 UNFCCC 2019b).

# 3 Ambition of Parties

Voluntary cooperation under Article 6 is not only to assist Parties in the implementation of their NDCs but also “to allow for a higher ambition of their mitigation and adaptation actions” (UNFCCC 2016 Article 6.1).

We will in the following focus on ambition in terms of climate change mitigation and consider ambition raising a requirement for Parties engaging in cooperative approaches. We will further understand ambition raising as being related to Parties’ NDCs and actions. This common understanding of ambition raising is also reflected by Article 4.3 of the Paris Agreement, which requires Parties’ NDCs to reflect the highest possible ambition. At the same time, several sections of the Paris Agreement, including Article 6.1 itself, indicate that ambition raising also relates to Parties’ actions. By linking ambition raising to Parties’ NDCs and their actions the concept can be delimited from the concept of overall mitigation, which is an additional objective of the mechanism established under Article 6.4 only.<sup>1</sup>

So what are the factors driving Parties’ ambition and what are elements that could hinder its enhancement? We will in the following explore both aspects separately, looking at both Parties involved in the cooperation, the host Party and the acquiring Party. Third Parties in-

involved in the transfer of ITMOs (broker) will not be taken into consideration.

## 3.1 Opportunities and risks

### 3.1.1 Ambition raising opportunities

As highlighted in previous work (CCAP 2017; Howard 2018; Kreibich 2018; Warnecke et al. 2018), use of Article 6 can provide significant opportunities to both, host Party and acquiring Party, to raise their ambition.

The support provided by cooperative approaches could allow host Parties to target emissions that would otherwise be beyond reach (Warnecke et al. 2018). An ambition raising impact is further achieved if the emission sources that have previously been targeted by the Article 6 cooperation are then included in the host Party’s climate policy. Mitigation activities outside the scope of NDCs could be **dynamically included in the host Party’s NDC** (see: CCAP 2017).

More broadly, the host Party could **increase the ambition level** of its NDC by building on the experiences made in the context of the Article 6 cooperation and the capacities established in this process.

Article 6 may also hold opportunities for the acquiring Party to increase its ambition: The ITMOs could be used to increase the ambition level of its NDC. It could hence go beyond what would be possible if building exclusively on domestic mitigation activities. This opportunity could also be applied in the context of policy linking, when the acquiring Party uses the efficiency gains resulting from the margin-

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<sup>1</sup> This understanding is derived from the fact that “[t]o deliver an overall mitigation in global emissions” is one of the objectives the *Article 6.4 mechanism* “shall aim” at, while the requirement contained in Article 6.1 to allow Parties to increase their ambition is relevant for all types of voluntary cooperation of Article 6. Therefore, ambition raising of Parties does not contribute to overall mitigation, as otherwise establishing an additional objective for Art. 6.4 would be pointless.

al abatement costs differences to enhance the ambition of the policy.

Opportunities	
<b>Host Party</b>	Host Party <b>taps inaccessible mitigation options</b> that cannot be reached unilaterally.
	Host Party <b>integrates the emission sources</b> targeted by the mitigation activity when updating its NDC.
	Host Party can <b>increase the ambition level</b> of its NDC by building on the experiences gained / capacities established with the Article 6 cooperation.
<b>Acquiring Party</b>	Acquiring Party uses the mitigation outcomes imported to <b>increase the ambition level of its NDC</b> . (Policy linking: Acquiring Party <b>uses efficiency gains from policy linking</b> to enhance ambition of the policy).

**Table 1:** Overview of ambition raising opportunities

*How to foster ambition raising opportunities?*

What provisions could be established to ensure that cooperative approaches focus on those abatement options the host Party cannot reach unilaterally? **Eligibility criteria and negative or positive lists** established by a **supervisory body** or the CMA could ensure that the mitigation activities will be implemented in the appropriate sectors. Host Parties could also be required to identify the emissions that it could not reduce unilaterally by highlighting relevant technological, capacity or financial barriers (Warnecke et al. 2018). These processes could build on additionality demonstration processes known from the CDM.

By combining **shortened crediting periods** with a requirement for Parties to unilaterally continue implementing the mitigation activity once the crediting period is over, an additional ambition raising impact could be achieved.

In order for these measures to have an actual ambition raising impact, countries would have to account for the additional emission reductions achieved. Otherwise, these emission re-

ductions would offset mitigation impacts achieved by other mitigation activities. Therefore, an **accounting framework** with respective accounting provisions for ambition raising is required.

**3.1.2 Risks to ambition raising**

One risk to ambition raising is **overselling**. Overselling occurs when the exports of mitigation outcomes reach a volume that leaves no remains for the host Party to raise its ambition (or even reaching its current NDC). A similar situation is given when the host Party uses its low-cost mitigation potential for the generation of ITMOs. These exports may limit the low cost mitigation potential the host Party can use for achieving its domestic mitigation targets and raising its ambition (see: Warnecke et al. 2018).

Another risk to ambition raising for host Parties is the possibility to **keep the NDC’s ambition level artificially low**. This perverse incentive may arise from the following: If Parties must account for the transfers of ITMOs, host Parties will have to implement additional mitigation activities in order to reach their NDC or increase their ambition. With a low level of ambition, the impacts from these accounting adjustments will be smaller.

The host Party may also be incentivised to **maintain the sectoral scope of its NDC small** if exports of mitigation outcomes from outside the scope of an NDC are possible without Parties having to account for these transfers. Without further provisions in place, the host Party may decide not to include certain sectors in its NDC in order to avoid having to account for ITMOs stemming from these sectors.

Article 6 may further prevent host Parties from **implementing own climate policies** as these would adversely impact the determination of mitigation outcomes from Article 6 activities. While this risk was considered limited

in the context of the project-based mechanisms CDM and JI (Spalding-Fecher 2013), it may become more relevant under Article 6 as the scale of the mitigation activities is expected to be considerably larger.

Another risk to ambition is overuse, a situation in which the acquiring Party buys mitigation outcomes abroad instead of reducing its own emissions.

Risks	
<b>Host Party</b>	Host Party cannot increase the ambition level of its NDC or is even unable to reach its current NDC as a result of having exported too many (low cost) mitigation outcomes ( <b>over-selling</b> ).
	Host Party <b>keeps NDC's ambition level low</b> in order to reduce impact from accounting.
	Host Party <b>keeps scope of its NDC small</b> , if Parties are not required to account for mitigation outcomes from outside the scope of an NDC.
	Host Party <b>refrains from adopting own climate policies</b> and <b>continues implementing policies that increase emissions</b> in order to maintain the crediting baseline high.
<b>Acquiring Party</b>	Acquiring Party buys mitigation outcomes abroad instead of reducing its own emissions ( <b>overuse</b> ).

**Table 2:** Overview of risks to ambition raising

*How to address ambition raising risks?*

Some of the ambition raising risks could be addressed by establishing **principles**. The complementarity principle could be used to address the risk of overuse. Under the Kyoto Protocol, where this principle was applied, complementarity remained a contentious issue as there was no common agreement about what share of mitigation outcomes should be considered sufficient to meet this principle. It would hence also require further specification under the Paris Agreement. The risk of a host country keeping its NDC's ambition level low and the scope small could be minimized by making ambition level raising and scope expansion key principles.

Adherence to some of these principles could be supported by introducing quantitative **limits and eligibility criteria**. Overuse could be prevented by limiting the amount of ITMOs to be used by the acquiring Party to a specific share of the mitigation outcomes achieved domestically. Overselling could be addressed by limiting the eligible amount of ITMOs the host Party can transfer. Brazil has for instance suggested that units eligible for trading should be limited to the difference between current emissions and the average of the last three inventories (Brazil 2016). The perverse incentive to keep the sectoral scope of NDCs small could be effectively addressed by excluding mitigation outcomes not covered by an NDC from Article 6.

For some principles, by contrast, the introduction of detailed processes might be required. An **NDC review process** could be established to assess the ambition level of Parties' NDCs. This will be challenging, since the circumstances of climate change mitigation undergo dynamic changes. Given the differences in national circumstances, there also is no straightforward way to determine what level of ambition would be appropriate for a specific Party. The review process would hence have to be developed on an international basis and be backed by independent research.

What are possible solutions in dealing with the perverse incentive for host Parties to refrain from adopting own climate policies in order to keep the crediting baseline for Article 6 activities high? One possible approach known from the CDM is to exclude climate policies (E- policies) when setting the crediting baseline of mitigation activities. This, however, would mean overestimating baseline emissions resulting and undermine environmental integrity through over-crediting (for a discussion see: Cames et al. 2016). Since the risk of perverse incentive is considered to be limited in comparison to the risk of overcrediting,



Spalding Fecher (2013) recommends to not exclude climate policies from baseline setting under the CDM. Either way, a decision on whether or not to consider domestic policies when setting the crediting baseline can only be made by establishing common baseline-setting rules. In order to maximize adherence to these rules, common baseline-setting methodologies could be established. Existing provisions for Parties' ambition

The generic **principle** of ambition raising is repeated in various places in the Paris Agreement. It is further broke down in Article 4.2 of the PA which states that “[e]ach Party’s successive [NDC] will represent a progression beyond the Party’s then current [NDC] and reflect its highest possible ambition”. Finally, while the principle of supplementarity is not contained explicitly in the Paris Agreement, Article 4.2 requires Parties to “pursue **domestic** mitigation measures, with the aim of achieving the objectives of [their NDCs] (UNFCCC 2016, Article 4.2 PA, emphasis added). The inclusions of the word ‘domestic’ could be seen as implying that using mitigation outcomes generated abroad is not considered sufficient to meet this requirement.

As for **limits**, none are introduced with the Katowice Climate Package.

As outlined above, the Katowice Climate Package does also explicitly not envisage an **NDC review process**.

The basic elements of an **ITMO accounting framework** as introduced with the Transparency Framework’s M&P is relevant, as several ambition raising opportunities build on such a framework. It is part of a broader **GHG accounting framework**, which has also been established with the Katowice Climate Package.

At the activity-level, no methodologies (baseline setting methodologies, development of a crediting baseline) have been established in the Katowice package that could support the

role of cooperative approaches as proponents of ambition raising. While this is no different to the issue of environmental integrity, it is remarkable that not even a very basic **reporting** provision was established that requires participating Parties to indicate how the co-operation contributed to ambition raising.

### 3.2 Katowice as a backstop to promote ambition?

Figure 4 provides an overview on existing provisions for dealing with the ambition raising function of cooperative approaches. The elements found in the Katowice Climate Package are highlighted in red with the dashed lines indicating that only basic elements were found.

Ambition raising has been established as one key principle of voluntary cooperation and principles that prevent Parties from lowering their ambition level as a result of the cooperation are at least partially included. At the same time, however, further guidance on how these principles can be observed is lacking. With reporting lying at the very core of the Transparency Framework, it is remarkable to see that Parties are required to report on how each cooperative approach has contributed to promoting environmental integrity and sustainable development, while contributions to ambition are prominently absent from these reporting provisions.

approach	ambition raising risks	ambition raising opportunities
principles	scope expansion, ambition raising	ambition raising as a principle
limits	require ambitious NDCs	
	limit ITMO transfers and use	
	require NDC-coverage of ITMOs	limit eligibility to inaccessible technologies / activities
infrastructure	GHG accounting framework	
	ITMO accounting framework	
	third party verifiers	
	NDC review process	
Party provisions		shortened crediting periods
	baseline-setting provisions	
	Monitoring	Monitoring
	Reporting	Reporting
	Verification	Verification
activity provisions	baseline-setting methodologies	
governance	supervisory body	supervisory body

**Figure 2:** Provisions for dealing with ambition raising (existing provisions highlighted in red)

# 4 Sustainable Development

## 4.1 Opportunities and risks

Article 6.1 specifically stipulates promotion of sustainable development as one objective of cooperation under Article 6.

There is indeed a strong potential for synergies between climate action and other sustainable development objectives. For example, reducing fossil fuel use reduces not only GHG emissions but also local air pollution and hence improves public health. Cooperation under Article 6 may allow host Parties to implement actions with multiple benefits for climate change mitigation and sustainable development that they would otherwise not be able to take.

However, investments may also entail the risk of having negative impacts on local populations and the environment. In particular large-scale developments such as hydropower projects or plantations frequently lead to displacement of local populations and negative impacts on their livelihoods. A number of CDM projects have caused or contributed to such negative impacts (Obergassel et al. 2017).

Development aid and public climate finance usually includes social and environmental safeguards to prevent or at least mitigate negative impacts and ensure that overall impacts are positive. However, there has been a long-standing controversy on whether and to what extent to address sustainable development impacts of market mechanisms at international level. While the Kyoto Protocol mandates promotion of sustainable development as one of two objectives of the Clean Development Mechanism, it was not possible to

operationalize this objective internationally. Many countries argued that sustainable development impacts could best be judged at national level and that establishing international provisions would violate their sovereignty. Many countries now make the same argument regarding cooperation under Article 6.

### *How to address the issue of sustainable development?*

As with the other objectives established in Article 6.1, provisions to operationalize the sustainable development objective could start at the level of **principles**. Parties could agree that all activities taking place under Article 6 need to have a positive impact on sustainable development. To be operational, it would be helpful to frame this principle in a way to directly provide a basis for implementation. For example, Parties could draw on the Sustainable Development Goals (SDGs) and agree that all activities under Article 6 need to have positive impacts on at least one SDG in addition to SDG 13 (Climate Action) and must have no negative impacts on any of the SDGs (do no harm principle) (Arens / Mersmann 2018).

One first step towards promoting these principles would be to agree on **limits**, excluding types of activities that are in conflict with international regulations or that are known to have a particularly high risk, such as large-scale hydropower projects.

Parties that want to participate in cooperative approaches would have to ensure that their activities are not excluded by these limits. In addition, Parties would need to ensure that their activities adhere to several implementing rules, such as:

- All activities taking place under a co-operative approach under Article 6.2 need to undergo a **social and environmental impact assessment** covering all SDGs with third-party verification before approval.
- All negative impacts must be avoided, minimised or compensated for. If that is not possible, the activity may not be approved by Parties (**ex-ante impact management**).
- All activities need to obtain the **free, prior and informed consent** of affected communities.
- Social and environmental impacts need to be monitored and verified by third-party entities throughout project implementation (**MRV of impacts**).
- If negative impacts become apparent during implementation, they must be remedied. If problems are not remedied, implementation must be stopped (**ex-post impact management**).
- Affected communities need to have access to **complaints mechanisms** at activity, national and international level.

Building on these principles, uniform **reporting provisions** could require Parties to provide evidence on how they have implemented them. Parties could develop uniform reporting formats requiring information on:

- Criteria and procedures for impact assessments;
- Procedures for conducting stakeholder consultations and obtaining the free, prior and informed consent of affected communities;
- Positive and negative sustainable development impacts resulting from im-

plemented activities and how negative impacts are being addressed.

These reports could further undergo an **independent review process** to assess the information reported.

To ensure equal protections across all Parties, it would be recommendable to operationalize these implementing rules through a set of **activity-level provisions**. These provisions should address **substantive** and **procedural** questions (Olsen et al. 2018).

On substance, the provisions could include a set of issues and indicators that need to be addressed in the impact assessments as well as the monitoring of activities. The development of indicators could build on the SDGs and the indicators that have been developed to track their implementation (UN Statistical Commission 2019). The indicators could also be informed by the voluntary sustainable development tool adopted by the CDM Executive Board as well as by current social and environmental safeguards of public finance institutions (Gold Standard 2018; Arens / Mersmann 2018).

On procedure, the provisions could require that impact assessments need to be undertaken before activity approval and need to be verified by third-party auditors. In addition, the provisions could require that impacts need to be monitored and reported on over the lifetime of the activity and that monitoring reports need to be verified by third-party auditors. The provisions may also require that activities need to elaborate management or action plans to address negative impacts.

The activity-level provisions may also lay out detailed procedures for the conduct of stakeholder consultations. The provisions should set out how to identify the relevant stakeholders, how to contact them, what information to provide them with in what form and how to conduct stakeholder meetings. In

2015, the UNFCCC Secretariat drafted detailed guidelines for stakeholder consultations in the CDM (UNFCCC 2015), but the CDM Executive Board substantially reduced the draft and adopted only limited guidelines (UNFCCC 2017b, paras 89-105). Nonetheless, the work of the Secretariat could be built on to develop guidelines for stakeholder consultations under Article 6.

Procedural guidance should also provide for complaints mechanisms, internationally, nationally, and at the activity level.

Adherence to the regulation could be overseen by an (international) **supervisory body**, requiring a fully fledged governance system.

## 4.2 Existing provisions on sustainable development

The link to sustainable development is arguably one of the core **principles** of the Paris Agreement. The preamble emphasises “the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty”. The objectives of the Agreement according to Article 2 as well as the goal to achieve a balance between emissions and removals laid down in Article 4.1 are equally framed “in the context of sustainable development and efforts to eradicate poverty”. One may therefore conclude that all climate actions need to be seen from a sustainable development perspective.

Nonetheless, promoting sustainable development is only minimally reflected in the **reporting** provisions of the Transparency Framework’s MPGs. They require participating Parties to provide “information on how each cooperative approach promotes sustainable development”. This seems to indicate that each individual activity undertaken under Article 6.2 needs to be reported on.

## 4.3 Katowice as a backstop to promote sustainable development?

As can be seen from Figure 3 below, the decisions taken so far provide little basis to operationalize the sustainable development objective. While there is a requirement to report on sustainable development, there is no guidance on how exactly this reporting is to be done. There is no guidance on how to determine on substance whether sustainable development has been promoted, nor is there guidance on procedures how to establish whether an activity has promoted it. Parties may therefore choose to report only on positive impacts and neglect reporting on negative impacts. Reporting only on positive impacts does not provide a basis for determining whether an activity has actually promoted sustainable development.



approach	SD risks	SD opportunities
principles	do no harm principle	contribution to SD
limits	exclusion of high risk activities	
infrastructure	third party verifiers	
	complaint mechanism	
Party provisions	social & environmental impact assessment	
	ex-ante impact management	
	free, prior and informed consent	
	MRV of social & environmental impacts	
	ex-post impact management	
	complaints mechanisms	
	Monitoring	Monitoring
	Reporting	Reporting
	Verification	Verification
	activity provisions	issues and indicators subject to MRV (substantive provisions)
detailed rules on the design of processes (procedural provisions)		
governance	supervisory body	

Figure 3: Provisions for dealing with sustainable development (existing provisions highlighted in red)

# 5 Options to move forward

As the analysis has shown, there remain significant regulatory gaps that must be closed in order for cooperative approaches to work effectively and in accordance with the objectives outlined in Article 6.1. We will in the following discuss different approaches for closing the remaining regulatory gaps.

## 5.1 Detailed activity-level provisions

Many of the risks identified could be mitigated through the introduction of robust activity-level provisions, such as a detailed methodology that Parties must apply to demonstrate that their activity is additional, or detailed criteria and procedures for determining whether an activity contributes to sustainable development. There are, however, several challenges associated to this approach, which is not only technically demanding but can also be expected to be politically challenging.

One argument that speaks against the introduction of international provisions to be applied at the activity level are potentially high transaction costs resulting from the top-down development of methodologies and tools. Another argument against detailed activity-level provisions is they might prevent Parties from developing future innovative cooperative approaches, thereby implicitly reducing the scope of Article 6.2. A main barrier against the introduction of activity level provisions, however, is political opposition against a Supervisory Body with strong governance functions being introduced under Art. 6.2. Several Parties have clearly opposed an international supervisory body in the past (Greiner et al. 2019; Obergassel / Asche 2017), and in Katowice

Parties have apparently agreed that Article 6.2 activities would not be subject to international oversight (Sharma et al. 2019). In light of these technical and in particular political challenges, building on alternative approaches can be seen as the more promising approach.

## 5.2 A legally-binding guidance built on existing principles

As outlined above, the Paris Agreement and the Katowice Outcome have already established principles that are relevant for the objectives of Article 6. By definition, principles are rather generic and usually little prescriptive. The question of prescriptiveness must however be differentiated from legal bindingness (see: Bodansky / Rajamani 2018). Principles can have a strong legally binding character despite being little prescriptive.

In order to allow Parties to adhere to these principles, a guidance for Article 6.2 is indispensable. When developing the guidance, Parties will also have to agree on the legal bindingness of the guidance as such and also specify which of the individual provisions contained therein are binding by international law. The outcome of SBSTA 49 seems to suggest that the application of the guidance will be binding, as it requires that each participating Party “**shall** ensure its participation in the cooperative approach and its use of ITMOs towards NDCs is consistent with this guidance” (UNFCCC 2018b, Annex, para 4, emphasis added). When formulating the individual rules of the guidance, Parties will also have to answer the question of how precise and detailed these rules should be. They could hence decide to develop very prescriptive rules for

some specific aspects while providing Parties with more leeway in other areas.

By adopting a stance that is guided by the precautionary principle, we are suggesting to establish rules with stronger legal bindingness and prescriptiveness for addressing negative effects, while positive impacts could be stimulated or enhanced with a more limited level of bindingness and prescriptiveness.

### 5.3 Establish a robust accounting framework

As shown in the analysis, strong accounting rules and a system for tracking ITMOs are key for addressing many environmental integrity concerns. The accounting rules contained in the Katowice Climate Package are a first starting point. There are, however, many open questions and regulatory gaps that must be closed.

Corresponding adjustments should be required for all Article 6.2 transfers. How to deal with ITMOs that were generated outside the scope of NDCs and whether generating such ITMOs should be allowed at all is still an open question to be answered. If NDC-coverage of ITMOs is not a prerequisite, one possibility would be to include non-NDC ITMOs in the accounting system and not treat them differently from ITMOs that were generated within NDCs. While this would address some risks to environmental integrity and ambition raising, it would also reduce the potential of cooperative approaches to enhance the host Party's ambition through the inclusion of the emission sources when updating the NDC. Alternative approaches, such as the introduction of a buffer registry to account for non-NDC ITMOs (Müller / Michaelowa 2019) do also raise new open questions. It is unclear how issues with potential adverse incentives regarding the scope expansion of the NDC are addressed. At

the same time, the complexity of accounting is further increased by requiring a reconciliation of the buffer registry with actual emissions and transfers at some point in time. Since there is further need to explore these issues in greater detail, an exclusion of ITMOs generated outside the scope of NDCs seems the most viable way forward at this point in time (see section 5.7 below).

### 5.4 Include NDC ambition in the Technical Expert Review

The ambition level of an NDC is not only relevant when dealing with the contribution of a cooperative approach to ambition raising but is also key for addressing many environmental integrity concerns. Assessing the ambition level of Parties' NDCs is, however, a highly political issue and the Technical Expert Review team under the transparency framework has currently no mandate in this regard.

There are several arguments in favour of expanding the scope of the TERs and providing the review team with a mandate to review NDCs. The first and most important argument is that the NDC review would be voluntary, as is the use of Article 6 more generally. Only the NDCs of Parties willing to engage under Article 6.2 would need to undergo an international assessment. Parties willing to host Article 6.2 mitigation activities and looking for others to engage as acquiring Parties could show the high stringency level of their NDC. The approach would result in the effective exclusion of Parties with hot air NDCs and address the risk of "low ambition carbon clubs" using Article 6.2. The approach would also lead to the exclusion of Parties where data availability and quality is insufficient. While this could significantly reduce the scope of applicability of Article 6.2, these Parties with low quality

NDCs could use Art. 6.4. Making the review of a Party's NDC's ambition levels a mandatory requirement for the participation under Article 6.2 could therefore result in a complementarity between Art 6.2 and 6.4. While several Parties can be expected to oppose the introduction of such a review process, Parties with ambitious and robust NDCs could be interested in having their NDCs reviewed. These Parties may further also be interested in the ambition of Parties they are wanting to engage with under Article 6.2. It should further be highlighted that the review process would be voluntary.

## 5.5 Establish Do No Harm Safeguards

While there has been strong opposition against establishing international provisions on sustainable development, it may be politically easier to argue that negative impacts need to be prevented. Arens and Mersmann (2018) note that the issues avoidance of human rights violations, a commitment to avoid negative economic impacts, and environmental protection are already on the table in the negotiations. Under these broad headings, they suggest to include the following issues (Arens / Mersmann 2018):

- as aspects of human rights: protection of marginalised groups and indigenous peoples, protection against involuntary resettlement, and gender equity concerns;
- as aspects of avoidance of negative economic impacts: access and equity rights, protection of public health, and core labour rights as defined by the International Labour Organisation;
- as aspects of environmental protection: protection of natural habitats, conservation of biological diversity, as

well as pollution prevention and resource efficiency.

## 5.6 Expand the scope and prescriptiveness of the ETF's reporting provisions

With detailed activity-level provisions for Article 6.2 being out of sight, building on the existing reporting provisions contained in the MPGs of the Transparency Framework seems to be the most promising way forward. The MPGs already require Parties to report on how their cooperative approaches promotes sustainable development and ensures environmental integrity. Including the requirement for Parties to show how their cooperative approach contributes to ambition raising would be an important addition.

A second aspect that should be added to the reporting provisions is an ex-ante perspective: Parties should be required to report on the expected impacts of their cooperative approaches before starting with the implementation. Similar to the existing practice under REDD+, ex-ante provision of information could even be made an eligibility criterion for participation in Article 6.2 activities. In REDD+, provision of information on how safeguards are addressed and promoted is part of eligibility requirements for results-based payments under Decision 9/CP.19. In the same vein, provision of information on the impacts of Article 6.2 activities could be made a precondition for being eligible to transfer ITMOs.

Furthermore, the prescriptiveness of the reporting provisions should be increased. The MPGs require Parties to report the information "in a narrative and common tabular format, as applicable" (Decision 18/CMA.1, Annex, para 79, UNFCCC 2019a). Such common tabular formats (CTF) are to be developed by the SBSTA for consideration and

adoption at CMP3 in November 2020. In developing these CTFs, SBSTA is to take into account the existing common tabular formats used under the reporting framework of the Convention. These already required Parties to report on the use of market-based mechanisms: Developed country Parties are required (“shall”) to provide information on the use of units from market-based mechanisms and their contribution towards achieving their mitigation target (see common tabular formats in: UNFCCC 2013). Developing country Parties, by contrast, are required to provide information on international market mechanisms for mitigation actions “to the extent possible” (UNFCCC 2012, Annex III, para 12). This shows that the prescriptiveness of the existing reporting requirements must be increased in order to ensure that cooperative approaches meet their objectives. Parties could be required to select and report on a set of predefined indicators, both qualitative and quantitative, that allow to assess how each individual cooperative approach has contributed to the objectives contained in Article 6.1. These indicators could be drawn from existing MRV systems developed in the carbon markets context such as the CDM, private certification standards such as VERRA and the Gold-Standard. With cooperative approaches presumably being much larger in scale and also involving policy-based activities, MRV schemes used in the climate finance context could also be a valuable source of indicators.

## 5.7 Introduce limits

In order to reduce the likelihood of cooperative approaches having adverse impacts and enhance positive effects instead, the previous measures should further be combined with the introduction of limitations.

The introduction of limits is a well known approach in climate policy. Party access has been

limited under the Kyoto Protocol, were Track II under Joint Implementation could only be used by Parties meeting specific eligibility criteria. In dealing with the issue of hot air transfers under the Kyoto Protocol, Parties further limited the possible amount of units to be transferred. This shows that the introduction of limits can be a viable solution, despite generating political opposition from affected Parties. Implicitly, the MPGs of the Transparency Framework do also introduce eligibility criteria by requiring Parties to account on the basis of GHG emissions. This does effectively exclude Parties that do not have quantitative GHG-based NDC targets.

Building on these existing limits or eligibility criteria, additional criteria should be developed. There are three areas where the introduction of limits should be explored: Party access, eligibility of activities and generation and use of ITMOs.

The participation in Article 6.2 could be limited to Parties that have adopted an ambitious NDC. Parties would have to provide the information required for assessing its ambition level and allow it to be reviewed by the Technical Expert Review. Only Parties with an NDC that has successfully been reviewed by the Technical Expert Review and which does not contain hot air could be allowed to participate in Article 6.2 cooperative approaches.

Eligibility of activities should be limited by excluding activities with a particularly high likelihood of adverse impacts on environmental integrity, ambition raising and sustainable development. For example, given the environmental integrity risks associated to ITMOs from activities not covered by NDCs, these activities should be excluded. Introduction of technology-specific eligibility criteria has been politically difficult in the past, with Parties pointing to the CDM being technology neutral. Since there will presumably be no international supervisory body for cooperative approach-



es the introducing technology-specific eligibility criteria can be expected to be politically even more challenging under Article 6.2.

In addition, the introduction of quantitative limits on the generation and use of ITMOs could reduce environmental integrity risks, in particular the risk of hot air transfers, but also address some ambition raising concerns, such as overselling and overuse (La Hoz Theuer et al. 2019). We thus suggest to further explore the introduction of quantitative limits. The data gathered by the Enhanced Transparency Framework and the outcome of the Technical Expert Review could be used as to inform the implementation of limits for Article 6.2.

## 6 Conclusions and Recommendations

With the adoption of the Katowice Climate Package, Parties at COP24 have agreed on an important regulatory framework for the operationalization of the Paris Agreement. With the notable exception of ITMO accounting and corresponding adjustments, the applicability of these provisions on cooperative approaches under Article 6.2 is, however, limited. And even in the area of accounting and the implementation of corresponding adjustments, several questions remain unanswered.

The regulatory gaps identified show that there is an urgent need for additional provisions to be adopted by the UNFCCC. This paper identified the five following approaches for closing remaining regulatory gaps that build on existing elements contained in the Paris Agreement and the Katowice Climate Package:

- The **principles** established by the Paris Agreement and the Katowice Outcome should be expanded and used as a basis for a **legally binding guidance** for Article 6.2. The level of legal-bindingness and prescriptiveness of the individual provisions included in the guidance should depend on the effects they address: Provisions aimed at the avoidance of negative environmental and sustainable development effects should be equipped with a stronger legal bindingness and prescriptiveness, while positive impacts could be stimulated by provisions that give Parties more leeway.
- The Katowice outcome provides some basic accounting rules that should be elaborated further in order to arrive at a

fully fledged **robust accounting framework**. Several open questions remain, for instance in terms of how to deal with different timeframe of Parties' NDCs and applicability of corresponding adjustments to ITMOs not covered by NDCs. In developing the outstanding rules, Parties should take a precautionary stance.

- With the ambition level of host Parties' NDCs being a key determinant of environmental integrity, the mandate of the Technical Expert Review should be expanded to include an **NDC review process** that assesses the ambition level of those Parties willing to participate in cooperative approaches under Article 6.2.
- To ensure that activities have no negative impacts on sustainable development, Parties should establish do no harm safeguards. Avoidance of human rights violations, a commitment to avoid negative economic impacts, and environmental protection should be established as mandatory principles that need to be adhered to in all activities.
- Another measure would be to **expand the scope and prescriptiveness of the ETF's reporting provisions**, by requiring Parties to select and report on a set of qualitative and quantitative indicators that allow to assess how their cooperative approach has contributed to the objectives contained in Article 6.1. Ex-ante provision of this information should be made a precondition for being eligible to transfer ITMOs.

- In dealing with the remaining uncertainties and for reducing some of the remaining risks, Parties should further explore the **introduction of limits**. Access to Article 6.2 should be limited to Parties with an ambitious NDC while the scope of Article 6.2 activities should be reduced to activities covered by NDCs. Additional quantitative limits on the use and generation of ITMOs could further mitigate some of the risks identified.

Fully developing these missing provisions will require additional time for finding agreement among Parties. In the meantime, Parties and other actors eager to engage in market-based cooperation under Article 6.2 must not necessarily adopt a wait and see approach and wait for the details to be agreed at the UNFCCC. They could, by contrast, pilot their cooperative approaches in order to explore innovative solutions to some of the questions Parties were unable to solve in Katowice. In doing so, they should adopt a precautionary stance to increase the chances that their cooperation being in line with the final guidance of Article 6.2.

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