

ERCST

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Reflections on Art 6 Post-Katowice

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The reflections below can be perceived as sobering – they are, and they are meant to show that we have serious work ahead of us, and issues to address, but issues that can be managed if addressed realistically, and accepting that we need solutions for good market functioning to serve the global environment.

Reflections post-Katowice

Article 6 negotiators, as a group, were conditioned after Paris, to overachieve. In Katowice, for a variety of reasons, it did not work out, and the disappointment was palpable.

The reaction has been that it was better to come from Katowice without rules than with rules, which can be seen, (by some) as being bad or inadequate. This may be true, but actually at COP 24 we did not end up without any rules, but rather with rules that only some like, in the form of paragraph 77(d) of the Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement (paragraph 77(d), Annex to draft decision on *Modalities, procedures and guidelines for the transparency framework for action and support referred to in Article 13 of the Paris Agreement* contained in document FCCC/CP/2018/L.23). Others don't like the outcome, and feel that it was conceded without enough thought, and at best, that it is incomplete.

It can be said that what Katowice highlighted was that a number of issues remain to be solved, and in my mind, has disproved the view that we did not succeed because of one country and one issue. There were many other issues that were not pushed as hard, in the final hours of COP 24, by some Parties as that of the Art 6.4 initial issuance – but in my view, this was simply seen as unnecessary. However, these are issues that were, and remain, equally difficult and important.

Not totally surprisingly, one issue that has emerged is that of the “without prejudice” clause in paragraph 4 of the draft decision on Matters relating to Article 6 of the Paris Agreement and paragraphs 36–40 of decision 1/CP.21 contained in document FCCC/CP/2018/L.28. It has the potential (and one can hope that it remains at this stage) to lead to a gridlock, which may be worse than the gridlock over which Article 6 text to start from at SB 50.

The Different Katowice Texts

Two texts are referenced in the draft decision contained in document FCCC/CP/2018/L.28, and they are quite different. One emerged at the end of SBSTA¹, and includes a significant number of options, which are very dear to a number of Parties. The process during SBSTA was very Party driven, with the co-Chairs ensuring that no options were dropped, and includes all that Parties still wanted to see on the table.

The second text that is referenced, available at https://unfccc.int/sites/default/files/resource/Katowice%20text%2C%2014%20Dec2018_1015AM.pdf, is a text that emerged from the Polish Presidency. While it represents the effort of the Polish Presidency to find a way forward, based on consultations with Parties and Groups, one could argue that the non-Party imprints are much more visible on this text. In this text some options are not present anymore, or moved into much less visible and operational positions, or with weaker language. Hence, the argument coming from many Parties, after Katowice, that we need to start from the SBSTA text.

A third way, and there is always a “third way”, is to avoid such debates, focus on issues, and move on to produce a new text before the end of SBSTA 50. Is there also a possibility to produce a text before SBSTA 50 that could be used? Would it be seen as legitimate?

Paragraph 77 (d)

The second issue is that of Para 77(d) and its relationship with the still under-negotiation Art 6. There is a clear provision in Art 6, which states that “*information provided in a structured summary in decision -/CMA.1 paragraph 77(d) is without prejudice to the outcomes on these matters*”.

¹ See the draft texts at <https://unfccc.int/documents/186331>, <https://unfccc.int/documents/186333> and <https://unfccc.int/documents/186334>.

One may find it surprising that this is being interpreted in many ways. But there are multiple interpretations, some more political than others, and some closer to the “handshake” in Katowice than others. One such interpretation could be that since Art 6 is still up for negotiation, once Art 6 is negotiated, then Para 77(d) will be adapted to recognize the realities of the Art 6 provisions. Such an interpretation implies that any and all current provisions in Para 77 (d) are fair game – current provisions could be modified or deleted, and new provisions could be added to the current provisions. In simple terms both Art 6 and Para 77(d) are up for discussion leading to and in Santiago, and Para 77(d) will need to adapt to the final provisions in Art 6.

Another interpretation is that Para 77(d) has been negotiated, and that we are not reopening what has been negotiated, and agreed, in Katowice. In this scenario, certain aspects of Art 6 would be open for discussion, but those aspects of Art 6 which mirror the current Para 77 (d) will need to be engineered back into Art 6, without any modifications. In simple terms, Art 6 will need to adapt to Para 77(d). It is unclear, in this interpretation, why the “without prejudice” wording was even deemed necessary.

Political and Technical Issues

A third “broad” issue is that of political and technical issues. Some do not like this terminology and they consider it inappropriate, as it is difficult to distinguish between these two types of issues. However, it seems rather obvious that some issues require solutions that have broader implications, and decisions that cannot be made without political support. That is, above the pay grade of Art 6 negotiators.

Metrics

As an example, and another issue, which seems to be of great importance to some Parties, is that of ITMOs being denominated in metrics other than CO₂e. Some have labelled this as a “technical” issue, one that can only be addressed at the technical level. However, denominating in ITMOs in non-CO₂e may be seen, by some, as going against the spirit of Article 4.4 of the Paris Agreement:

“Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances” .

Others would view being forced into a CO₂e metric system only as abandoning the principle of the NDCs as the building blocks of the Paris Agreement, and the national nature of the NDCs. This decision, (CO₂e only)/(more than CO₂e), is significant, with broad implications for the overall Agreement. This makes this issue, in our view, a super political issue, which needs to be addressed at the appropriate level of decision-making.

Art 6.4 First Issuance

The same can be said of the decision on how to treat a first issuance under Art 6.4 from the point of view of corresponding adjustments (CA). While the slogan is “no to double counting” the reality is much more nuanced, and essentially leads to the creation of a non-Annex 1 country-like environment outside/beyond the NDC. We would regard “outside the NDC” as a particular case of “beyond NDC”.

The extent to which these political issues are recognized and addressed, and the timing when they are to be addressed, will be a test. There needs to be a fine balance - with a clear need for intervention, but without overreaching for political intervention at too early a stage in the process.

This leaves negotiators with a series of issues, discussed above, which emerged following the decisions in Katowice, while still having to address the more “traditional” Art 6 issues, unresolved at COP 24.

OGM & SOP

Some of these issues were hotly debated in Paris, and were not included in Art 6, but have now re-emerged as political issues, namely overall mitigation (OGM) and share of proceeds (SOPs). To what degree, if any, is OGM a voluntary provision in Art 6.4? This came as a surprise to many for whom it is important to go beyond the KP offsetting approach. Another

issue, to have fair competition between using 6.2 and 6.4 – does that justify SOPs for both of them?

Art 6, 13 & 15

Another set of issues emerged from the new reality that was formed from the results at COP 24: the interaction between Art 6, Art 13 and Art 15 of the Paris Agreement. We now have real outcomes on how Art 13 and Art 15 are structured and governed, and we need to ensure that any Art 6 provisions that connect with these articles make sense. Is there a need for an Art 6 Technical Expert Review Committee? If yes, this needs to be clearly enunciated and explained.

Other issues carried forward from pre-COP 24

- Timing of CA
- Accounting for single year/multiple year accounting. How does this work – can we really have options to choose from?
- Relationship between tracking- corresponding adjustments- reporting. The language used may be the same, but everyone seems to understand something different
- KP mechanism transition. While emotional and an important issue, with strong implications for the credibility of a new regulatory market, it cannot be the issue that brings down Art 6.

Final thoughts

Getting this right is important, as there is indeed a difference between Art 6 and other Paris Agreement provisions. If in other provisions the consequences can be attenuated by political accommodation, the consequences of last minute political compromises, so common, accepted and expected in a COP process, may have much more immediate and potentially destructive impacts in the case of Art 6.

While markets do adapt to many circumstances, they will be attractive only if they have clear objectives, have governance that ensure predictability, are liquid and transparent, and participants are re-assured that they have clear ownership of the assets.

Let's make sure that history does not repeat itself. We must remember that it took until 2005, an IETA initiative and the strong interest of the Canadian Presidency at COP 11 in Montreal, to start the process of repairing the CDM and making it functional – and that it took many years after that to achieve a functional mechanism - with a few key regulatory provisions, such as Appeals, unresolved to this day.

Let's make sure that we don't make political compromises that will satisfy some Parties, but will be unworkable in the real world of markets. The priority must be an outcome that creates a market that works for the environment, not an outcome that addresses political needs. Now that is idealism.