

AN APPEAL PROCEDURE FOR ART. 6.4:  
SOME THOUGHTS AND OPTIONS

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**A. BACKGROUND**

**B. SIX REASONS WHY**

**C. OPTIONS**

# **A. BACKGROUND**

## I. DÉJÀ VU...

- CDM: disputes between private project participants and parties, and parties and the EB
- Negotiations on “procedures, mechanism and institutional arrangements for appeals against the decisions of the CDM Executive Board”: significant progress, but no decision due to uncertain future of the CDM and political differences.
- Changes:
  - Paris Agreement in place and in force,
  - End of KP second commitment period in 2020,
  - (Likely) transition of the CDM into the larger framework of the art. 6.4 mechanism

## 2. FROM CDM TO ART. 6.4

- Art. 6.4 objectives: Scope for diverse and complex legal relationships amongst a mix of private and public stakeholders.
- Art. 6.4 activities likely have to deal with and address many of the same concerns (if not more) that were experienced by CDM participants and stakeholders.
- **“In-house” appeal** mechanism: Could help increasing the legitimacy of the governing structure for art. 6.4 and gaining broader support for cooperative approaches

## **B. SIX REASONS WHY...**

1. Greater accountability

2. Enhance legitimacy

3. Better accessibility

4. More (relevant) expertise

5. Greater flexibility

6. Greater consistency

## **3. OPTIONS**



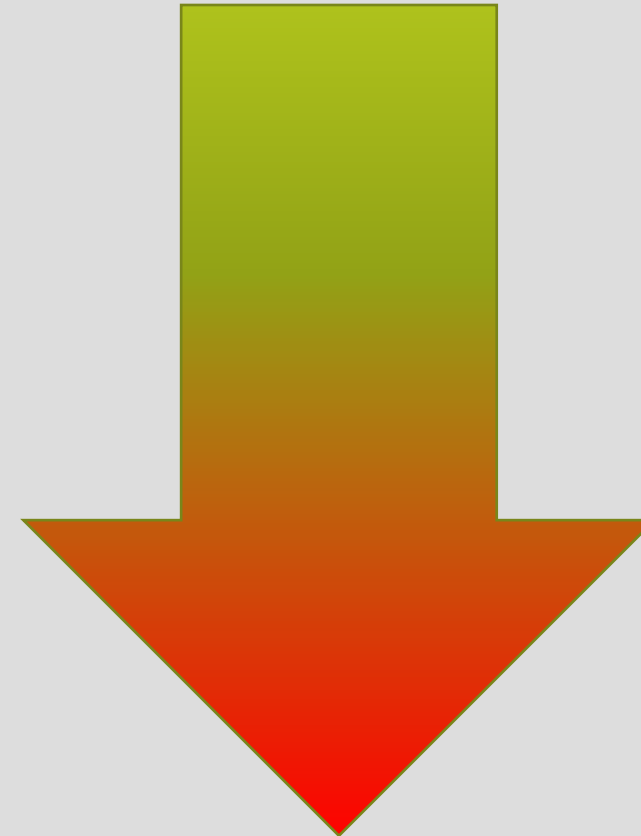
# I. **POSSIBLE** FUNCTIONS, GROUNDS OF APPEAL, AND OUTCOMES

**Administrative Review**

**“Judicial Review”**

**Complaints Mechanism**

**Dispute Settlement Mechanism**



	Nature and Function	Ground of Appeal	Outcome
<b>I. Administrative Review</b>	<p>Consideration of appeals against the decisions of the art. 6.4 supervisory body regarding the approval, rejection or alteration of requests for registration of art. 6.4 activities, approval of methodologies and the (approval of) issuance of A6.4ERs</p>	<ol style="list-style-type: none"> <li>1. The SB exceeded its competence (acted <i>ultra vires</i>),</li> <li>2. The SB committed a procedural error;</li> <li>3. The SB did not follow this RMPs or incorrectly interpreted or applied or breached one or more RMPs for art. 6.4,</li> <li>4. The SB erred on a question of fact available to the SB at the time of the decision,</li> <li>5. Members of the SB are not qualified;</li> <li>6. Members of the SB are faced with a conflict of interests, which makes impartial decisions impossible;</li> <li>7. Breach of confidentiality</li> </ol>	<ol style="list-style-type: none"> <li>1. Affirm the decision of the SB; or</li> <li>2. Remand the request for registration or issuance to the SB for further consideration;</li> </ol>

	Nature and Function	Ground of Appeal	Outcome (Decisions and/or orders)
<b>2. “Judicial” Review</b>	<b>Review</b> of the decisions of the art. 6.4 supervisory body regarding the approval, rejection or alteration of requests for registration of art. 6.4 activities, approval of methodologies, and the (approval of) issuance of A6.4ERs	ditto	Ditto, plus <b>3. Reverse the decision by the SB</b>

	<b>Nature and Function</b>	<b>Ground of Appeal</b>	<b>Outcome (Decisions and/or orders)</b>
<b>3. Complaints Mechanism</b>	Hearing of complaints by art. 6.4 participants (i.e. parties and private entities) and affected non-party stakeholder, such as individuals and communities, who believe that they have been, or are likely to be, adversely affected by an art. 6.4 activity	Assess allegations of negative effects to people or the environment of art. 6.4 activities and review whether the SB followed its RMPs	<ol style="list-style-type: none"> <li>1. Make a determination about whether there was any harm,</li> <li>2. If so, whether a violation of the art. 6.4 RMPs was linked to the harm;</li> <li>3. Issue an assessment or investigation report,</li> <li>4. Make recommendations</li> </ol>

	Nature and Function	Ground of Appeal	Outcome (Decisions and/or orders)
<b>4. Dispute Settlement Mechanism</b>	Settlement of disputes between states, or private entities/investors and states. Could involve arbitration, mediation, conciliation, or other forms of alternative dispute resolution (ADR).	Breach of treaty or contractual norms related to art. 6.4. Claims would need to substantiate that in implementing art. 6.4 activities protected interests or rights have been affected. This would include (a) a statement of the facts supporting the claim; (b) the points at issue; (c) the relief or remedy sought; and (d) the legal grounds or arguments supporting the claim.	<ol style="list-style-type: none"> <li>1. Reject the claim, or</li> <li>2. Issue an award/opinion</li> </ol>

## 2. BODY OR INSTITUTION

Independent, impartial and expert-based. Options:

- Creation of a new body under the authority of the CMA;
- Designation of the Art. 15 Committee.
- Delegation of the authority to the Executive Secretary to establish ad-hoc or standing appeals panels in consultation with the Bureau;
- Delegation of authority to the SB to establish ad-hoc or standing appeals panels;
- Any other body considered appropriate by the CMA.