

Linkages between Cooperative Approaches, Transparency and Compliance (Articles 6, 13 and 15 of the Paris Agreement)

Paris Agreement Policy Brief

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This Policy Brief identifies linkages between cooperative approaches provided for in Article 6 (in particular guidance for Article 6, paragraph 2, and the rules, modalities and procedures (RMPs) for Article 6, paragraph 4), the modalities, procedures and guidelines (MPGs) for the Transparency Framework, and the Modalities and Procedures (MPs) for the committee established in Art. 15 (Art. 15 committee).

1. Introduction

The use of international carbon markets (or ‘cooperative approaches’) poses particular challenges for both transparency and for tracking implementation and achievement of NDCs because it depends on the performance of two or more parties. At the same time, robust accounting and transparent and correct reporting as well as compliance with the agreed framework for both is crucial for safeguarding the environmental integrity of mitigation actions of Parties’ who pursue cooperation in the implementation of their NDC.

The transparency framework sets up mandatory reporting requirements for Parties that participate in cooperative approaches which will also be considered by the Technical Expert Reviews (TER). However, not all situations involving robust accounting and reporting might come before the TER. And not all situations that do and where inconsistencies are identified, might be resolved. This leaves a gap and, thus, a role for the Article 15 committee.

Article 15, paragraph 1, of the Paris Agreement established a committee to facilitate implementation of and promote compliance with the provisions of the Agreement. This committee is expected to enhance the effective functioning of the Paris Agreement both by encouraging parties to implement the Agreement and by holding them accountable for aspects of their performance.

The committee is to be facilitative in nature, transparent, non-adversarial, non-punitive (Art. 15.2). It shall strive to avoid duplication of effort, shall not function as enforcement or dispute settlement mechanism, not impose sanctions or penalties. Decision 20/CMA.1 has put in place the modalities and

procedures to safeguard the effective functioning of the committee in line with the general guidance set out in Art. 15 of the Paris Agreement.¹

The Article 15 committee is tasked to address, *inter alia*, issues where a party has failed to submit a mandatory report or communication of information under Art. 13, paragraphs 7 and 9. Moreover, the committee may, with the consent of the party concerned, address significant and persistent inconsistencies of the information submitted under Art. 13, based on recommendations contained in the TER reports. In both cases, there is a potential linkage between Article 15 and Article 6.

2. Accounting for internationally transferable mitigation outcomes (ITMOs)

Article 6, paragraph 2, of the Paris Agreement recognizes that the ‘international transfer of mitigation outcomes’ will require robust reporting and accounting rules. This article contains a legally binding obligation for each party participating in cooperative approaches ‘to apply robust accounting to ensure, *inter alia*, the avoidance of double counting’ of the same emission reductions by more than one party.² Such double counting is to be avoided by a corresponding adjustment by parties of emissions and removals used to achieve their NDC.³

While the negotiations relating to Article 6 are scheduled to conclude at CMA2, several key elements of the Transparency Framework MPGs relating to Article 6 were already agreed by CMA1. As a result, the Article 15 Committee, through its relationship to the Transparency Framework, will have a role in relation to Article 6 —regardless of the outcome of the ongoing negotiations.

There are currently **two different ways** in which Article 6 issues might reach the Art. 15 committee. First, any party participating in cooperative approaches is under the obligation to ensure that it is not double counting under Article 6. Article 6, paragraph 2, is to be implemented consistently with CMA guidance, which was (partly) adopted by CMA1.

¹ C. Voigt, Policy Brief on the “Article 15 Committee”, available at: <https://ercst.org/publication-article-15-committee/>.

² Decision 18/CMA.1, Annex, para. 77(d)(ii).

³ Decision 1/CP.21, para. 36.

Because the Paris Agreement is silent on the channel through which parties will provide information under Article 6, paragraph 2, CMA1 decided that such information will be part of the ‘structured summary’ in the BTR and becomes part of the information necessary to track progress towards the implementation and achievement of a Party’s NDC under Article 13, paragraph 7(b).

Accordingly, under paragraph 77(d) of the Transparency Framework MPGs, each party that participates in cooperative approaches involving ITMOs ‘shall provide’ in its structured summary information listed in this section of the MPGs, as well as in any additional MPGs later adopted in relation to Article 6.⁴ If a party is participating in cooperative approaches but fails to provide the information required under paragraph 77(d), this might be considered a failure to provide mandatory information.

The party could then be considered to have not submitted a ‘mandatory report or communication of information’ under Decision 20/CMA.1, Annex, paragraph 22(a)(ii). In this situation, the initiation of consideration of this issue by the Article 15 committee would be “automatically” triggered. This situation would allow the Art. 15 committee to assess the situation and to apply any appropriate measures from the entire catalogue in paragraph 30, Decision 20/CMA.1.

As with other mandatory reports submitted under Article 13, the Art. 15 committee, under Decision 20/CMA.1, Annex, paragraph 22(a)(ii) and paragraph 23, would assess only whether such information had been communicated or not; but not its completeness or quality. It is not clear, however, how the committee would know that a party is participating in cooperative approaches when the party does not submit such information. This might, however, be revealed through the structured summary submitted by the other party to the transaction, or through the databases and registries being discussed under the ongoing negotiations concerning Article 6.

Second, the information submitted by a participating party under paragraph 77(d) will form part of a structured summary of information reviewed by the Art. 13 TER Teams. Because paragraph 77(d) is a ‘shall’ provision developed under Article 13, paragraph 7, of the Transparency Framework MPGs, *significant and persistent* inconsistencies in a party’s information, if they are identified in the

⁴ Decision 18/CMA.1, Annex, para. 77(d)(ii). When CMA 1 failed to reach consensus on matters related to Article 6, it noted that the information called for in para. 77(d) ‘is without prejudice to the outcomes’ on these matters that will result from the ongoing negotiations on Article 6. This leaves the relationship between Article 77(d) and whatever may be eventually be agreed to CMA 2 on Article 6 somewhat unclear. See Decision 1/CP.21, and UNFCCC, *Matters related to Article 6 of the Paris Agreement and paragraphs 36-40 of decision 1/CP.21*, FCCC/CP/2018/L.28 (2018), <<https://unfccc.int/es/node/187598>>.

recommendation by the TER Team, could lead to an initiation of the committee's procedures according to Decision 20/CMA.1, Annex, paragraph 22(b).

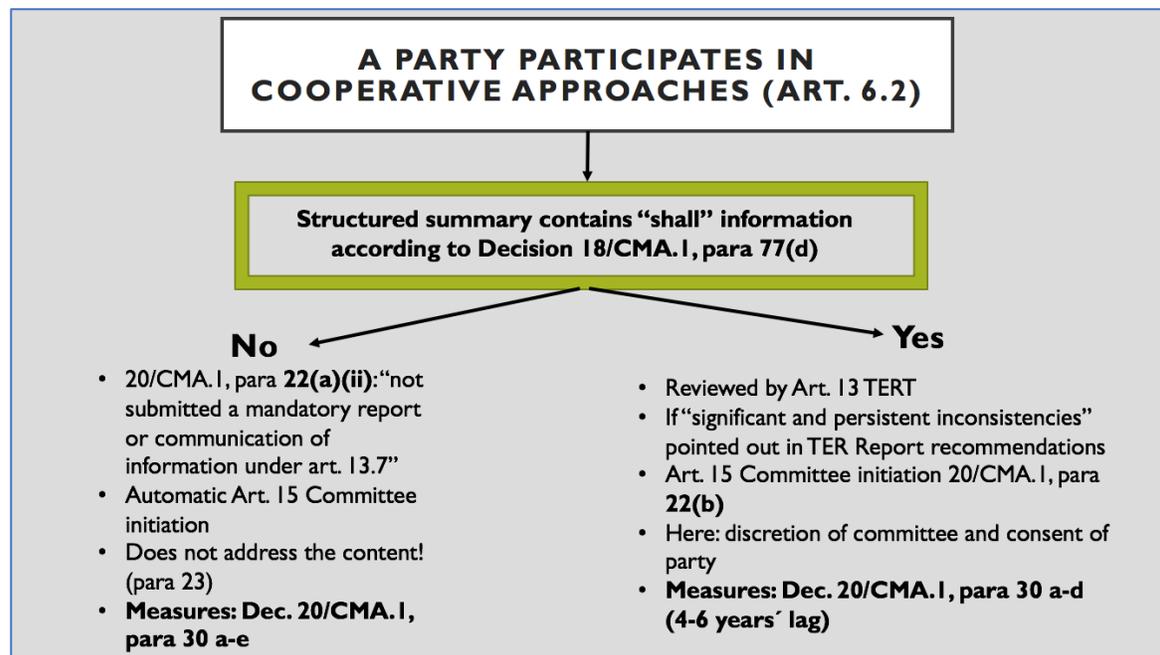
However, the following preliminary steps would need to be taken before the committee could consider such an issue:

- a) "Significant" and "Persistent" are *not defined* in the rulebook but the language implies a judgment by the committee on whether the inconsistency crosses a *de minimis* threshold and demonstrates the party's failure to respond to repeated efforts, presumably by the TER Team or the Secretariat, to encourage the party to improve its performance. 'Significant' indicates that the committee is to act only on cases in which the inconsistencies limit the effective functioning of the transparency framework, whether with regard to the party concerned or more generally. 'Persistent' may be taken to refer to circumstances where a party has failed to improve over time—for example, where an issue is unresolved after repeated TER cycles (4-6 year's lag). The two threshold criteria will need to be further developed by the committee through its rules of procedure to be adopted by CMA3 or through the committee's practice.⁵
- b) Moreover, this type of initiation lies in the *discretion* of the committee ("the committee *may*"). There is no automatism – and the committee will most likely undertake a preliminary assessment upon which it will base its decision on whether to take the issue forward or not.
- c) If the committee were to decide to take the matter forward, it cannot do so without the *consent* of the Party concerned. This was an important condition (for some Parties) to establish any link between the committee and Art. 13 procedures. The committee would therefore need to contact the party concerned and ask for the party's consent, which the party may or may not provide. If a party does not give its consent, the committee would be barred from considering the issue. It can, however, mention this situation in its annual report.

⁵ See Gu Zihua, Christina Voigt and Jacob Werksman (2019) *Facilitating Implementation and Promoting Compliance with the Paris Agreement: Conceptual Challenges and Pragmatic Choices*, 9 *Climate Law*, 65-100.

- d) If the party provides its consent, the committee can consider the issue, but is *limited* to apply only the appropriate measures listed in paragraph 30, lit. a-d, of Decision 20/CMA.1. In other words, the committee is not mandated to issue a “finding of fact” (para 30, lit.e).

Box: Relationship between Arts. 6.2, 13 and Art. 15



The committee is to take appropriate measures, which could be tailored to the circumstances of Article 6. The list in paragraph 30, Decision 20/CMA.1 is guiding, but not exhaustive. The committee could decide to apply other measures. As always, such measures must be in keeping with the facilitative and non-punitive character of Article 15 and not impose sanctions or penalties.

3. Possible role of the Committee in the governance structure for Art. 6.2

The negotiations on Article 6.2 might propose a distinct ‘Article 6 technical expert review’ that would start earlier, and review the participating party’s performance more frequently (i.e. annually), than the Article 13 TER Teams.⁶ If such review were adopted, the Article 6 TER teams ‘may make recommendations’ to the party, including on ‘how to address inconsistencies’ with the reporting and

⁶ See Draft Text on SBSTA 50 item 11(a), version 2 of 26 June 2019 16:45 hrs, Annex, paras 444 and 45.

accounting guidance. The Article 6 TER teams would forward their reports to the Article 13 TER Teams and, in case of “significant and persistent inconsistencies” to the Article 15 committee.⁷ Alternatively (or in addition), the Art. 6.2 TER teams could forward their reports directly to the Art. 15 committee.⁸

⁷ See Draft Text on SBSTA 50 item 11(a), version 2 of 26 June 2019 16:45 hrs, Annex, para 46.

⁸ See Draft Text on SBSTA 50 item 11(a), version 2 of 26 June 2019 16:45 hrs, Annex, para 46, and Draft Text on SBSTA item 11(a) of 8 December 2018, para 35.