
LEGAL FOUNDATIONS AND APPROACHES TO CARBON MARKETS

International rules govern both Article 6.2 and 6.4, requiring participating parties to make crucial decisions. For Article 6.2, decisions involve approving activities and granting authorisations.¹ Conversely, Article 6.4 places more responsibilities on the supervisory body, leaving certain aspects such as defining eligible activities to the host country's discretion. To operationalise these provisions, countries should establish national procedures anchored in legal foundations and/or mandates, as illustrated in **case study examples from various countries**.

Legal foundations for carbon markets

The nature of these decisions can take various forms, ranging from a national framework or guideline to the enactment of bills or laws. Although usually not legally binding on their own, frameworks or guidelines provide comprehensive and principled understanding, offering flexibility in both the development and implementation of the process². At the same time, the enactment of bills or laws offers greater legal certainty. Legally grounded options include the enactment of bills or acts and laws. It is crucial to carefully consider the primary differentiators in this regard:

- **Bills** are proposed legislation undergoing evaluation by the legislature and does not hold legal binding until successfully passing and being enacted into law.
- **Acts and laws** are legislative measures that have successfully by the legislature and are formally enacted, making them legally binding.
- **Decrees** constitute formal authoritative directives specifying mandatory actions. Typically issued by a head of state, such as the president, they carry the force of law and are consequently legally binding.

Environmental laws predating the Paris Agreement and any legal obligations they impose also need to be taken into account as it is crucial for understanding the regulatory framework within which countries operate.



Parallel to the Article 6 policy, legal foundations and technical specifications should be adopted to formalise the institutional framework for Article 6, ideally in regulation alongside the Article 6 policy and guidelines.

Top down, bottom-up and ad hoc approaches

Countries establish or consider implementing diverse Article 6 frameworks based on national circumstances, legal systems, and whether there are existing interim measures. One approach to developing these frameworks is the **'top-down' approach**. In this approach, a new statute on Article 6 is adopted through the legislative process. In addition, some countries use existing laws to develop subsidiary legislation, such as regulations and decrees. This ensures high legal certainty.

Host countries often adopt new legislation or amend existing legislation (climate change laws, in most cases) to develop their Article 6 frameworks. However, these pieces of legislation – both new and existing – are generally broad and may include carbon markets as one of several components of the law. Ultimately, this means that such statutes generally do not include detailed, substantive, or procedural provisions on Article 6, as these are usually included in regulations, decrees or guidelines implementing the statute. For instance, Fiji's Climate Change Act grants the Minister responsible for climate change the power to make regulations to implement the carbon market provisions of the Act.

The **'bottom-up' approach** is the second most common approach that countries take in developing frameworks relevant to Article 6. In the bottom-up approach, countries develop administrative frameworks based on existing laws. The frameworks are usually more detailed than legislative approaches, and address procedural issues (e.g., the authorisation, approval, and mitigation activity registration processes), the responsibilities of various institutions, and substantive issues (e.g., eligibility criteria for authorisation and approvals). For example, Ghana has developed one of the most extensive Article 6 frameworks to date. Ghana's framework covers eligibility criteria for activities, procedural aspects (e.g., authorisation, project development process), institutional arrangements, operationalisation of the Article 6.4 mechanism, and the VCM – among other aspects.

Next, some host countries take **'ad hoc measures'** to guide Article 6 activities. For instance, some host countries like Zambia and Thailand have developed a set of interim guidelines to benefit from Article 6 while a more substantive legal framework is developed. Such ad hoc guidelines provide preliminary administrative measures and procedures to temporarily guide government entities and market actors on carbon market activities, including Article 6.

Authors:

Annika Wallengren Carlotta Frey, Kaja Weldner (Perspectives Climate Group)

Camilo Pardo, Jean-Pierre Sfeir (Climate Focus)