



Supervisory Body Art. 6.4
UN Climate Change Secretariate
UNFCCC

Lucerne, 15th February 2024

Public comment on agenda of the 10th meeting of the Article 6.4 Supervisory Body

Appeal & grievance processes

Dear Sir or Madame

As per publication shared on the Supervisory Body Webpage regarding the 10th meeting of the Article 6.4 Supervisory Body, the public is invited to share comments on issues included in the annotated agenda.

Fastenaktion / Swiss Lenten Fund is happy to follow this invitation. In its 60 years of activity, Fastenaktion has acquired a longstanding experience in development work and currently implements projects in 14 countries, including a Gold Standard certified project. The right to food and climate justice are at the heart of our work.

Concretely, we would like to comment Agenda Item 3 “Matters relating to the Article 6.4 mechanism” and specifically on the “Draft Procedure: Appeal and grievance processes under the Article 6.4. mechanism” (A6.4-SB010-AA-A04).

Appeal & grievance processes

We welcome that the “Draft Procedure: Appeal and grievance processes under the Article 6.4. mechanism” provides details on the appeal & grievance processes.

We would like to share our reflections regarding the draft document presented.

Standing of appeals

- Section 4.1 “appeal process”, para 7, option 2, which makes possible to appeal against decisions on methodologies and standardized baselines” seems preferable to us. In the past year, many carbon activities have been criticized for flawed methodologies, often linked to flawed baselines. Hence, a mechanism that allows to strengthen their robustness through appeals, might increase credibility of the whole 6.4 mechanism.

Grounds

Section 4.3 “appeal process”, para 10, letter (d), it seems important to us that substantial erroneous information is a ground for appeal if a Supervisory Body’s decision was based on it.

Confidentiality

We welcome the clause for confidentiality included in Section 4.4.1, para 11 letter (a), as well as in the relevant section of the grievance process. This strengthens the mechanism.

Fees of appeals and grievances

As per current draft, the appeals & grievance mechanism is subject to a fee of 2500 or 5000 USD (par 12 and 38).

We welcome that

- the reduced fee is now also offered for local communities and non-profit organizations.
- That there is an option for “no fee” for this more vulnerable group.

Reflection:

- Given our experience of working in developing countries all over the globe, for local communities, this fee, also a of 2500 USD is likely to be an effective barrier for filing a grievance without financial support. Even if support is given in form of a loan, a community in most cases could not take the risk of filing a grievance, as there is a threat of a considerable debt. We therefore see the risk that the fee impedes the grievance process to achieve its objective as per the scope.

Suggestion:

- We would invite the Supervisory Body to either totally abandon the concept of fees for appeal or grievance mechanisms or at least to opt in letter (a) and (b) for the lower options, hence for the “no fee option” as the reduced fee option. Otherwise, the mechanism is in high risk to exclude the group of people for which it is designed.
- With the same reasoning, we would invite the Supervisory Body to find define “local communities” in collaboration with the LCIPP, with a spirit to adopt an inclusive definition and to make this definition publicly accessible as to increase transparency.

Review and ruling

Section 4.4.5: We welcome para 22, option e) that the appeal panel takes into account appeals on the same matter, as this is likely to increase consistency of the ruling of the appeal panel.

Reconsideration by the Supervisory Body upon remand/recommendation

Section 4.4.6 and section 5.3.3.

We welcome para 29, the addition to provide the rationale, this will greatly enhance transparency and confidence into the mechanism.

We welcome option in para 31 and para 51 that the appeal/grievance fee shall reimbursed in case of remand/specific recommendations. This reduces the barrier to file appeals/grievances.

We feel that para 33 is potentially contradictory. In case several appeals have been filed on the same decision, then a first ruling should not make invalid all other appeals filed on the same decision. Each of them needs its own ruling, as they may present different angles on the case, but taking into account para 22.e above any subsequent ruling can build on taken decisions.

Recommendation: To make explicit that only this specific appeal cannot be filed again.

Standing of grievances

We feel that section 5.1 needs streamlining and clarification: making eligibility dependent on the fulfilling of all three requirements is a very high level to have standing. Also, as of now, it is not clear when an individual or group would have a standing. As of now:

Letter (a) refers to residency and domicile, thus so mostly people.

Letter (b) refers to presence, such as business or community-related activity, so mostly enterprises and organisations.

Letter (c) is more general and refers to adverse effects.

Reflection: (a) and (b) are two different type of actors that can have a standing. (c) seems redundant because it is obvious that some sort of adverse effect happens so that actors under (a) or (b) want to file a grievance.

Recommendation: Therefore, we would recommend, changing "all" to "or" and deleting letter (c), incorporating its elements to the degree needed into (a) and (b).

Consideration and recommendations

Section 5.3.3., para 47 lists the criteria under which to reject a grievance. Letter (c) refers to the legitimacy of an organization to represent individuals, which needs to be proven.

Reflection: This letter as it stands now is a concern as

- a) It is unclear how this differs from the requirements to have standing as per section 5.1
- b) it is an additional burden for grievants to prove legitimacy
- c) the concept of legitimacy is not defined and potentially leads to the rejection of grievances even though they would be justified in the substance.

Recommendation: We therefore suggest to delete letter (c) of para 47.

Recommendations to DNA

Section 5.3.3., para 48 letter (b) invites the grievance panel to also formulate recommendations to the national authority if appropriate. We think that this could potentially be beneficial to the 6.4 mechanism.

Monitoring of outcome of recommendations

Section 5.3.4., para 56 calls on the Supervisory Body to take action regarding the Grievance Panel's decision.

Recommendation: to indicate a timeline for the Supervisory Body to take action as per letter (a) or (b) and to make its decision publicly available in order to increase transparency.

We thank you for considering our comments and are available for any questions.

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