

Call for input 2024 - Issues included in the annotated agenda and related annexes of the fourteenth meeting of the Article 6.4 Supervisory Body.

A6.4-SBM014-AA-A07 - Draft Tool: Article 6.4 sustainable development tool

Stakeholder Input:

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SD-Tool	Comment
Overall	The acknowledgment of the potential co-benefits and dis-benefits of an Article 6.4 activity through the SD tool is an important step. For the tool to be more than a mere formality, it is essential that potential social-ecological dis-benefits are taken seriously enough to prohibit the activity altogether, or at least at the proposed site. This requires clearer guidelines on the types and levels of social-ecological dis-benefits that would trigger such a prohibition. Currently, this decision appears to be at the discretion of the DOE, where common issues arise, such as a high degree of information asymmetry, limited resources, and potentially misleading incentives that favor positive outcomes. It is therefore crucial to ensure that the SD tool avoids the same pitfalls as previous offsetting standards, which were often more focused on sustaining the mechanism itself. On the contrary, the primary focus of Article 6.4 and the SD tool must be on the material outcomes of the activities.

2.1 7 a)	Conduct a risk assessment to identify risks and potential impacts, evaluate them, and avoid harm where possible. When avoidance is not feasible, the A6.4 SD Tool instructs participants to minimize impacts as much as possible and, finally, to mitigate any remaining negative environmental and social impacts and risks by establishing activity-level environmental and social indicators;	This passage implies that, even if a risk assessment identifies potential harm, the activity may still proceed. It is important to differentiate between varying levels and types of harm, as some should be deemed unacceptable and warrant halting the activity. The phrase ‘when avoidance is not feasible’ requires clarification, as the interpretation of ‘feasible’ can be subjective and overly broad. A more precise definition is needed to ensure rigorous application. Furthermore, it is unclear how establishing activity-level environmental and social indicators will actively mitigate negative impacts, since these indicators primarily serve to measure, rather than reduce, such impacts. Clear guidance on how these indicators will lead to effective mitigation is necessary.
3.1 11	Activity participants of A6.4 activities shall adopt mitigation strategies to avoid risks or, where complete avoidance is not possible and activity implementation is nonetheless permitted, minimize and mitigate identified risks.	It appears that the text implies the possibility of prohibiting an activity, but it is unclear what regulations govern this process. How is the decision made after harm is identified? Additionally, once it is determined that harm cannot be sufficiently avoided, a decision must be made regarding whether the activity can still proceed. Therefore, clear guidelines are needed for both stages of the process: (1) identifying the harm and (2) assessing the potential for avoidance. These guidelines should establish the criteria/ thresholds for either allowing the activity to continue or prohibiting it.
3.3.	Stakeholder engagement and the A6.4 SD Tool	How will it be ensured that relevant stakeholders have the necessary awareness, access, resources, and agency to participate (effectively) in the consultation process? Given the scope of the SD Tool, it is essential to address common pitfalls associated with stakeholder consultations, including how free, prior, and informed consent can be ensured.

Figure 1	A6.4 SD Tool flow chart	The two process steps mentioned above should be included here, highlighting the points at which a decision must be made regarding whether the activity is allowed to proceed or should be prohibited.
6.1 23. (d)	If activity participants identify that their A6.4 activity impacts the environmental and social safeguards elements (by indicating “Yes” or “Potentially” as per table 1 below), they shall conduct further assessment against the safeguarding criteria under the element impacted by their A6.4 activity. [...]	Again, if the identified impacts are not acceptable, there needs to be an option to prohibit the activity based on the severity of the impacts.
6.1 23. (d) (i)	Identify potential negative environmental and social impacts/risks by comparing the activity scenario to environmental and social conditions in the absence of the proposed activity and based on each of the safeguard elements and criteria defined in section 6.2 below;	This passage implies the use of a counterfactual. Given the well-known complexity and challenges in selecting an appropriate counterfactual, as well as the misuse of counterfactuals that has led to overestimated positive impacts in the past and present, more guidance on determining an appropriate counterfactual is needed here.
6.3.2. 37. E2.2.4	E2.2.4: Activity participants of the A6.4 activity are to identify the functions and services provided by the landscape and demonstrate that no degradation of soil resources or loss of ecosystem services provided by soils as a result of the activity.	This paragraph remains vague about the actual scope of ecosystem services included here and how directly they must be provided by soils. For example, would this include cultural ecosystem services that could be linked to soils?
Footnote 35	These measures may include, but are not limited to, the use of additional, technically and economically feasible water conservation measures, the use of alternative water supplies, water reuse, or evaluation of alternative activity locations and relocation, as appropriate.	<p>To ensure the proper use of this SD Tool, and in light of previous drafts of this paragraph, the use of water offsets (and other offset types e.g. later on for biodiversity) should be explicitly excluded from the available measures.</p> <p>Moreover, the phrase 'These measures may include but are not limited to' leave it completely open how this could be obtained. The list should provide all allowable measures. Therefore, we suggest the phrasing: ' These measures include the use of additional, technically and economically feasible water</p>

		conservation measures, the use of alternative water supplies, water reuse, or evaluation of alternative activity locations and relocation, as appropriate.'
6.3.2. 37. E2.3.3.	[...] These measures should aim to avoid or reduce water consumption so that the activity's water consumption does not have negative impacts on people and biodiversity in terms of availability, accessibility, reliability, and quality compared to environmental and social conditions in the absence of the activity.	Again, the use of a counterfactual is implied here, which requires more guidance to avoid misuse.
6.3.3. E3.2.	Biodiversity	Except for paragraph 48, all other paragraphs omit the initial identification step. For example, paragraph 44 states that ecosystem functions must be maintained, while paragraph 45 calls for the protection and conservation of biodiversity. However, none of the paragraphs describe how the initial state will be determined. Since different approaches to identifying this initial state could lead to varying outcomes, clarification is needed.
6.4.1. 53.	E4.1: The A6.4 activities are to be implemented with respect for participation and inclusion and do not undermine the host Party's national measures for the realization of human rights, including those related to SD.	The principle of Free, Prior, and Informed Consent (FPIC) must be explicitly included here.
6.4.5 70.	Where involuntary resettlement is unavoidable, it is to be minimized, and appropriate measures to mitigate adverse impacts on displaced persons (and on host communities receiving displaced persons) are to be carefully consulted, planned and implemented.	Involuntary resettlement should never be unavoidable; it should instead be regarded as a criterion for prohibiting the activity in that area.