

Ad-hoc Working Group on the Paris Agreement (APA)

Third part of the first session, Bonn, 8–17 May 2017

Agenda item 8a – Preparing for the convening of the first session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement

Adaptation Fund

Informal note by the Co-Facilitators

Reflections of the Co-Facilitators on the discussion in the informal consultations:

Note: This note has been renamed from “snapshot document” to “Informal note”, reflecting an agreement to do so at the final informal consultations. This informal note is our attempt to informally capture the views expressed by Parties on this agenda item to date. The document has been prepared under our own responsibility and thus has no formal status. The content of the document is not intended to prejudge further work that Parties may want to undertake nor does it in any way prevent Parties from expressing other views they may have in the future.

Overview of the informal consultations on this item

By decision 1/CMA.1, the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) decided that the Adaptation Fund should serve the Paris Agreement, following and consistent with decisions to be taken at CMA 1.3, to be convened in conjunction with the twenty-fourth session of the Conference of the Parties (COP), and by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) that address the governance and institutional arrangements, safeguard and operating modalities of the Adaptation Fund.

By decision 1/CP.22, the COP requested the Ad Hoc Working Group on the Paris Agreement in its consideration of the necessary preparatory work on the Adaptation Fund to address the governance and institutional arrangements, safeguards and operating modalities for the Adaptation Fund to serve the Paris Agreement. By the same decision, Parties were invited to submit their views on the aforementioned areas.

Over the course of APA 1.3, Parties met six times in an informal setting. Based on the mandate provided by decision 1/CP.22, and on the submissions received by Parties, the co-facilitators suggested the following three guiding questions during the initial informal consultation, which served as a basis for some of the discussion:

1. What are the **governance and institutional arrangements** that need to be addressed for the Adaptation Fund to serve the Paris Agreement?
2. What are the **operating modalities** of the Adaptation Fund that need to be addressed for the Adaptation Fund to serve the Paris Agreement?
3. What issues related to the Adaptation Fund’s **safeguards** that should be addressed for the Adaptation Fund to serve the Paris Agreement?

Parties identified a number of options and elements that could be addressed as part of the governance and institutional arrangements, safeguards and operating modalities. Based on submissions and the interventions during the session, the co-facilitators captured the views expressed by Parties in response to the guiding questions, as contained in **annex I**. This is a non-exhaustive list

and is not meant to be definitive. Their placement under the headings and their order are not meant to indicate any prioritization or prejudice when and whether any decisions would need to be taken on them.

Some Parties highlighted that there is a potential relationship between the elements and the options listed in annex I and that the selection of an *option* could be informed by implications on different elements identified and vice versa.

As for the potential sources of funding for the Adaptation Fund, a number of Parties suggested the possibility that a share of proceeds from activities under the mechanism referred to in Article 6, paragraph 4, of the Paris Agreement, for which the negotiations are ongoing, and while not prejudging its outcomes, could be a possible source of funding.

There was a different understanding expressed among Parties on safeguards. Some Parties suggested that more information may be needed before determining whether and how any adjustment to safeguards may be required. Other Parties were of the view that the safeguards of the Adaptation Fund are working effectively and do not require substantive adjustment for the Adaptation Fund to serve the Paris Agreement.

A group of Parties outlined that the Adaptation Fund is going to serve the Paris Agreement, while others stressed that there is a decision-making process that needs to be fulfilled for that to take place.

A group of Parties considered that only procedural steps were remaining in order for the Adaptation Fund to serve the Paris Agreement. They proposed that a decision could be taken by the CMP that the Adaptation Fund shall serve the Paris Agreement, and, that CMA 1.2 could take the procedural decision that the Adaptation Fund shall serve the Paris Agreement, and that the operational modalities shall apply *mutatis mutandis*. Other Parties considered that there is substantive work to be undertaken before the CMA would make a decision in 2018.

Furthermore, Parties raised a number of questions and requested the legal views of the secretariat. The secretariat Legal Affairs programme provided preliminary legal views on some of the questions raised by Parties during the informal consultations, which are summarized in **annex II**.

Annex I – List of options and elements identified by Parties in response to the guiding questions

Parties identified the following options:

1. Adaptation Fund is under the authority and guidance of, and is accountable to the CMP and serves the Paris Agreement
2. Adaptation Fund is under the authority and guidance of, and is accountable to the CMA and serves the Paris Agreement
3. Adaptation Fund is under the authority and guidance of, and is accountable to both the CMP as well as the CMA (either indefinitely or ad-interim until PA institutions and mechanisms are fully operational) and serves the Paris Agreement
4. Adaptation Fund is under the authority and guidance of, and is accountable to the COP and serves the Paris Agreement

Governance and institutional arrangements

- Authority under which the Adaptation Fund operates
- Reporting of the Adaptation Fund Board to which governing body/bodies
- Guidance to the Adaptation Fund Board from CMA/CMP/COP
- Role of SCF in providing guidance
- Composition of the Adaptation Fund Board
- Eligibility of Parties to the Paris Agreement and/or Kyoto Protocol (pending governance arrangement)
- Arrangements for secretariat services
- Arrangements for services of the trustee

Operating modalities

- Role / niche of the Adaptation Fund
- Sources of funding to the Adaptation Fund
- Linkages with other bodies and institutions

Safeguards

- Coherence of the Adaptation Fund's safeguards policies to serve the Paris Agreement
- Accreditation process

Annex II. Informal consultations on matters related to the Adaptation Fund: Arrangements for the Adaptation Fund to serve the Paris Agreement

Prepared by the UNFCCC Legal Affairs Programme, 14 May 2017

1. During the Informal Consultations on this agenda item during APA 1.3, Parties requested the UNFCCC Legal Affairs Programme to provide clarifications on questions relating to decisions for the Adaptation Fund to serve the Paris Agreement. At the Informal Consultations on Friday, 12 May 2017, the Legal Affairs Programme made an oral presentation on some of the questions from Parties. This note summarizes the presentation made by the UNFCCC Legal Affairs Programme.

A. Legal requirement for the Adaptation Fund to serve the Paris Agreement

2. The Adaptation Fund (AF) operates and functions under the authority and guidance of, and is accountable to, the supreme body of the Kyoto Protocol - the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) (see Decisions 10/CP.7 and 28/CMP.1). The CMP exercises sole decision-making authority over the Fund, including on, inter alia:

- Its institutional and governance arrangements;
- Operating modalities;
- Eligibility for funding; and
- Legal safeguards.

3. In the exercise of its authority, the CMP may assign additional functions to the AF, including that the AF should serve other institutions or international agreements, such as the Paris Agreement, the Convention, or other international institutions.¹

4. A key question is the role of the AF Board in the decision-making over the AF. The Board was established by the CMP to supervise and manage the AF, and has delegated authority over the operations of the AF (see Decision 1/CMP.3). Further, the Board has been conferred legal capacity to enable its effective supervision and management of the Fund. Aside from the specific responsibilities that the CMP has delegated to the AFB, the Board has no authority over fundamental aspects of the Fund that the CMP has retained (e.g., review of the Fund, or a decision that the Fund shall serve other institutions). Given the central role of the Board in the architecture of the Fund, it would be sound management practice for the CMP to engage the Board before taking fundamental decisions (for e.g., the AFB develops draft legal arrangements for the interim trustee and secretariat of the Board for adoption by the CMP).

5. A unilateral CMP decision that the AF should serve other international institutions or international agreements is not sufficient – it also requires a complementary decision of the governing body of the institution or international agreement that confirms that the AF shall serve that institution or international agreement. Those institutional decisions may be taken simultaneously, but this is not legally required. A key legal requirement for clarity and certainty, is that these decisions clearly specify the effective date from when the AF shall serve the Paris Agreement. In this sense, the supreme bodies of the Kyoto Protocol and the Paris Agreement could both decide that the AF shall serve the Paris Agreement, as confirmed in Decisions 1/CP.21, 1/CMP.11 and 1/CMA.1.

6. Accordingly, the decisions of the CMP and the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) are the legal thresholds for the Adaptation Fund to serve the Paris Agreement.

¹ It is noted that the Global Environment Facility serves many international agreements.

7. At its first session in Marrakech, the CMA confirmed its readiness to take that decision, conditioned on other specific decisions. Through its Decision 1/CMA.1, paragraph 11, the CMA decided that the AF should serve the Paris Agreement:

- a. Following and consistent with the decisions to be taken at the third part of its first session (CMA 1.3) (to be convened in 2018);
- b. Decisions to be taken by the CMP; and
- c. That such decisions address the governance and institutional arrangements, safeguards and operating modalities of the Adaptation Fund.

8. **The decision to be taken by the CMA at CMA 1.3 that the AF shall serve the Paris Agreement** is therefore conditioned on and following those decisions to be taken by the CMA and CMP. Therefore, the Adaptation Fund shall serve the Paris Agreement only when the relevant decisions are taken by the CMP and the CMA.

B. Arrangements and modalities for the Adaptation Fund to serve the Paris Agreement

9. The decisions of the CMP and CMA that the AF shall serve the Paris Agreement need to be operationalized through decisions by one or both supreme bodies that address, inter alia, governance, institutional/administrative arrangements, eligibility for access to funding, and the operating modalities that delineate how the AF serves the Paris Agreement.

10. The design of those arrangements and operating modalities for the AF to serve the Paris Agreement will depend on many factors, such as:

- a. Whether the AF will simultaneously serve the Kyoto Protocol and the Paris Agreement; or
- b. Whether the AF will only serve the Paris Agreement.

11. **If the Fund simultaneously serves the Kyoto Protocol and the Paris Agreement**, then the CMA and CMP should adopt decisions on the arrangements and operating modalities for this dual role of the AF that, at a minimum, confirms:

- a. The Fund also reports to the CMA;
- b. The CMA also provides guidance to the Fund directly or through the CMP,² with measures to address any inconsistencies in guidance by both bodies;
- c. Procedures for members from Parties to the Paris Agreement to be elected to serve on the AF Board, consistent with Article 16, paragraph 2, and Article 18, paragraph 1, of the Paris Agreement;
- d. Procedures for decision making on Paris Agreement matters by only members from Parties to the Paris Agreement, consistent with Article 16, paragraph 3, and Article 18, paragraph 2, of the Paris Agreement;
- e. The process for the preparation of draft guidance for CMA's consideration and adoption, such as by the Standing Committee on Finance;
- f. That Parties to the Paris Agreement are eligible to receive funding from the AF; and
- g. The funding sources for the AF to support implementation of the Paris Agreement.

12. It should be noted that in this scenario, the authority and accountability of the AF remain vested with the CMP, unless it decides otherwise.

² See for example, Decision 1/CP.21, paragraph 61, which recommends that the guidance from the CMA to the operating entities of the Financial Mechanism be transmitted through the COP.

13. In the second scenario, where the AF serves only the Paris Agreement, Parties to both the Kyoto Protocol and to the Paris Agreement may wish to consider what purpose the CMP may continue serve in this case as the CMP has no competence over matters concerning the Paris Agreement. To address this situation, the CMP could decide to delegate its authority and accountability over the AF to the CMA, and there are precedents of such delegation - most recently in Marrakech where the CMA delegated its authority to the COP to continue to oversee the preparation of the work programme under the Paris Agreement (see decision 1/CMA.1); and the decision of the COP to delegate to the CMA authority and guidance over the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, which was established by the COP (see Article 8, paragraph 2, of the Paris Agreement).

14. With this delegation, the CMA would be empowered to take all necessary decisions on governance, institutional arrangements and operational modalities, unless this is circumscribed by the CMP.

C. Transitional measures for the Adaptation Fund

15. Parties have raised proposals for transitional measures for the AF to address the current pipeline of AF projects and the monetization of certified emissions reductions should the CMP and the CMA both decide that the AF shall serve only the Paris Agreement from a specific date. This will require further review.

16. Questions have also been raised on whether the AF may also serve the Convention (as the AF currently serves only the Kyoto Protocol).³ This would require decisions of the CMP and the COP, and, as outlined above, the CMA and COP would need to take decisions on arrangements and operating modalities for AF to serve the Convention. Were the AF to serve all three international agreements of the climate change regime, safeguards should be put in place to ensure clarity, certainty, and respective roles and responsibilities over the Fund.

³ See also [Legal Note on the proposed recommendations on the institutional linkages and relations between the Adaptation Fund and the other institutions under the Convention](#), prepared by the UNFCCC Legal Affairs Programme, dated 29 October 2015.