

APA 1.5
30 April – 10 May 2018
Bonn, Germany

Draft elements of
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

Second iteration (7 May 2018)

This informal note has been prepared by the co-facilitators of the negotiations on this agenda item under their own responsibility and on the basis of the deliberations by Parties at this session and the views they have submitted. The note is preliminary and should not be considered as final in any way; it is offered as a basis for work and does not prejudge further work or prevent Parties from expressing their views in the future. It is recognized that the outcome of deliberations on this item will form part of the overall outcome under the Paris Agreement work programme.

This informal note does not supersede the final iteration of Informal note by the co-facilitators issued at APA 1.4.

I. Introduction / mandate / purpose

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, safeguards 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.

At APA 1.3, the co-facilitators produced an informal note to capture the discussions, which took place during the informal consultations. The informal note from APA 1.3 captures in its Annex I a list of options and elements identified by Parties in response to the guiding questions posed by the co-facilitators. In addition, at APA 1.3 Parties “requested the secretariat to compile and make available on the UNFCCC website, by 15 September 2017, a list of all previous decisions that have been taken on the Adaptation Fund that touch on governance and institutional arrangements, safeguards and operating modalities”.¹ This compilation has been made available on the secretariat’s website².

At APA 1.4, the co-facilitators also produced an informal note to capture the discussions that took place through informal consultations. The informal note included a list of elements of relevant guidance based on the inputs by Parties that were annexed to the note.

¹ FCCC/APA/2017/2

² <http://unfccc.int/bodies/apa/items/10436.php>

II. Cross-cutting and overarching considerations / relevant context / general elements of text

At the first informal consultation held during APA 1.5, Parties generally welcomed the outcomes from the last sessions in Bonn, in particular decision 1/CMP.13, which decided that the AF shall serve the Paris Agreement subject to and consistent with decisions to be taken at CMA 1.3. CMP 13 also decided to consider whether the AF shall serve the PA exclusively, under the guidance of and accountable to the CMA, following a recommendation from the CMA to the CMP at its 15th session.

During the first informal consultation at APA 1.5, the co-facilitators invited and received six inputs from Parties. During the second informal consultations, Parties discussed the first iteration of the informal note and generally viewed it as a good basis for further work. At the third informal consultations, Parties reflected on a number of possible legal issues related to the preparatory work for the Adaptation Fund to serve the Paris Agreement. Following a second call for inputs, three inputs were received from Parties following the third informal consultations. All inputs, along with the revised final information note from APA 1.4 are available on the UNFCCC website.³

III. Elements of draft text on relevant guidance

The elements of draft text below and the formulation of options where possible are to reflect the inputs received in the three elements of preparatory work - governance and institutional arrangements, operating modalities and safeguards. The inputs provided by Parties are included immediately after each of the boxes. The elements of draft text and the formulation of options where possible do not attempt to prejudge the outcome of Parties' negotiations on the issues.

1. Governance and Institutional Arrangements

A. Guidance/accountability/reporting

1. The Adaptation Fund / Board:

- Option 1: under the guidance of, be accountable to and report to the CMA and the CMP
- Option 2: under the guidance of, be accountable to and report to the CMA and the CMP for a limited time, after certain date only under the guidance of, be accountable to and report to the CMA
- Option 3: under the guidance of, be accountable to and reports to the CMA as of a specific date onwards, not serving the CMP as of that date

Considerations

- If the AF is serving both the KP and the PA either indefinitely or during a transition period, reporting arrangements and arrangements to resolve conflicting guidance need to be made

- Decides also that the Adaptation Fund shall function under the guidance of, and be accountable to, the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement;

³ <https://unfccc.int/process/bodies/subsidiary-bodies/ad-hoc-working-group-on-the-paris-agreement-apa/information-on-apa-agenda-item-8>

- Also decides that the Adaptation Fund Board will report and be accountable to the CMA and receive guidance from the Conference of the Parties serving as meeting of the Parties of the Paris Agreement;
- Adaptation Fund shall function under the guidance of, and be accountable to, the CMA;
- The Adaptation Fund Board will receive guidance from the CMA;
- The Adaptation Fund shall serve the Paris Agreement under the guidance of and be accountable to the CMA;
- From the date the Adaptation Fund serves the Paris Agreement, the Adaptation Fund operates under the guidance of, and reports annually to, the CMA;
- Applying existing guidance: There is existing guidance that the CMP has given to the Adaptation Fund in the past. That guidance applies to the Adaptation Fund serving the Kyoto Protocol;
- The Adaptation Fund Board will report to the CMA;
- For matters relating to the Paris Agreement, the Adaptation Fund Board will annually report to the CMA;
- The CMA-1 should recommend to the CMP that the AF Board shall continue to report to the CMP on an annual basis until 2020;
- The AF Board reports annually to the CMA from 2019 onward;
- On reporting of the AFB to which governing bodies - CMP and CMA should make appropriate arrangements before the AF starts full operation (including approval of funding to new projects) under CMA for then ongoing projects approved under CMP.

B. AF serves the PA / date

2. The Adaptation Fund serves the Paris Agreement

- Option 1: CMA confirms that AF starts serving PA immediately as of COP24
- Option 2: CMA confirms that AF starts serving PA as of 2019
- Option 3: CMA confirms that AF starts serving PA as of 2020 or 2021

- Decides that the Adaptation Fund shall serve the Paris Agreement as of January 1 st 2019;
- Welcomes and confirms the decision of the CMP at its thirteenth meeting that the Adaptation Fund shall serve the Paris Agreement subject to and consistent with decisions to be taken at the third part of the first session of the CMA, in line with decision 1/CMA.1, paragraph 11;
- The Adaptation Fund shall serve the Paris Agreement from 2019 onward;
- The CMA decides on the starting date from which the AF serves the PA. This should be 2020 or 2021.

C. Exclusivity

3. The Adaptation Fund serves the Paris Agreement:

- Option 1: CMA recommends that AF continues to serve the KP and the PA
- Option 2: CMA recommends that AF starts serving the PA as of a specific date and stops serving the KP as of a later date
- Option 3: CMA recommends that AF stops serving the KP as of a specific date and immediately starts serving the PA thereafter

- Decides that the CMA shall recommend, whether the Adaptation Fund shall serve the Paris Agreement exclusively under the guidance of and accountable to the CMA, to the CMP by its fifteenth session (November 2019), in line with decision 1.CMP/13 paragraph 13;
- The CMA-1 should recommend to the CMP that the AF shall serve the Paris Agreement exclusively from 2021 onward;
- CMP should give up all authority over the existing Adaptation Fund Board (AFB) and CMA should decide that the AF exclusively serves the Paris Agreement from the specified date (e.g. Jan 2021), which will be also decided by CMP in 2019 in accordance with the CMP13 decision, ensuring a smooth transition from CMP to CMA;
- In this regard, CMP should stop providing guidance from the specified date (e.g. the end of 2020) before CMA starts providing guidance to the AF to avoid duplicative guidance to the AF and any confusion. APA will send a recommendation to CMP in 2018 in line with the CMP13 decision, without prejudice the CMP decision in 2019 (timing), on top of a recommendation to CMA;
- The CMA recommends to the CMP that the AF stops serving the KP from 2020/2021. There should be continuity of the Adaptation Fund's work and project funding;
- The Adaptation Fund shall continue to function under the established arrangements under the Kyoto Protocol;
- Objection to the current AF under the CMP to exclusively serve the PA.

D. Transitional period

4. Transitional period:

- Option 1: no transitional period is necessary
- Option 2: transition to begin /when decision is adopted /2019 /2020/.... during which AF serves both PA and KP

Considerations

- Whether there is a transitional period or not, Parties need to consider whether more work needs to be done by the AFB / other body in preparation for the AF to serve the PA [see box L for suggested work that needs to be done]

- Transitional period (period during which the AF will serve and be accountable to both, the PA and the KP);
- The transitional period will run from the beginning of 2019 until the end of 2020;

- Serve PA after a transitional period of two years (until the end of 2020). During the transitional period the fund will serve both the Paris Agreement and the Kyoto Protocol;
- The [AF Board][ad-hoc technical working group]⁴ should until the end of the transitional period make a recommendation on which past guidance to the AF from CMP shall apply mutatis mutandis;
- The [AF Board][ad-hoc technical working group] should until the end of the transitional period make a recommendation on any further legal decisions and policy adjustments necessary to ensure a smooth transition to ensure that the AF will exclusively serve the PA from 2021 onwards;
- The [AF Board][ad-hoc technical working group] should decide during the transitional period whether the operational policies and guidelines for Parties to access funding from the AF would have to be changed from 2021 onward.

E. Board composition / practices

<p>5. Eligibility for Board Membership</p> <ul style="list-style-type: none"> - Option 1: Parties to the KP and/or the PA only - Option 2: Parties to the PA only <p>6. Representation</p> <ul style="list-style-type: none"> - Option 1: No change to representation on the board - Option 2: Change to representation on the board <p>7. Timing</p> <ul style="list-style-type: none"> - Option 1: Change to representation on the Board effective immediately after AF serves PA - Option 2: Change to representation on the Board at a later stage <p>Considerations for change</p> <ul style="list-style-type: none"> - Depending on sources of funding - If sources of funding different from share of proceeds from PA in line with Art. 6 - More appropriate balance between donor countries (voluntary contributions) and recipient countries taking into consideration geographic distribution, gender, other relevant elements - One LDC representative and one SIDS representative / preserving seats for LDCs and SIDS - Ensures adequate geographic representation - Not categorize Annex 1 / non Annex 1 - Aims to achieve gender balance

- Adaptation Fund will be managed by a Board that has a secured seat for the LDCs and one for the SIDS;

⁴ If the Board Constitution couldn't be changed in accordance with the above board constitution points before the end of the transitional period, we would insist on a balanced ad-hoc technical working group to make the policy recommendations instead.

- Only Parties to the CMP or the CMA will be on the Board of the AF;
- Only Parties of the PA can serve on the Board and ensure adequate geographic balance amongst PA Parties;
- Add a textual element, which aims to achieve a gender balance in the board;
- Textual elements referring to country categories such as Annex-I and non-Annex-I would not be acceptable with regards to the composition of the board;
- Current balance between developed and developing countries will be maintained, if the primary source of funding will be share of proceeds from the Paris Agreement in line with the language from Article 6. If the source of funding is different, we would not be in the position to support the regional balance in the board as it is right now;
- The Board constitution would have to change from 2019 onwards (decision in CMA-1) and would remain the same in the transitional period and after;
- The composition of the AFB should eliminate Annex I and Non-Annex I demarcations;
- CMA should decide a new composition of the board, and the new board should be established under CMA, provided that the existing board will be terminated when hand-over to CMA;
- Only Parties to the Paris Agreement are allowed sit on the board, with a more appropriate balance of representation (between donor countries (i.e. voluntary contributions) and recipient countries) taking into consideration geographic distributions, gender, and other relevant elements while preserving seats for SIDs and LDCs;
- AFB decisions should be taken only when three-quarters of the entire AFB agree;
- Placeholder on Board Composition: The current composition of the Board has worked well. Potential revision of the composition depends on the outcome of the preparatory work, for instance sources of funding.

F. Arrangements for secretariat and trustee services

8. Arrangements for secretariat and trustee services

- Option 1: continue with current arrangements with minor adjustments
- Option 2: create new arrangements
- Option 3: create interim / transitional arrangements

Considerations:

- Extent to which the arrangements need to be adjusted can be finalized following the CMA decision (for further clarification, refer to question and answer)
- Further work on who and when these arrangements will be made to follow
 - o Check and consult on whether current arrangements are sufficient
 - o Prepare amendments if necessary and report back to CMA
 - o Decide on transitional period on the secretariat
 - o Decide on administrative arrangements
 - o Decide on the permanent trustee until end of 2020
 - o Establish new agreements/arrangements for trustee and secretariat, effective on date / Jan 2021
 - o Seek out appropriate legal personality for the Fund

- Adaptation Fund should continue to have its own secretariat;
- The CMA (i) invites the AFB, its interim Secretariat and interim Trustee to check and consult on whether their current arrangements are sufficient for them to serve the Adaptation Fund also

under the Paris Agreement, and (ii) to prepare amendments if necessary, and (iii) to report back to the CMA;

- The [AF Board][ad-hoc technical working group] should decide during the transitional period on the secretariat and the administrative arrangements;
- The [AF Board][ad-hoc technical working group] should take a decision on the permanent trustee for the AF until the end of 2020;
- CMP would decide to extend the current arrangements with the secretariat (GEF) and the trustee (the WB) to the specified date (e.g. the end of 2020)[*the current arrangement under MOU between CMP and the interim secretariat and trustee will be terminated in the end of May 2020];
- CMA and the new AFB should take subsequent actions to establish new agreements with regard to trustee and secretariat arrangements, which will be effective from the specified date (e.g. Jan 2021);
- The Adaptation Fund Board should seek out an appropriate legal personality for the Fund.

2. Operating Modalities

G. Operating Modalities

9. Operating policies and guidelines

- Option 1: apply mutatis mutandis to the Agreement
- Option 2: Changes to operating policies and guidelines
 - o new policy to open accreditation for multiple NIEs from a single developing country
 - o Business modalities changed only for legal matters that allow the Fund to serve the PA

Consideration

- Further work to be done by AFB/other body (see also box L)

10. Funding priorities

- Option 1: No change to funding priorities
- Option 2: Change to funding priorities
 - o Particularly LDCs and SIDS

- Decides that the operational policies and guidelines of the Adaptation Fund shall apply mutatis mutandis to the Agreement;
- While funding concrete adaptation projects, priorities are given to Parties that are particularly vulnerable, especially LDCs and SIDS;
- Open possibilities of accreditation for multiple NIEs from a single developing country;
- Modality of the business of the Fund changed only for legal matters that allow the Fund to serve the PA;
- [Comment: in the view of operational decisions such as the management of projects in the pipeline should be decided by the newly constituted board and not by the CMA].

H. Role in the climate international architecture / Linkages with other bodies and institutions

11. Role in climate finance architecture / Linkages with other bodies and institutions

Considerations

- To take into account the added value of the fund providing support to developing country Parties such as through small scale projects, innovative approaches, direct access / enhanced direct access, and its experience in M&E of projects
 - To consider the role of the Adaptation Fund in the climate finance architecture
 - To promote coordination with other funds / OEs under the FM to ensure coherence and complementarity
 - AF is not an operating entity of the FM
-
- The CMA-1 should recommend to the AF Board to take decisions to ensure that the AF will focus on its comparative advantage within the climate finance architecture, such as small scale adaptation projects, innovative approaches, the direct access modality and, experience in monitoring and evaluating of adaptation projects;
 - Continuation of direct access modality along with the Enhanced Direct Access Modality;
 - Emphasis the value of the Fund as the most successful fund that has served the needs of developing countries. Invented the principle of country-ownership, has progressed this approach, and continues to address the specific needs for adaptation of developing countries in the context of their sustainable development. Brings a great deal of value only if stays on its principles, governance, structure and modalities;
 - When the CMA 1 takes a decision regarding the Adaptation Fund serving the Paris Agreement, the CMA shall instruct the new Adaptation Fund Board to accomplish the following items: (also linked to box L);
 - o To ensure that it will continue to occupy a unique role in the international financial architecture, in that it provides direct access modalities, grants for adaptation, and small-scale projects;
 - o The AF will maintain its complementarity with the Operating Entities of the Financial Mechanism of the Paris Agreement, and avoid duplication, reaffirming that it is not part of the Financial Mechanism of the Paris Agreement.
 - The CMA should recommend to promote coordination with other funds financing adaptation projects to ensure coherence and complementarity;
 - Adaptation Fund should coordinate with other funds and operating entities supporting adaptation projects/programme in developing countries under the Financial Mechanism for coherence and complementarity;
 - Highlighting the importance of the Adaptation Fund as a key and innovative funding institution of the Convention and Kyoto Protocol, and of the work it has done for supporting developing countries with regards to adaptation, including through enhanced direct access modalities;
 - Recognizes that the Adaptation Fund would enhance the implementation of the Paris Agreement, in particular with regards to supporting developing country Parties actions in adaptation in line with article 2 of the Paris Agreement;
 - The Adaptation Fund is not an operating entity of the financial mechanism.

I. Sources of funding - Eligibility

12. Eligibility

- Option 1: KP and/or PA developing country Parties are eligible to receive resources
 - Option 2: KP and/or PA developing country Parties are eligible to receive resources in transitional period / until AF starts serving the PA. From 2019 / 2020/ 2021 onwards PA eligible developing countries receive resources exclusively
 - Option 3: PA developing country Parties are eligible to receive resources
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- Developing country parties are eligible to receive resources from the AF from 2019 onward;
 - During the transitional period parties to the KP should still be eligible for funding, but from 2021 onwards Parties to the KP, which are not Parties to the PA will no longer be eligible for funding from the AF;
 - Until the Adaptation Fund starts serving the Paris Agreement, developing countries continue to receive funding under the KP, as now. From 2020/ 2021 the AF serves only the Paris Agreement and developing country parties to the Paris Agreement are eligible to receive resources from the Adaptation Fund;
 - When the CMA decides that the AF serves the PA exclusively, funding eligibility will be restricted to Parties to the Paris Agreement.

J. Sources of funding

13. Sources of funding (one option or a combination of options)

- Option 1: Link to Article 6
- Option 2: No linkage to Article 6 / 6.2 / 6.4
- Option 3: Additional voluntary funding by international Parties and organizations
- Option 4: Share of proceeds CDM KP
- Option 5: Voluntary public funding
- Option 6: Innovative sources of funding

Considerations

- Sustainability, adequacy and predictability of funding reassured / reaffirmed
- Transitional period funded by KP and PA share of proceeds and AFB/ad hoc technical working group ensure flow of Art. 6 share of proceeds
- Sources of finance changed only for legal matters to allow the Fund to serve the Paris Agreement
- Sources of funding part of core CMA decision

- Also decides further that the Adaptation Fund shall continue to be financed from the share of proceeds on the clean development mechanism project activities of the Kyoto Protocol and other sources of funding;
- Decides further that Parties and international organizations are invited to continue providing funding to the Adaptation Fund, which will be additional to the share of proceeds of clean development mechanism project activities of the Kyoto Protocol;

- [Decides further that the Adaptation Fund shall be financed from the share of proceeds on the mechanisms under Article 6.2 and 6.4 of the Paris Agreement;]
- Reaffirm that the sustainability, adequacy and predictability of funding for the Adaptation Fund shall be reassured;
- The Adaptation Fund shall be financed from the share of proceeds on the mechanisms under Article 6.2 and 6.4 of the Paris Agreement;
- During the transitional period (2019-2020) the funding source will be share of proceeds from the KP and the PA, as well as other innovative sources of funding and voluntary public funding;
- From 2021 onwards the primary source of funding shall be share of proceeds from the PA in line with the language from Article 6 of the PA, other innovative sources of funding and complementary voluntary public funding;
- The [AF Board][ad-hoc technical working group] shall until the end of the transitional period make recommendations to the CMA on further legal and procedural decisions necessary to ensure the flow of share of proceeds from the PA in line with Art. 6 of the PA;
- The sources of funding are a core part of the CMA decision;
- No obligatory replenishment to the Adaptation Fund;
- The financing model for the Adaptation Fund should be flexible and diverse;
- [Placeholder for a decision that resolves the question of sources of funding, which should occur when the CMA 1 takes a decision on the Adaptation Funding serving the Paris Agreement.];
- Funding shall not come from Proceeds from Article 6.2 (which does not exist under the Paris Agreement) nor any mandatory replenishment process;
- Sources of finance changed only for legal matters to allow the Fund to serve the Paris Agreement.

3. **Safeguards**

K. Safeguards

14. Safeguards

- Option 1: apply existing policies and guidelines on safeguards
- Option 2: amend /enhance policies and guidelines on safeguards

Considerations

- Review current safeguard policies and align them with international best practices, recognizing the small scale of projects and programmes
- Types of safeguard policies, including (not mutually exclusive)
 - o fiduciary risk management
 - o environmental and social safeguards
 - o gender
 - o disclosure
 - o independent accountability mechanism
 - o independent M&E
 - o anti-money laundering
- Ensure more accredited entities satisfy more robust safeguard policies

- The Adaptation Fund shall apply existing policies and guidelines established under the Kyoto Protocol, including:

- (a) the Fiduciary Risk Management Standards;
 - (b) Environmental and Social Safeguards policies;
 - (c) Gender Policies and Action Plan.
- The Adaptation Fund Board shall be invited to enhance all guidelines to meet international best practice;
- Coherence of the AF's safeguards policies to serve the PA;
- The [AF Board][ad-hoc technical working group] shall until the end of the transitional period:
 - review the current AF safeguard policies and ensure that its social and environmental safeguards, in particular related to indigenous peoples and traditional knowledge, as well as its fiduciary standards are in line with international best practice (e.g. World Bank taking a tier approach), while recognizing the small scale of projects and programmes funded by the AF.
 - ensure that the disclosure policies are in line with international best practice.
 - decide on an independent accountability mechanism in line with international best practice, while recognizing the scale of projects and programmes funded by the AF.
- Establish an enhanced Environmental and Social Safeguards System (also called an Environmental and Social Risk Management System), that includes:
 - Establishing a robust environmental and social safeguards policy, articulating the AF's responsibilities and commitments, including for oversight of Accredited and Implementing Entities;
 - Setting up Accredited/Implementing Entity requirements that are in line with best practices, such as the IFC Performance Standards or the World Bank's new Environmental and Social Standards;
 - Developing an organizational structure for overseeing the Accredited Entities and their activities.
- Approve an enhanced disclosure policy in line with international best practice (e.g., GCF);
- Establish a system and process by which activities that are funded are regularly monitored and evaluated by the AF and, as appropriate, by independent entity(ies);
- Put in place an independent accountability mechanism that allows parties that are negatively affected by AF- funded projects to have recourse to a responsible authority that can recommend remedial action;
- Approve a robust/enhanced Anti Money Laundering / Countering Financing for Terrorism (AML/CFT) policy that is commensurate with the type of risks that the AF faces;
- Decide how to ensure current accredited entities satisfy more robust safeguard policies.

L. Work for the Adaptation Fund Board / Other Body

15. A body to undertake preparatory work

- Option 1: Task the AFB to undertake work
- Option 2: Task another body to undertake work

Considerations: work in relation to

- arrangements/adjustments for trustee and secretariat services, rules of procedures for application for funding
- develop the necessary legal arrangements for the trustee and secretariat services
- review and revise its operational policies and inform CMA
- Ensure its unique role in the financial architecture – that it provides direct access modalities, grants for adaptation, small scale projects

16. Timeline

- Option 1: Start at CMA 1 and finish at CMA 2
- Option 2: timeline to be decided by date

- Requests the Adaptation Fund Board to make recommendations to the CMA in 2019 regarding the arrangements/adjustments for trustee and secretariat services, as well as the rules of procedure of the AFB, or any other additional safeguards, operational policies, guidelines and procedures for application for funding for adaptation projects and programmes;
- Decides to request the Adaptation Fund Board to develop the necessary legal arrangements, to be concluded between the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement and both the secretariat and the trustee servicing the Adaptation Fund, for the purpose of regulating the provisions of the required services, the terms and conditions thereof and the performance standards required from the secretariat and the trustee servicing the Adaptation Fund, and present these legal arrangements for adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its third/fourth session;
- Timeline: The Adaptation Fund Board shall be invited to finalise arrangements for trustee and secretariat services, operational policies of the AFB, enhancement of safeguards, operational policies, guidelines and procedures for funding for adaptation projects and programmes by CMA.2;
- The CMA invites the Adaptation Fund Board to review its operational policies and revise them as appropriate, and to inform the CMA accordingly;
- When the CMA 1 takes a decision regarding the Adaptation Fund serving the Paris Agreement, the CMA shall instruct the AF Board to achieve the following goals within two years;
- Legal aspects, and necessary arrangement to facilitate the decision to allow the AF should be left to the AFB to address and report to the CMP and CMA.

APA agenda item 8

Further matters related to implementation of the Paris Agreement:

(a) 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

Questions and answers at the informal consultations convened on 5 May 2018

Prepared by the UNFCCC Legal Affairs programme

Draft version 6 May 2018 @ 19:30 hours

Question	Response
1. Are there any legal impediments for the Adaptation Fund (AF) to serve both the Kyoto Protocol and the Paris Agreement?	<p>There are no legal impediments.</p> <p>The CMP has authority and accountability over the Adaptation Fund in accordance with decision 1/CMP.3. The CMP has decided that the AF shall serve the Paris Agreement and the Kyoto Protocol subject to and consistent with decisions of the CMA at CMA 1.3 (see decision 1/CMP.13, paragraph 12).</p>
2. If the AF serves both the Kyoto Protocol and the Paris Agreement, are there certain actions that must be taken by the Board of the AF when it serves the CMA?	<p>When the AF serves both agreements, the Board continues to fulfil its functions within its mandate as decided by the CMP. The Board would also undertake any new functions relating to its service to the Paris Agreement as decided by the CMA.</p> <p>The Board would report to the CMP and the CMA, respectively, on those actions taken to service the Kyoto Protocol and the Paris Agreement, which could be included in a single report of the Board with distinct sections for consideration by the CMP and CMA.</p>
3. If the AF serves both the Kyoto Protocol and the Paris Agreement, which body should mandate the Board to make adjustments to the institutional arrangements for trustee or secretariat services for the AF?	<p>Mandates to the Board on matters that would result in fundamental changes to the institutional arrangements of the AF are the prerogative of the CMP in accordance with its authority and accountability over the AF (e.g., decisions that could result in changes in the institutions that provide trustee or secretariat services).</p> <p>The CMA would directly mandate the Board to make adjustments to the AF institutional arrangements that are necessary for servicing activities under the Paris Agreement (e.g., any additional services relating to Paris Agreement to be undertaken by the interim trustee). Some mandates, however, may require complementary action by the CMP, which would need would be determined on a case-by-case basis.</p>
4. From what date would the decision by the CMA that the AF serves the Paris Agreement becomes legally effective?	<p>The AF starts serving the Paris Agreement with immediate effect upon a decision of the CMA unless the CMA decides on another specific date in the future.</p>

<p>5. Bearing in mind the 2019 timeline contained in decision 1/CMP.13, there may be a need to extend the interim arrangements for the AF until the final arrangements are in place. How long should the extension of those interim arrangements be?</p>	<p>Following past approach, the AF Board could make recommendations to the CMP 15 (December 2019) to extend the interim arrangements for trustee and secretariat services to the AF and the Board (which expire in May 2020 in accordance with decision 2/CMP.12). That CMP 15 decision could be endorsed by the CMA.</p> <p>That extension would also take into account adjustments to the AF to serve the Paris Agreement. The scope and form of those adjustments will depend in particular on decisions by the CMA. The adjustments would be negotiated by the Board with each respective organisation. Where necessary, the adjustments could be undertaken in phased approach.</p> <p>Following past decisions, the CMP could extend the interim trustee and, if necessary, the interim secretariat services, for a short duration to provide flexibility for the CMP and the CMA to make further adjustments in the future, in particular to take into account decisions on the services to be provided by the AF when it serves the Paris Agreement simultaneously with Kyoto Protocol or exclusively.</p> <p>Such an approach would ensure continued uninterrupted services without prejudice to future decisions on the AF.</p>
<p>6. Could CMA 1.3 in 2018 invite the AF Board to undertake specific tasks and make recommendations to the CMA in 2019?</p>	<p>At CMA 1.3, the CMA could invite the Board to undertake specific tasks and report back to the CMA in 2019.</p> <p>Whether the Board accepts that invitation and undertakes those task(s) depends on various factors, such as:</p> <ul style="list-style-type: none"> (a) Whether the CMA 1.3 takes a decision that the AF shall serve the Paris Agreement, and the effective date of that decision; (b) If the AF serves the Paris Agreement with immediate effect is upon the decision of CMA 1.3, the Board would be empowered to undertake the tasks immediately. However, if the effective date is a future date, then CMP confirmation of the invitation may be required; (c) The nature of the tasks, and whether CMP endorsement is required; (d) Whether the tasks are within the scope of the mandate of the Board; (e) The workload of the Board; (f) The resources available to the Board to undertake the request; (g) Whether the Board has the information required to fulfil that tasks; and (h) If CMP confirmation or endorsement is required, sequencing of decisions by the CMA and the CMP to ensure timely decision-making would be necessary. <p>Should the Board accept the invitation and undertake the tasks as requested, it would include the outcomes of its work in its report to CMP 15 (and, as appropriate, the CMA in 2019), with an invitation to the CMA by the CMP to take note of the outcomes as appropriate.</p>

<p>7. How could the complexity regarding the AF serving two masters – not just trustee/secretariat issues – be managed with two masters providing guidance to Board?</p>	<p>The CMP/CMA could adopt a decision that mirrors paragraph 61 of decision 1/CP.21 to provide that guidance from the CMA to the Board would to be transmitted by the CMP. One single omnibus guidance, comprising both CMP and CMA guidance, would be transmitted to the Board. This provides a single channel of communication and could promote consistency and coordination.</p> <p>The CMP could also confirm that the CMA would provide guidance directly to the Board, without transmittal through the CMP.</p> <p>Under both scenarios, Parties remain responsible to ensure consistency and coordination with the guidance being provided from both governing bodies. The Board could also inform the governing bodies of any inconsistencies in the guidance received, with a request for clarification.</p> <p>For efficiency and effective use of resources, a single report would be submitted by the Board to the CMP and CMA on the outcomes of its work and recommendations on matters relating to both the Kyoto Protocol and Paris Agreement.</p>
<p>8. Should the AF serve both the CMA and CMP – with decision(s) to be taken in December 2018, would such decision(s) prejudice any decisions on legal matters?</p> <p>9. Can the Board complete its work on the legal matters in due time taking into account decisions after 2019?</p>	<p>The CMP and CMA may wish to sequence decisions on the arrangements for the AF to ensure continuous service and smooth transition when the AF serves the Paris Agreement simultaneously with the Kyoto Protocol or exclusively. The CMP and CMA may wish to consider a phased approach in sequencing such decisions, with interim arrangements put in place pending final decisions.</p> <p>As noted in response to question 5, a possible approach at CMP 15 (2019), would be for the CMP to extend the interim trustee and secretariat arrangements services for a short period. That decision would be without prejudice to future, long-term decisions. Parties may wish to consider a phased approach.</p> <p>As also noted in question 5 above, adjustments will be required to the legal arrangements with the interim trustee, and, if necessary, to the interim secretariat for the services to the AF. The scope and form of those adjustments would be negotiated by the AF Board with each respective organisation, and the timeline for the conclusion of work would be determined by the Board and these organisations.</p> <p>It is recalled that in 2008, the legal agreements for trustee and secretariat services for the AF were negotiated and concluded by the Board and the interim trustee (the World Bank) and the interim secretariat (the GEF) in one year and adopted at CMP 4 (see decision 1/CMP.4). The Board would advise Parties on the timeline for completing work.</p>
<p>10. If a decision is taken at CMA 1.3 that the AF serves both agreements, would guidance be provided by both the CMP and CMA?</p>	<p>See response to question 7.</p> <p>Parties may wish to consider to retain the current structure of the Board for an interim period pending future decisions.</p>

<p>11.Should the structure of the Board be adjusted?</p> <p>12.Should arrangements be made for a new Board now or at a future date?</p>	<p>Should CMA 1.3 decide that the AF shall serve the Paris Agreement with immediate effect, to ensure that decisions by the Board on matters relating to the Paris Agreement are taken by Parties to the Paris Agreement, the CMA could also decide that Parties to the Paris Agreement shall serve on the Board. The secretariat, in consultation with the Chair of the consultations on elections, would make arrangements for the nomination and election at CMA 1.3 of additional member(s) to the Board from amongst Parties to the Paris Agreement, further to Articles 16.3 and 18.3 of the Paris Agreement applied mutatis mutandis.</p> <p>This could serve as an interim measure pending a future restructuring of the Board.</p> <p>Alternatively, Parties could undertake to restructure of the Board during the negotiations in 2018, for decisions at CMP 14 and CMA 1.3, with members elected to the Board by both the CMP and CMA, respectively, in Katowice.</p>
<p>13.Can the CMA change the authority of the CMP over the AF?</p>	<p>No, the CMA has no such authority. Only the CMP, as a legally distinct supreme body has decision-making power over its authority regarding the AF.</p>
<p>14.How much time does the Board need to adjust the legal arrangements for the trustee and secretariat services?</p>	<p>See response to question 9.</p>
<p>15.Is the AF an operating entity of the Financial Mechanism of the Convention?</p>	<p>No, the AF is not an operating entity of the Financial Mechanism of the Convention. To date, no decision has been taken by the COP to this effect in accordance with Article 11, paragraph 1, of the Convention.</p>
<p>16.Does the CMP need to confirm the decision of the CMA that the AF serves the Paris Agreement?</p>	<p>In decision 1/CMP.13, the CMP has already confirmed the decision to be taken by the CMA at CMA 1.3.</p>