



ADAPTATION FUND

AFB/B.33/11
24 February 2019

Adaptation Fund Board
Thirty-third meeting
Bonn, Germany, 14-15 March 2019

Agenda item 15

DECISIONS OF CMP14 AND CMA1 RELATED TO THE ADAPTATION FUND AND THE RELEVANT MATTERS TO BE CONSIDERED BY THE ADAPTATION FUND BOARD

I. Background

1. In Katowice, Poland in December 2019, landmark decisions related to the Adaptation Fund (the Fund) were made at the fourteenth session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) and the first session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA), completing the process of the Fund to serve the Paris Agreement. By decision -/CMA.1 and decision -/CMP.14, the Fund shall serve the Paris Agreement under the guidance of, and be accountable to, the CMA with respect to all matters relating to the Paris Agreement, effective 1 January 2019. In addition, the Fund shall exclusively serve the Paris Agreement once the share of proceeds under Article 6, paragraph 4, of the Paris Agreement becomes available.

2. Regarding source of finance, CMP 14 and CMA 1 decided that the Fund continues to receive the share of proceeds, if available, from activities under Article 6, 12 and 17 of the Kyoto Protocol, and that it shall be financed from the share of proceeds from the mechanism established by Article 6, paragraph 4, of the Paris Agreement and from a variety of voluntary public and private sources.

3. With regard to membership on the Adaptation Fund Board (the Board), by decision -/CMP14, the CMP requested the Subsidiary Body for implementation, at its fiftieth session (June 2019), to consider the eligibility for membership on the Board, and to forward a recommendation to the CMP 15 in November 2019¹.

4. By the same decision, the CMP requested the Board to consider the following and to make recommendations to the CMP 15 with a view to the recommendations being forwarded to the CMA 2 in November 2019²:

- (i) the rules of procedure of the Board;
- (ii) the arrangements of the Fund with respect to the Paris Agreement;
- (iii) any other matter so as to ensure the Fund serves the Paris Agreement smoothly; and
- (iv) implications of the Fund receiving the share of proceeds from activities under Articles 6, 12 and 17 of the Kyoto Protocol when the Fund serves the Paris Agreement.

5. This document presents decisions made by CMA 1 and CMP 14 related to the Adaptation Fund and a list of matters and relevant background information related to the above four themes. The Annex I to the document contains some of the issues that the Board may want to consider during the preparation of the document on the Board's consideration and recommendations related to the above four themes and that would require further review during the intersessional period between the thirty-third and thirty-fourth meetings of the Board, to assess the content of such document. The Annex II to this document contains a note prepared by the World Bank on the implications of the Adaptation Fund serving the Paris Agreement and shared with the UNFCCC Secretariat for the discussions on matters related to Adaptation Fund in the 1.7 session

¹ It was confirmed on 7 March 2019 that COP 25 / CMP 15 will take place on 2-13 December 2020.

² Ibid.

of the Ad-hoc Working Group on the Paris Agreement (APA) in December 2018, in Katowice, Poland.

II. Decisions related to Adaptation Fund made at CMA 1 and CMP 14

6. Decision -/CMA.1: “Matters Relating to the Adaptation Fund” (emphasis added):

The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA),

1. *Decides that the Adaptation Fund shall serve the Paris Agreement under the guidance of, and be accountable to, the CMA with respect to all matters relating to the Paris Agreement, effective 1 January 2019, subject to the decision on this matter made by the CMP;*

2. *Recommends that the CMP decide that the Adaptation Fund will continue to be financed by the activities under Articles 6, 12 and 17 of the Kyoto Protocol;*

3. *Also recommends to the CMP that the Adaptation Fund shall exclusively serve the Paris Agreement once the share of proceeds under Article 6, paragraph 4, of the Paris Agreement becomes available;*

4. *Invites the CMP to ensure that developing country Parties and developed country Parties that are Parties to the Paris Agreement are eligible for membership on the Adaptation Fund Board;*

5. *Decides that, when the Adaptation Fund serves the Paris Agreement, it shall be financed from the share of proceeds from the mechanism established by Article 6, paragraph 4, of the Paris Agreement and from a variety of voluntary public and private sources;*

6. *Invites the CMP to request the Adaptation Fund Board to consider **the rules of procedure** of the Board, **the arrangements of the Adaptation Fund with respect to the Paris Agreement** and the **implications of the Adaptation Fund receiving the share of proceeds from activities under Articles 6, 12 and 17 of the Kyoto Protocol when the Adaptation Fund serves the Paris Agreement**, with a view to forwarding recommendations to the CMA for consideration at its second session (November 2019).*

7. Decision -/CMP.14 “Matters relating to the Adaptation Fund” (emphasis added):

The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP),

1. *Takes note of decision 1/CMA.1, whereby the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) decided that the Adaptation*

Fund shall serve the Paris Agreement under the guidance of, and be accountable to, the CMA with respect to all matters relating to the Paris Agreement, effective 1 January 2019;

2. *Decides that the Adaptation Fund shall exclusively serve the Paris Agreement and shall no longer serve the Kyoto Protocol once the share of proceeds under Article 6, paragraph 4, of the Paris Agreement becomes available;*

3. *Also decides, pursuant to paragraph 2 above, that the Adaptation Fund shall continue to receive the share of proceeds, if available, from activities under Articles 6, 12 and 17 of the Kyoto Protocol;*

4. *Further decides to ensure that developing country Parties and developed country Parties that are Parties to the Paris Agreement are eligible for membership on the Adaptation Fund Board;*

5. *Requests the Subsidiary Body for Implementation, at its fiftieth session (June 2019), to consider the matter referred to in paragraph 4 above, and to forward a recommendation to the CMP for consideration at its fifteenth session (November 2019);*

6. *Also requests the Adaptation Fund Board: to consider **the rules of procedure of the Board, the arrangements of the Adaptation Fund with respect to the Paris Agreement and any other matter so as to ensure the Adaptation Fund serves the Paris Agreement smoothly; to consider the implications of the Adaptation Fund receiving the share of proceeds from activities under Articles 6, 12 and 17 of the Kyoto Protocol when the Adaptation Fund serves the Paris Agreement;** and to make recommendations to the CMP at its fifteenth session with a view to the recommendations being forwarded to the CMA for consideration at its second session (November 2019).*

8. **Decision -/CMP.14 “Report of the Adaptation Fund Board”**

The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP),

Recalling decisions 1/CMP.3, 1/CMP.4, 2/CMP.10, 1/CMP.11 and 1/CMP.13,

1. *Takes note of the annual report of the Adaptation Fund Board, including its addendum, and the information contained therein;³*

2. *Reiterates its concern regarding the issues related to the sustainability, adequacy and predictability of funding for the Adaptation Fund due to the current uncertainty about the prices of certified emission reductions;⁴*

3. *Also reiterates the encouragement of the scaling-up of financial resources, including the provision of voluntary support, that are additional to the share of proceeds*

³ FCCC/KP/CMP/2018/4 and Add.1, as requested in decision 1/CMP.13, paragraph 11.

⁴ Decision 1/CMP.13, paragraph 7.

*levied on certified emission reductions, in order to support the resource mobilization efforts of the Adaptation Fund Board with a view to strengthening the Adaptation Fund;*⁵

4. *Welcomes the appreciation the Adaptation Fund Board's consideration of and report on linkages to other funds to ensure coherence and complementarity;*⁶

5. *Encourages the Adaptation Fund Board to continue, in line with its existing mandate, its consideration of linkages between the Adaptation Fund and other funds;*

6. *Also encourages the Adaptation Fund Board to continue its efforts to enhance complementarity and coherence with other funds both under and outside the Convention, including to better align processes and leverage financing;*

7. *Requests the Adaptation Fund Board to report on any outcomes related to paragraphs 9 and 10 above to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at its fifteenth session (November 2019).*

9. **Decision -/CMA.1:** "Further guidance in relation to the adaptation communication, including, inter alia, as a component of nationally determined contributions, referred to in Article 7, paragraphs 10 and 11, of the Paris Agreement" (emphasis added):

The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA),

Recalling relevant provisions of the Convention and the Paris Agreement, in particular Article 7,

Recognizing the importance of flexibility provided to Parties by Article 7, paragraphs 10 and 11, of the Paris Agreement for submitting and updating the adaptation communication,

Recalling decisions 4/CP.5, 17/CP.8, and 5/CP.17,

Recognizing the links between adaptation and sustainable development, including the Sustainable Development Goals and the Sendai Framework for Disaster Risk Reduction 2015–2030,

Emphasizing the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty,

Recalling that continuous and enhanced international support shall be provided to developing country Parties for the implementation of Article 7, paragraphs 7, 9, 10 and 11, of the Paris Agreement, in accordance with the provisions of Articles 9, 10 and 11 of the Paris Agreement,

...

⁵ FCCC/KP/CMP/2018/4, paragraphs 45–56, and FCCC/KP/CMP/2018/4/Add.1, paragraph 18.

⁶ FCCC/KP/CMP/2018/4, paragraphs 45–56, and FCCC/KP/CMP/2018/4/Add.1, paragraph 18.

*Encourages the Green Climate Fund, the Global Environment Facility, **the Adaptation Fund**, the Climate Technology Centre and Network and the Paris Committee on Capacity building, in line with their existing mandates and governing instruments, **to continue channeling support to developing country Parties for the implementation of their adaptation plans and actions in accordance with the priorities and needs outlined in their adaptation communication;***

...

III. Matters to be considered by the Board related to decisions -/CMA.1 and -/CMP.14

1) *The rules of procedures of the Board*

10. The rules of procedure (RoP) of the Board was established based upon [Decision 1/CMP.3](#) which includes integral features of the Fund: operating entity of Fund; Board's functions, composition, membership, quorum, decision-making, and chairmanship; frequency of meetings; observers; transparency; secretariat; trustee; monetization; access to finding; institutional arrangements; and review. The RoP was adopted by decision 1/CMP.4 and its amendment was adopted by decision 1/CMP.5. It would be necessary to consider the possible amendments to the RoP. Following further review during the intersessional period between the thirty-third and thirty-fourth meetings, the secretariat could present an analysis and possible amendments to the Board for consideration and decision at its thirty-fourth meeting. Some of the issues that the Board may want to consider in preparation of the amendment to the RoP are contained in the Annex I to this document.

2) *Arrangements of the Fund with respect to the Paris Agreement*

11. By [Decision 1/CMP.4](#), the CMP adopted the Rules of Procedures, [the Strategic Priorities, Policies and Guidelines of the Adaptation Fund](#) (hereinafter "SPPG"), the MoU between the CMP and the GEF Council, and the Terms of Conditions of Service to be provided by the IBRD (the World Bank) as Trustee for the AF were adopted by the CMP. Any amendments to these four instruments need to be first adopted by the CMP.

12. The Operational Policies and Guidelines (OPG) was first developed in 2009 in accordance with decisions 1/CMP.3 and 1/CMP.4 and based upon the SPPG (later contained as Annex I of the OPG) wherein paragraph 9 indicates that "the operational principles and modalities that shall guide the provision of assistance by the Adaptation Fund to eligible Parties shall be consistent with [decision 5/CMP.2](#), paragraphs 1 and 2. The adoption of the OPG was taken note of by the CMP by decision 4/CMP.5. The OPG has amended three times to make it in line with the Fund's environmental and social policy (ESP), Gender Policy, and to reflect the Fund's readiness programme respectively.

a) Strategic Priorities, Policies and Guidelines of the Fund

13. The Board may want to consider a need of amending the Strategic Priorities, Policies and Guidelines of the Fund (SPPG, contained in Annex I to OPG) to ensure that it is in line with the decisions related to the Fund serving the PA. Paragraph 4 of the SPPG indicates that “[t]he strategic priorities, policies and guidelines set out in this document form the basis upon which the OPG shall be developed to enable eligible Parties to access resources from the Adaptation Fund.” In this regard, the Board may want to look into the need of amendments to SPPG before considering the amendments to OPG main text.

b) The MOU between the CMP and the Council of the GEF regarding secretariat services to the Adaptation Fund Board

14. By decision 1/CMP.3, the CMP invited the Global Environment Facility (GEF) to provide secretariat services to the Adaptation Fund Board on an interim basis. The form of the arrangement was an MOU which is often used to denote a firm, but not legally binding, commitment between two or more organizations.⁷ The MOU was finalized upon mutual agreement by the CMP and the Council of the GEF, and it became effective upon adoption by the CMP and the Council of the GEF.⁸ Section IV, paragraph 4 (Amendments) says that any amendments to the present MOU will be mutually agreed upon by the CMP and the Council, and the Board may recommend to the CMP any amendments to the MoU. The MOU was extended through decisions 4/CMP.8, 2/CMP.10 and 2/CMP.12. The current MOU was renewed in 2016 for an additional three years, from 30 May 2017 to 30 May 2020. Following further review during the intersessional period between the thirty-third and thirty-fourth meetings which will be conducted by the secretariat which will consult with the GEF Secretariat and seek to coordinate with the UNFCCC Secretariat’s legal team, the secretariat could present an analysis and proposal for a draft MOU regarding the secretariat services to the Adaptation Fund to the Board for review at its thirty-fourth meeting.

c) Terms of Conditions of Service to be provided by the IBRD (the World Bank) as trustee for the AF

15. By decision 1/CMP.3, the CMP requested the Board to develop the necessary legal arrangements to be concluded between the CMP and the trustee serving the Fund, and to present the legal arrangements for adoption by the CMP. Pursuant to decision 1/CMP.3, paragraph 31, the Board: (i) approved the draft Terms and Conditions of Service to be provided by the IBRD (the World Bank) as trustee for the AF (TOC); (ii) recommended to the CMP 4 to conclude the legal arrangement between the CMP and the World Bank by way of approving and accepting the terms and conditions, subject to approval and acceptance of the same by the World Bank; and (iii) invite the World Bank to take any necessary action to accept the invitation to serve as the trustee, including seeking approval of the terms and conditions by the Board of Directors of the World

⁷ FCCC/KP/CMP/2008/11/Add.2, Annex II.

⁸ See the MOU between the CMP and the Council of the GEF, paragraph 6.

Bank, following approval and acceptance of the same by the CMP.⁹ The TOC was adopted by decision 1/CMP.4, and later amended through decisions 5/CMP.6, 1/CMP.9 and 1/CMP.10 and extended through decisions 4/CMP.8 and 2/CMP.12.

16. The TOC and any amendments to the TOC become effective and constitute an agreement between the CMP and the World Bank upon decisions by the CMP and the World Bank to approve and accept the TOC or any amendments to the same. The current TOC was renewed in 2016 for an additional three years, from 30 May 2017 to 30 May 2020. Following further review during the intersessional period between the thirty-third and thirty-fourth meetings which will be conducted by the secretariat which will consult with the trustee and seek to coordinate with the UNFCCC Secretariat's legal team, the secretariat could present an analysis and a proposal for a draft TOC to the Board for review at its thirty-fourth meeting. Some relevant background information is contained in the Annex II to this document which is a note prepared by the World Bank on the implications of the Adaptation Fund serving the Paris Agreement and shared with the UNFCCC Secretariat for the discussions on matters related to Adaptation Fund in the 1.7 session of the Ad-hoc Working Group on the Paris Agreement (APA) in December 2018, in Katowice, Poland.

d) Operational Policies and Guidelines

17. In reviewing the need of amendments to Operational Policies and Guidelines (OPG), the Board may consider the decisions related to the Fund serving the PA, together with decision 5/CMP.2 paragraphs 1 and 2 and Annex I to OPG which formed its basis. The Board may also want to consider whether any other updates to the OPG are needed, inter alia, in line with the Fund's Medium-Term Strategy (MTS).

e) Legal capacity of the Board

18. By decision 1/CMP.4 the Board was conferred such legal capacity as necessary for the discharge of its functions with regard to direct access by eligible Parties and implementing and executing entities, in accordance with decision 1/CMP.3, paragraphs 29 and 30, in particular legal capacity to enter into contractual agreements and to receive project, activity and programme proposals directly and to process them in accordance with paragraph 7 (a) and (b) above, as appropriate, consistent with decisions 5/CMP.2 and 1/CMP.3.¹⁰

19. The German Act to establish the legal capacity of the Adaptation Fund Board in Germany (2011) conferred the legal capacity to (i) contract, (ii) to acquire and dispose of movable and immovable property and (iii) to institute legal proceedings on the Board. Article 1 (a)¹¹ mentions the Kyoto Protocol. While it does not appear to require amendment considering that the Act states the fact that the Fund was established by the CMP, further legal assessment on this matter will

⁹ FCCC/KP/CMP/2008/11/Add.2, Annex III.

¹⁰ Decision 1/CMP.4, paragraph 11.

¹¹ The Adaptation Fund Board, the operating entity of the Adaptation Fund established by the Conference of the Parties meeting as the Meeting of the Parties to the Kyoto Protocol under the United Nations Framework Convention on Climate Change concluded on the 11th of December 1997

be necessary to confirm this, during the intersessional period between the thirty-third and thirty-fourth meetings, which will serve as the basis for an analysis to be presented by the secretariat to the Board for review at its thirty-fourth meeting.

3) Any other matter so as to ensure that the Fund serves the Paris Agreement smoothly

20. Other matters that may be considered in preparation of the Board's consideration and recommendations on the Fund's policies and guidelines (other than those mentioned in section III. 1) and 2)) with a view to ensure that the Fund serves the Paris Agreement smoothly are the following but may require further review during the intersessional period between the thirty-third and thirty-fourth meetings, following which the secretariat could present an analysis to the Board for review at its thirty-fourth meeting:

- [Code of Conduct of AFB](#)
- [Zero Tolerance Policy for the Board](#)
- [General guidelines for Committees](#)
- [PPRC ToR](#) and [EFC ToR](#)
- [Accreditation Panel ToR](#)
- [Risk Management Framework](#)
- [Environmental and Social Policy](#) (ESP) (approved in 2013 and amended in 2016): The Board may consider the Parties' views suggested during the negotiation.
- [Gender Policy and Action Plan](#) (adopted in 2016): Update will be launched this year in accordance with Action Plan
- [Open Information Policy](#) (adopted in July 2013): This may need to be updated to be in line with the international best practices. CSOs (Transparency International) recommended features to be updated, including lack of appeal process, process of holding executive session, etc. During APA negotiations, there was a request to the Board to review 'disclosure policies.'
- [Ad Hoc Complaint Handling Mechanism](#) : During APA session, there was a request to the Board to review 'independent accountability mechanism.
- [Resource Mobilization Strategy](#) (adopted in 2016)
- [Medium-Term Strategy](#) 2018-2022: Will be updated in 2022-2023.
- [Methodologies for Reporting AF Core Impact Indicators](#) (adopted in 2014)

4) *Implications of the AF receiving the share of proceeds from activities under Articles 6, 12 and 17 of the Kyoto Protocol when the AF serves the PA*

21. The Board may want to consult with the trustee and possibly with the UNFCCC Secretariat on relevant matters including, among others, the ownership of the share of proceeds. Some relevant background information is contained in the Annex II to this document which is a note prepared by the World Bank on the implications of the Adaptation Fund serving the Paris Agreement and shared with the UNFCCC Secretariat for the discussions on matters related to Adaptation Fund in the 1.7 session of the Ad-hoc Working Group on the Paris Agreement (APA) in December 2018, in Katowice, Poland.

Draft Board Decision

22. The Adaptation Fund Board (the Board) may want to consider and decide:

- a) To request the secretariat to include, in the draft addendum to the report of the Board to the Conference of the Parties serving as meeting of the Parties to the Kyoto Protocol at its fifteenth session (CMP 15), possible Board's consideration and recommendations on the tasks mandated by the CMP through decision -/CMP.14 "Matters Relating to the Adaptation Fund," and submit them to the Board for consideration at its thirty-fourth meeting;
- b) To request the secretariat, in preparation of the Board's consideration and recommendations mentioned in the above subparagraph a), to consult with the UNFCCC Secretariat, the interim trustee (the World Bank) and GEF Secretariat on relevant matters; and
- c) To establish a task force composed of [the following members of the Board] to guide the secretariat's preparation of the draft report contained in subparagraph a) above.

ANNEX I: MATTERS TO BE CONSIDERED BY THE BOARD RELATED TO DECISION -/CMP.14 AND DECISION -/CMA.1 TITLED “MATTERS RELATING TO THE ADAPTATION FUND”

Introduction

1. This annex represents some of the issues that may be considered during the preparation of the document on the Board's consideration and recommendation on the tasks mandated by the Conference of the Parties serving as meeting of the Parties to the Kyoto Protocol (CMP). The document will be submitted to the Board for consideration and decision at its thirty-fourth meeting in October 2019 and the approved document will be included in the addendum to the Board's report to the CMP 15. The information contained in this Annex is not intended to prejudice the content of the document to be presented to the thirty-fourth meeting and requires further review during the intersessional period between the thirty-third and thirty-fourth meetings to assess the content of such documents.

Matters to be considered by the Board related to decisions -/CMA.1 and -/CMP.14

1) The rules of procedures of the Board

2. The amendments to the RoP would be presented to the Board for consideration and decision at its thirty-fourth meeting in October 2019, and some of the CMP/CMA decisions that may be considered in preparing of the amendments to the RoP could include the following but require further review during the intersessional period between the thirty-third and thirty-fourth meetings to assess the content of such amendments:

- Decision 1/CMP.3 which served as a basis of the establishment of the RoP;
- The Fund shall serve the Paris Agreement (PA) under the guidance of, and be accountable to, the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) with respect to all matters relating to the PA¹²;
- The Fund shall exclusively serve the PA and shall no longer serve the Kyoto Protocol (KP) once the share of proceeds under Article 6, paragraph 4, of the PA becomes available¹³;
- When the Fund serves the PA, it shall be financed from the share of proceeds from the mechanism established by Article 6, paragraph 4, of the PA and from a variety of voluntary public and private sources¹⁴; and

¹² Decision -/CMA.1, paragraph 2 and Decision -/CMP.14, paragraphs 1.

¹³ Decision -/CMA.1, paragraph 3 and Decision -/CMP.14, paragraph 2.

¹⁴ Decision -/CMA.1, paragraph 5.

- Developing country Parties and developed country Parties that are Parties to the PA are eligible for membership on the AFB,¹⁵ and that the Fund still continue to receive the share of proceeds, if available, from activities under Articles 6, 12 and 17 of the KP.¹⁶

3. In amending the RoP the Board may want to bear in mind of the current 'transition period' where the Fund serves both the KP and the PA and the 'post-transition period' where the Fund exclusively serves the PA and no longer serves the KP once the share of proceeds under Article 6, paragraph 4 of the PA becomes available. There may be two options to reflect this in the RoP:

- Option 1: Producing two revised RoP which applies to transition period and post-transition period respectively; and
- Option 2: Producing one revised RoP which apply both to transition period and post-transition period.

4. Considering that the revised RoP needs to be adopted by the CMP and CMA as far as it applies to the transition period and by the CMA as it applies to the post-transition period, it might be more efficient to produce one revised RoP which encompasses both periods so that it applies both to transition period and post-transition period.

5. The Board may also want to consider how the 'trigger' for the Fund to start exclusively serving the PA and stop serving the KP is defined. Decision -/CMA.1, paragraph 3 and Decision-/CMP.14 indicates that the threshold for the Fund entering the post-transition period is when the share of proceeds under Article 6, paragraph 4, of the PA becomes available. However, further clarifications may need to be sought regarding, such as:

- Are additional CMP and CMA decisions needed for the Fund to stop serving the KP and start exclusively serving the PA when the share of proceeds under Art. 6, para.4 of the PA becomes available? If so, when the share of proceeds under Art. 6, para. 4 of the PA becomes available during intersessional period (between the COP sessions), and the CMP and CMA decisions are needed for the Fund to enter into the 'post-transition' period, how can this 'gap' will be bridged?
- Will the Fund stop serving the KP and start exclusively serving the PA 'automatically' (without CMP and CMA decisions)? Does the 'trigger' – "when the share of proceeds under Art. 6, para.4 of the PA becomes available"- need to be further defined? If the additional CMP and CMA decisions are not necessary, are there any actions to be taken by the Board to ensure the smooth transition from serving the KP and PA to exclusively serving the PA?

¹⁵ Decision -/CMA.1, paragraph 4 and Decision -/CMP.14, paragraph 4.

¹⁶ Decision -/CMP.14, paragraph 3.

6. Provisions of RoP that may be considered in preparing Board's consideration and recommendation on the amendments to the RoP may include:

- Section I, paragraph 1 [Scope]: The Board may want to consider and amend paragraph 1 of RoP in a way that the RoP applies to the conduct of the business of the Board, in accordance with not only decision 1/CMP.3 but also the relevant CMP decision and CMA decision related to the Fund serving the PA, and that the effective date of the amended RoP is the date of its adoption by the CMP and the CMA.
- Section II, paragraph 2 [Definition]: Possible amendments to the definitions may include those of 'Fund,' 'Board,' 'Member' and 'Alternate,' 'Secretariat' 'Parties,' 'Annex I Parties' and 'Non-Annex I Parties.'
- Section III, paragraphs 3-9 [Board]: Considering Decision -/CMA.1, paragraph 4 and -/CMP.14, paragraphs 4-5, paragraphs 3-9 will need to be amended in accordance with CMP 15 decision related to the eligibility for membership of the Board to be made in November 2019 considering the recommendation by the Subsidiary Body for Implementation.
- Section IV, paragraphs 10-16 [Officers]:
 - a) Paragraph 10 indicates the election of the Chair and Vice-Chair of the Board, with one being from an Annex I Party and the other being from a non-Annex I Party. This will need to be amended in accordance with CMP 15 decision related to the eligibility for membership of the Board to be made in November 2019 considering the recommendation by the Subsidiary Body for Implementation. In particular, 'developing country Parties and developed country Parties to the PA' need to be reflected in this paragraph.
 - b) Paragraph 15 may need to be revised to reflect that the Chair, or any member designated by the Chair, on behalf of the Board, reports to both the CMP and CMA during transition period, and reports to the CMA during post-transition period when the Fund exclusively serves the PA and no longer serves the KP. The Board also may consider whether to prepare and present a joint report to the CMP and the CMA, or separate reports to the CMP and CMA respectively during transition period. For efficiency and effectiveness, the Board may consider preparing and presenting a joint report to the CMP and the CMA for transition period, rather than separate reports.
 - c) Other parts under Section IV which are not mentioned (a) and (b) are related to the term of office of the Chair and Vice-Chair, function, authority and responsibility of the Chair, election of chairs and vice-chairs of working groups and committees, and the Board may want to consider them whether they need amendments in line with the decisions related to the Fund serving the PA.

- Section V, paragraph 17 [Secretariat]: The Board may want to consider paragraph 17 whether the enumerated function of the secretariat needs to be changed or updated in line with the decisions related to the Fund serving the PA.
- Section VI, paragraphs 18-25 [Meetings]: The Board may want to amend paragraph 18 by replacing “. . . in conjunction with sessions of the CMP . . .” with “. . . in conjunction with sessions of the CMP and CMA during ‘transition’ period when the Fund serves both the KP and the PA and in conjunction with sessions of the CMA during ‘post-transition’ period when the Fund exclusively serves the PA. . . .”
- Section XIII, paragraphs 44-51 [Decision-Making and Voting]: The Board may want to consider the section with a view to ensure the Fund serving the PA.
- Section XIV, paragraph 52-54 [Termination of Board Membership]: This section may need to be amended to reflect that the Board may propose the termination of the membership of member or alternate for stated reasons, to both the CMP and CMA during ‘transition’ period when the Fund serves both the KP and the PA and to the CMA during ‘post-transition’ period when the Fund exclusively serves the PA and stops serving the KP.
- Section XVIII, paragraph 64 [Amendments to Rules of Procedure]: This may need to be amended by replacing “. . . must be formally approved by the CMP” with “. . . must be formally approved by the CMP and the CMA during transition period when the Fund serves both the KP and the PA, and by the CMA during ‘post-transition period’ when the Fund exclusively serves the PA and stops serving the KP.
- Section XIX, paragraph 65 [Overriding Authority of the Kyoto Protocol]: This may need to be amended by adding “In the event of any conflict between any provisions of these rules and any provisions of the Paris Agreement, the Paris Agreement shall prevail” to the current provision.

2) Arrangements of the Fund with respect to the Paris Agreement

a) Strategic Priorities, Policies and Guidelines of the Fund (Annex I to OPG)

7. Paragraphs of the SPPG that may be considered in preparing the Board’s consideration and recommendations on amendments to the SPPG could include the followings but require further review during the next few months to assess the content of the amendments:

- **Background** section, paragraphs 1-4: This section may need to be amended to reflect the decisions related to the Fund serving the PA.
- **Strategic priorities** section, paragraphs 5-8:

- a) Paragraph 5 may need to be amended to reflect changes related to eligible Parties which can access the financial resources of the Fund. The eligible Parties are Non-Annex I country Parties to KP and developing country Parties to PA for transition period when the Fund serves both the KP and PA, and then developing country Parties to PA when the Fund exclusively serves the PA and no longer serves the KP. As of 25 January 2019, 185 Parties have ratified the PA of 197 Parties to the Convention. As of 25 January 2019, there are 192 Parties (191 States and 1 regional economic integration organization) to KP to the UNFCCC.
- b) Paragraphs 6-8 may need to be amended to add, inter alia, nationally determined contributions (NDCs)¹⁷ and/or sustainable development goals (SDGs) to the components to be considered in the projects and programmes funded under the Fund.
- c) 'adaptation communication' related CMA decision may need to be reflected in this section (Decision -/CMA.1 "Further guidance in relation to the adaptation communication, including, inter alia, as a component of nationally determined contributions, referred to in Article 7, paragraphs 10 and 11, of the Paris Agreement" mentions the AF (along with GCF, GEF, CTCN, and PCCB).
- **Strategic policies and guidelines**, section, paragraphs 9-17: Paragraphs 9-10 may need to be revised to reflect changes related to 'eligible Parties' (Non-Annex I country Parties to KP and developing country Parties to PA during transition period, and then developing country Parties to PA when the Fund starts exclusively serving the PA and no longer serves the KP. In addition, the Board may want to consider other paragraphs whether any changes need to be made to ensure the Fund serving the PA.

b) The MOU regarding secretariat services to the Adaptation Fund Board

8. Preparing a draft MOU regarding the secretariat services to the Adaptation Fund would require further review and consultation with GEF Secretariat and the World Bank which hosts the GEF Secretariat in the intersessional period between the thirty-third and thirty-fourth meetings. The secretariat will also seek to coordinate with the UNFCCC Secretariat's legal team in this process. Following further review during the intersessional period between the thirty-third and thirty-fourth meetings, the secretariat could present an analysis and proposal for a draft MOU regarding the secretariat services to the Adaptation Fund to the Board for review at its thirty-fourth meeting in October 2019.

¹⁷ See Decision -/CMA.1 "Further guidance in relation to the adaptation communication, including, inter alia, as a component of nationally determined contributions, referred to in Article 7, paragraphs 10 and 11, of the Paris Agreement."

c) Terms of Conditions of Service to be provided by the IBRD (the World Bank) as trustee for the AF

9. Considering the Fund currently serves the CMP and the CMA during transition period, and then exclusively serves the CMA when the share of proceeds from the mechanism established by Article 6, paragraph 4, of the PA becomes available, the Board may want to consider whether the delegation of signing authority from the CMP (and possibly CMA) to the Board through relevant decisions of CMP and CMA may contribute to expediency of the process of amending and/or entering into the new TOC with the trustee. This topic was raised in the APA negotiations in 2018, but that discussion did not result in conclusion. In considering this matter, it may need to be considered that the trustee (World Bank) may have to agree to this approach of delegating the signing authority from CMP to the Board. Some relevant background information is contained in the Annex II to this document which is a note prepared by the World Bank on the implications of the Adaptation Fund serving the Paris Agreement and shared with the UNFCCC Secretariat for the discussions on matters related to Adaptation Fund in the 1.7 session of the Ad-hoc Working Group on the Paris Agreement (APA) in December 2018, in Katowice, Poland.

3) Any other matter so as to ensure that the Fund serves the Paris Agreement smoothly

10. Other matters to be considered by the Board which were suggested during the APA negotiations (until COP24) are the followings but may require further review in the intersessional period between the thirty-third and thirty-fourth meetings and a draft would be presented to the Board for its review at its thirty-fourth meeting in October 2019:

- **Anti-money laundering system:** Although the Fund has yet to have a stand-alone anti-money laundering policy, it has considered this matter since 2012. At its 19th meeting, the Board considered effective mechanism to ensure that the follow-on use of funds does not contravene any Resolution issued by the United Nations Security Council or other sanctions regimes which may apply to the Fund's implementing entity. By decision B.21/15, the legal agreement between the Board and implementing entity was amended to reflect anti-terrorist financing and anti-corruption issues. In addition, by decision B.32/36, the Board decided to incorporate anti-money-laundering and countering the financing of terrorism into the list of supporting documents of the accreditation form: (i) Policies and procedure related to anti-money-laundering/countering the financing of the terrorism; (ii) Screening system which documents all individuals and/or organizations before the entity transfers money to them; and (iii) Decision-making process that the entity follows when it identifies risks related to any individuals and/or organizations.
- **Independent monitoring and evaluation system:** The Board may want to reiterate (if this was already reported to CMP) or report 'the operationalization of TERG' to the CMP.
- **A policy to open accreditation for multiple national implementing entities from a single developing country:** The Board may consider this matter considering the accreditation policy, country cap, and the Fund's financial sustainability and other relevant matters.

- **Enhancing complementarity and coordination with the entities entrusted with the operation of the Financial Mechanism and other funds, entities and channels of climate change financing outside the Adaptation Fund:** The Board may want to reiterate (as this has been included in its report to the CMP) the activities of the Board which aim to enhancing complementarity and coherence with other climate funds. In addition, the Board may consider any other ways to further enhance its achievement of this goal.
- **Ensuring efficient access to financial resources through simplified approval procedures and enhanced readiness support for developing country Parties:** The Board may reiterate its continued efforts related to this suggestion in its report to the CMP and consider any other ways to further enhance its achievement of this goal.
- **Legal personality of the Fund:** During the Ad-hoc Working Group on the Paris Agreement (APA) sessions in 2018, one of the suggestions included to confer legal personality to the Adaptation Fund. The Board may want to consider whether this would be beneficial and feasible considering the current operation of the Fund. The Board may want to consider this matter in the long-term in consultation with the UNFCCC Secretariat's legal team.

4) *Implications of the AF receiving the share of proceeds from activities under Articles 6, 12 and 17 of the Kyoto Protocol when the AF serves the PA*

11. The Board may want to consult with the trustee and possibly the UNFCCC Secretariat in preparing its Board consideration and recommendation on this matter during the next few months, among others, the ownership of the share of proceeds. Some relevant background information is contained in the Annex II to this document which is a note prepared by the World Bank on the implications of the Adaptation Fund serving the Paris Agreement and shared with the UNFCCC Secretariat for the discussions on matters related to Adaptation Fund in the 1.7 session of the Ad-hoc Working Group on the Paris Agreement (APA) in December 2018, in Katowice, Poland.

**ANNEX II: Comments from the World Bank
(as interim trustee for the Adaptation Fund)
on the implications of the Adaptation Fund
Serving the Paris Agreement**

**Comments from the World Bank (as interim trustee for the Adaptation Fund)
On the implications of the Adaptation (AF) Serving the Paris Agreement**

UNFCCC Document References:

- *Document of the UNFCCC Ad Hoc Working Group on the Paris Agreement: “Revised additional tool under item 8 of the agenda: 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, Informal document by the co-facilitators, Second iteration.” (APA1.6.IN.i8.v3. 9 September 2018)*
- *Document of the UNFCCC Ad Hoc Working Group on the Paris Agreement: “UNFCCC Joint reflections note by the presiding officers of the Ad Hoc Working Group on the Paris Agreement, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation” (APA-SBSTA-SBI.2018.Informal.2.Add.4. 19 October 2018)*

I. The World Bank as AF Interim Trustee: Background and Context

Overview of AF Governance: The AF was established to finance concrete adaptation projects and programmes in developing countries that are parties to the Kyoto Protocol. It is supervised and managed by the AF Board and serviced by a Secretariat hosted in the World Bank (GEF Secretariat). The World Bank also serves as trustee of the AF, on an interim basis.

The services provided by the World Bank as interim trustee for the AF (the “Trustee”) are governed by Terms and Conditions of service agreed among the CMP and the World Bank. The Terms and Conditions were developed in close consultation among the AF Board and the World Bank, then approved by way of decisions of the CMP and the World Bank respectively. The original Terms and Conditions have been since amended four times, by this same approach. At the time of the original CMP decision in 2009 (1/CMP.4), the AF Board had not yet been conferred with legal personality and could therefore not enter into a contract or other legal arrangement with the World Bank. The current Terms and Conditions expire automatically on 30 May 2020, unless otherwise agreed in the same manner, i.e. by CMP decision and concurrence of the World Bank.

The Terms and Conditions provide authorization from the CMP to the Trustee to perform its functions. The CMP also delegated certain functions to the AF Board, including providing guidance to the Trustee on day to day activities of the Fund, e.g. on the process used by the Trustee for monetization of carbon assets (CERs), processing donations from Parties, transferring funds to Implementing Entities, reporting, and other services.

An important feature of the Terms and Conditions is that they establish that the Trustee is acting in the capacity as agent of the CMP. This is required for the monetization of AF’s carbon assets. In this respect, authorization to transfer CERs from the AF Share of Proceeds at the Clean Development Mechanism (CDM) to buyers of the CERs derives from the arrangement with the CMP (the Terms and Conditions), not from instructions, direction or additional guidance from the AF Board. Insofar as the AF Share of Proceeds are considered assets of the CMP, any decision by the CMP vis a vis the AF would

need to consider how these assets would be transferred, disposed of, or otherwise handled by the CMP. The Trustee has no agreement (Terms and Conditions) with the CMA (Paris Agreement, or PA). It is therefore not authorized to monetize carbon assets as its agent, nor perform other trustee services for the AF on behalf of the CMA.

II. Trustee Comments on the Options presented in UNFCCC Documents:

For all options presented, Parties may wish to ensure clarity among the roles of the AF and the roles of the AF Board.

Option 1: AF serves both Paris Agreement and Kyoto Protocol and is accountable to the CMP for KP matters and the CMA for PA matters.

“The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA), decides that the Adaptation Fund shall serve under the guidance of, be accountable to, and report to the CMA with respect to all matters related to the Paris Agreement as of COP 24. The CMA notes that the Adaptation Fund continues to serve the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP).”

Trustee Comment to Option 1: Under this option, the current Trustee Terms and Conditions with the CMP would remain effective and all trustee activities including CER monetization could continue without disruption. The Trustee would continue to take guidance and instruction from the AF Board on day to day activities and would have no separate arrangements with, or accountability to, the CMA. No further action would be required unless and until the Trustee was requested to perform additional services for the AF on behalf of the CMA (e.g. monetization of new carbon assets under Paris Agreement Article 6).

Option 2: AF serves both PA and KP and thereafter only PA. Firstly accountable to CMA and CMP, then when PA only accountable to CMA; CMP to confirm.

“The CMA decides that the Adaptation Fund shall serve the Paris Agreement from 1 January 2019 and be accountable to, report to and be under the guidance of the CMA.

The CMA recommends to the CMP that the Adaptation Fund shall continue to serve the Kyoto Protocol and also be accountable to, report to and be under the guidance of the CMP until [date][31 December 2022][31 December 2023].

The CMA also recommends to the CMP to decide that the Adaptation Fund shall exclusively serve the Paris Agreement from date mentioned in the paragraph above.”

Trustee Comment to Option 2: The current Terms and Conditions agreed among the Trustee and CMP would need to remain effective for the World Bank to continue to serve as Trustee for the AF. In

general, if Parties decide that the AF would serve only the PA, the following would be required for the trustee services to continue:

- i. New Terms and Conditions for trustee services would need to be agreed between the CMA and the Trustee, to replace the current Terms and Conditions with the CMP. The contents of any new Terms and Conditions would need to first be agreed with the World Bank as Trustee and the new arrangement made effective prior to or concurrent with the expiry of the current Terms and Conditions.
- ii. If the Trustee is no longer authorized by the CMP to monetize the AF Share of Proceeds (CERs) as an agent of the CMP, the CMP would need to decide on the disposition of the current (and any future) AF Share of Proceeds held at the Clean Development Mechanism (CDM).
- iii. If there are activities under the PA which require trustee services for the AF, a separate regime would be required based on the governance structure for such activities. However, to ensure clear accountabilities, only one unique agreement (Terms and Conditions) can be in place with the World Bank as trustee to cover all aspects of trustee services, including authorization to act as agent for the monetization of carbon assets either under KP or PA, holding and investing funds, transfers to implementing entities, etc.
- iv. If the CMA requests the Trustee to act as its agent for the monetization of AF Share of Proceeds (whether current or future), further due diligence, including review of tax, regulatory, legal and other issues may be required by the Trustee. This could result in a disruption of trustee service and additional cost to the AF.
- v. If “The CMA decides that the Adaptation Fund shall serve the Paris Agreement from 1 January 2019 and be accountable to, report to and be under the guidance of the CMA” without the existing Terms and Conditions with the CMP remaining in place, there would be a discontinuity in trustee services. This could have serious implications for the ability of the AF to function. The Terms and Conditions only terminates as specified by its terms or as otherwise agreed among the CMP and the World Bank (by way of CMP decision and concurrence by the World Bank).

Option 3: AF serves KP until [date] and thereafter it starts serving the PA.

“Decides that from 2020 the Adaptation Fund shall serve the Paris Agreement, subject to a CMP decision at CMP 15 (2019) that the AF serves the PA exclusively from 2020.

Decides that from that date the AF shall be under the guidance of, be accountable to, and report to the CMA.

The CMA recommends to the CMP 15 (2019), that the AF stops serving the KP from the date specified in the paragraph above.”

Trustee Comment to Option 3: All comments to Option 2 above apply to this option. In particular, a new arrangement (Terms and Conditions) with the Trustee would need to be drafted and effective prior to 2020 and such date further defined (e.g. January 1, 2020).

Option 4: AF is accountable to the CMP, and serves the KP and PA

“The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) confirms that the Adaptation Fund shall [serve and report to] [subject to the authority and guidance of] the CMA with respect to all matters related to the Paris Agreement as of COP 24. The CMA notes that the Adaptation Fund remains under the authority and guidance of and be accountable to the CMP, and that the CMP will transmit guidance from the CMA to the AFB.

[Placeholder for a CMA decision on a range of elements that clarifies the scope of the Adaptation Fund activities in relation to serving the Paris Agreement, i.e. clarifications in relation to decision 1.CMP/3, in relation to decision 1.CMA/1].”

Trustee Comment to Option 4: As with Option 1, the current Trustee Terms and Conditions with the CMP could remain effective and all trustee activities including CER monetization could continue without disruption. No further action would be required unless and until the Trustee was requested to perform additional services for the AF on behalf of the PA (e.g. monetization of new carbon assets under Article 6).