

### **Investment layer in draft NCQG decision**

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*This advice is provided in response to **Query 103/24***

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#### **Query:**

Under the existing finance goal, developed countries pledged to mobilize US\$100 billion annually by 2020 to address developing countries' needs. This goal was extended to 2025. Most of this finance has been provided in the form of public finance.

In the discussions related to the New Collective Quantified Goal on Climate Finance (NCQG), some of the options being put forward include a multi-layer approach of a core public finance goal, supplemented by other goals including investment flows to developing countries.

1. What, if any, legal issues might arise if an investment layer is included in the NCQG (given that such an element was not part of the 100bn goal)?
2. If such an element is included in the NCQG how could parties (contributors) be held accountable, especially for the quantity of these flows, bearing in mind that the reporting obligations under the UNFCCC/PA are addressed to Parties, i.e. countries and not the private sector.
3. In a scenario where the investment layer is agreed, what type of language would increase the possibility of holding governments accountable for reaching objectives set for this outer layer/investment goal.

#### **Advice:**

##### **Query 1**

If an investment layer is included in the NCQG, legal issues could arise due to the inclusion of private sector finance within what has traditionally been a government-focused commitment. Unlike the previous \$100 billion goal, which targeted public finance, the NCQG's expanded scope could blur the lines of accountability, as the private sector is not subject to the UNFCCC or Paris Agreement. This raises questions about how to clearly delineate the responsibilities of Parties versus non-state actors to achieve the NCQG.

In addition, COP decisions can only be binding on the Parties (i.e., countries) - when they are actually binding, which is not generally the case (for more on this see our advice [here](#)) - and including an investment layer into the NCQG could lead to concerns that it imposes commitments on non-state

actors. However, there is precedence for referencing the private sector in COP decisions. For example, the [Glasgow Climate Pact](#) “Calls upon multilateral development banks, other financial institutions and the private sector to enhance finance mobilization in order to deliver the scale of resources needed to achieve climate plans...” and also “Urges ... other bilateral and multilateral institutions, including non-governmental organizations and private sources, to provide enhanced and additional support for activities addressing loss and damage associated with the adverse effects of climate change.”

Based on the latest text of the NCQG ([DT.DD.CMA6.i11a.1](#) version 21/11/24 03:00), the references to non-state actors (such as the private sector) are framed in a similar way and there are no direct obligations imposed on them, at the international level at least. The situation could be different at the domestic level (see further below in relation to Q2).

In the first instance, developing countries could also try to argue that the inclusion of the investment layer deviates from Article 9 of the Paris Agreement which provides that “Developed country Parties shall provide financial resources to assist developing country Parties.” If there is pushback on this, the text could state that the investment layer is complementary, or in addition, to developed country Parties’ obligation to provide financial resources [under Article 9 paragraph 1 of the Paris Agreement].<sup>1</sup>

### Queries 2 & 3

If an investment layer is included in the NCQG, holding Parties accountable for the quantity of private finance mobilised may be challenging as:

- the NCQG is framed as a goal, rather than a legally binding obligation, meaning there are no direct sanctions for failing to meet the NCQG; and
- the private sector is not bound by the reporting obligations under the UNFCCC or the Paris Agreement.

However, to facilitate accountability for Parties in an NCQG that includes an investment layer, the transparency section in the NCQG decision could require Parties to transparently report their climate finance provided and mobilised, including those which have been contributed by the private sector.

We note that paragraph 56 of the latest version of the NCQG (version 21/11/24 03:00) invites the Subsidiary Body for Scientific and Technological Advice to develop transparency arrangements for tracking progress towards achieving the NCQG. If an investment layer is included, such transparency arrangements could include a regime which defines and distinguishes each source of finance (i.e., distinguishing private and public finance).

The Subsidiary Body for Scientific and Technological Advice or the Standing Committee on Finance could also be requested to establish specific guidelines for measuring and reporting private finance under the NCQG.

In addition, the NCQG decision could encourage Parties to develop and implement regulatory frameworks or mechanisms under which private sector entities within their jurisdiction report their climate finance contributions and activities related to the achievement of the NCQG to the government of that Party. As the reporting obligations under the UNFCCC and Paris Agreement are addressed to Parties, and not private entities, this option provides a means by which Parties could create an enabling regulatory framework within their national legal system which is capable of imposing reporting obligations on the private sector. This would respect the existing framework of the UNFCCC and Paris Agreement. However, we note that a uniform approach across all Parties may be challenging to

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<sup>1</sup> The reference to Article 9.1 of the Paris Agreement might not be acceptable to some countries, for more information on this see our advice [here](#).

implement, and overly burdensome reporting requirements may deter private investment flows. Some parties may argue that it is already possible to track these types of financial flows based on investments in certain types of mitigation activities (e.g. renewable energy investment).

The draft text already calls upon Parties to enhance enabling environments and policy frameworks to, inter alia, mobilise private investment (Paragraph 47(l)). To increase the possibility of holding governments accountable, the decision could require Parties to report on specific measures taken in accordance with Paragraph 47(l), such as domestic policies and incentives as part of their reporting requirements under the Transparency section of the latest decision text.

Additionally, the Review section of the decision could also be amended to enhance accountability. For example:

- instead of either a midterm review not commencing until one session before CMA 13 in 2031, or as part of the GST, a separate, more frequent review process (such as biennial) would allow for more regular assessments of progress;
- the review process could consider progress towards achieving the NCQG, including financial mobilisation from both public and private sources, and the effectiveness of enabling environments and policy frameworks established by Parties to mobilise private investment;
- the Standing Committee on Finance or another independent body could be tasked with the review process to ensure impartiality; and
- the review process could engage a broad range of stakeholders, including civil society, the private sector, and international financial institutions, to provide feedback on the adequacy of the NCQG and its implementation.