The Paris Agreement goal on finance flows*

The Paris Agreement is different in multiple respects from the two earlier multilateral climate treaties, the United Nations Framework Convention on Climate Change (the Climate Convention) and the Kyoto Protocol. Among these differences, the goal of making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development (in Article 2.1c) may be one of the most significant innovations contained in the Agreement. The goal acknowledges that the collective response to climate change requires not only financial assistance from developed to developing country parties, but also a broader transformation of global finance to align it with mitigation and adaptation objectives.

This briefing provides an overview of the Article 2.1c goal on finance flows and an introduction to the legal implications of this goal. It will be seen that the goal has legal salience on multiple levels, including within the UNFCCC process, in the realm of Party implementation through domestic legislation and regulation and through international institutions and transnational initiatives. For the time being, it remains an open question if and how the UNFCCC process will itself specifically address the achievement of the finance flows goal.

Negotiating background and interpretation

The Paris Agreement identifies three long-term goals, the achievement of which are necessary for realising the stated aim 'to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty' (Article 2.1). The most well-known of these goals is the limitation of global average temperature increase to 'well below 2 °C' while trying to achieve the more ambitious 1.5 °C limit (Article 2.1a). The second goal is to increase the 'ability to adapt to the adverse impacts of climate change' (Article 2.1b). The third long-term goal is the subject of this briefing: 'Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development' (Article 2.1c). The negotiating history[1] underlines that each of the components of Article 2.1, including its chapeau, are integral to the Agreement's purpose and should not be construed in isolation from the other components.[2]

The Article 2.1 goals acquire their legal force from their prescribed relationship with other provisions of the Agreement. Article 2.1 has been described

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1 See L.H. Zamarioli, *et al*, 'The climate consistency goal and the transformation of global finance' (2021) 11 *Nature Climate Change* 578, https://www.nature.com/articles/s41558-021-01083-w

2 H. Thorgeirsson, 'Objective (Article 2.1)', in D. Klein, *et al* (eds), *The Paris Agreement on Climate Change: Analysis and Commentary* (OUP 2017) 127.

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as 'legally non-prescriptive' in and of itself,[3] as it is limited to setting out what the Agreement 'aims' to do. However, Article 3 provides: 'As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4 [mitigation/Nationally Determined Contributions], 7 [adaptation], 9 [finance], 10 [technology], 11 [capacity-building] and 13 [transparency] with the view to achieving the purpose of this Agreement *as set out in Article 2*. The efforts of all Parties will represent a progression over time…' (emphasis added).

One particular question of interpretation has been the relationship between Article 2.1c and Article 9 of the Agreement. The latter provides *inter alia* for developed Parties (Article 9.1) and other Parties (Article 9.2) to provide financial support to developing Parties for mitigation and adoption and also for the role of the Financial Mechanism (which has the Global Environment Facility and the Green Climate Fund as its operating entities) under the Agreement (Article 9.8-9.9). Finance mobilisation under Article 9 is '[o]ne of the tools' to achieve the finance flows goal[4] but it is not the only one. The requirement for Parties to take action to achieve the Article 2.1c goal cannot be limited to activities pursuant to Article 9 and also requires from Parties 'ambitious efforts' concerning mitigation/NDCs, adaptation, technology development and transfer, capacity-building and transparency in pursuit of the Article 2 purpose, including the finance flows goal.

The goal in the UNFCCC processes

Currently, the finance flows goal is taken into account in several processes under the Paris Agreement. Parties can include finance flows policies and measures in their NDCs (although the UNFCCC Secretariat's 2016 INDC synthesis report and the advance version of the 2021 NDC synthesis report do not capture any such content). Additionally, the 'long-term low greenhouse gas emission development strategies' which the Paris Agreement encourages all Parties to formulate, 'mindful of Article 2' (Article 4.19), are also opportunities to set out Party approaches to the 2.1c goal.[5]

Party reporting under Article 9.5 of the Paris Agreement has addressed efforts to achieve the Article 2.1c goal. Article 9.5 of the Agreement provides: 'Developed country Parties shall biennially communicate indicative quantitative and qualitative information related to paragraphs 1 and 3 of this Article, as applicable, including, as available, projected levels of public financial resources to be provided to developing country Parties. Other Parties providing resources are encouraged to communicate biennially such information on a voluntary basis.' Paragraphs 1 and 3 respectively concern developed Parties' provision of financial support to developing Parties and mobilization of various forms of climate finance.

In the first round of Article 9.5 communications,[6] many Parties included reporting on efforts to achieve Article 2.1c. The UNFCCC Secretariat's synthesis report notes that '[m]any Parties have made high-level commitments to implementing' the finance flows goal, with reported measures in the areas of green recovery from the COVID-19 pandemic, climate-related financial disclosure, climate budget tagging, promoting climate-friendly financial instruments, phasing out fossil fuel subsidies and carbon pricing.[7] Parties also 'indicated that developing countries should be supported in implementing Article 2, paragraph 1(c), of the Paris Agreement, including through capacity-building and technical assistance for fiscal and macroeconomic policymaking',[8] and noted the importance of multilateral development banks, financial regulators, central banks, commercial banks 'and indeed the financial sector as a whole' to achieving the Article 2.1c goal.[9] This summary indicates the breadth of Party activity, including using legal and regulatory tools, addressing finance flows.

The global stocktake (GST) is 'to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals' (Article 14.1). Assessment of progress towards the finance flows goal and opportunities for enhanced action and support is an integral component of the GST. The CMA decided that 'sources of input for the global stocktake will consider information at a collective level on', *inter alia,* '[t]he finance flows, including the information referred to in Article 2, paragraph 1(c), and means of implementation and support and mobilization and provision of support'.[10] As inputs to the GST, the UNFCCC Secretariat has been requested to produce a synthesis report on the Article 2.1c goal and means of implementation,[11] while relevant UNFCCC constituted bodies, including the Standing Committee on Finance (SCF), have been invited to produce synthesis reports within their 'areas of expertise'.[12]

3 R. Bodle and S. Oberthür, 'Legal Form of the Paris Agreement and Nature of its Obligations', in D. Klein, *et al* (eds), *The Paris Agreement on Climate Change: Analysis and Commentary* (OUP 2017) 98.

4 Thorgeirsson, 'Objective (Article 2.1)', 128.

5 https://unfccc.int/process/the-paris-agreement/long-term-strategies

6 https://unfccc.int/Art.9.5-biennial-communications

7 First biennial communications in accordance with Article 9, paragraph 5, of the Paris Agreement. Compilation and synthesis by the secretariat (advance version), para. 92 and Annex VI, https://unfccc.int/documents/278119

8 Ibid, para. 93.

9 Ibid, para. 32, 39, 44.

10 Decision 19/CMA.1, para. 36.d.

11 Ibid, para. 23.d.

12 Ibid, para. 24.

In addition to Article 9.5 reporting and the GST, an additional opportunity to collate and assess information regarding the finance flows goal is provided by the Paris Agreement's enhanced transparency framework. This includes a framework for transparency of action 'to provide a clear understanding of climate change action in the light of the objective of the Convention as set out in its Article 2' (Article 13.5). Although the modalities, procedures and guidelines for the transparency framework do not address Article 2.1c explicitly,[13] it is open to Parties to report on financial flows measures as both mitigation and adaptation actions, as relevant. The first biennial transparency reports under the framework must be submitted by the end of 2024.[14]

Reporting on the Article 2.1c goal is also provided through the SCF's biennial assessment and overview of climate finance flows. The general outline of the fourth BA technical report provides for a chapter on 'Mapping information relevant to' Article 2.1c.[15]

Domestic implementation and multilateral cooperation

Achieving the finance flows goal will require significant legal and regulatory reform within Parties. Financial regulation and other domestic levers are indispensable for achieving the historic redirection of finance that Article 2.1c foresees. Domestic rulemaking is therefore a key locus of activity on finance flows, complemented by multilateral and bilateral initiatives and support and by norm development in transnational markets.

In the case of the European Union, for example, the Article 2.1c goal has been explicitly identified as context for recent sustainable finance regulation. The 2020 taxonomy regulation, which establishes a framework for classifying investments as sustainable, notes: 'Article 2(1)(c) of the Paris Agreement aims to strengthen the response to climate change by making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development, among other means. In that context, on 12 December 2019, the European Council adopted conclusions on climate change. In light thereof, this Regulation represents a key step towards the objective of achieving a climate-neutral Union by 2050'.[16]

Related measures include the creation of the 'EU Paris-aligned Benchmark', referring to indices the underlying assets of which are 'aligned with the objectives of the Paris Agreement'.[17] More broadly, the European Council has also set out the 'general principle' that 'all EU expenditure should be consistent with Paris Agreement objectives'.[18] The EU continues to take the Paris finance flows goal into account in the further elaboration of its legal frameworks. For example, the European Commission's July 2021 proposal for a regulation on European green bonds notes that '[t]his legislative proposal aims to … contribute to meeting the Union's climate and environmental objectives in accordance with Article 2(1)c of the 2016 Paris Agreement on climate change', *inter alia*.[19]

The incorporation of the finance flows goal into the financing frameworks of multilateral development banks (MDBs) is a growing area of party cooperation. MDB frameworks are both an example of collective rulemaking by member states and signify the embedding of sustainable finance standards into contracts with states and other counterparties. Recent MDB climate strategies generally target some form of alignment with the Paris goals. For example, the World Bank Group's (WBG) 2021-2025 'Climate Change Action Plan' commits the WBG to 'align its financing flows with the objectives of the Paris Agreement', with 'all new operations' to be aligned by mid-2023.[20] On what alignment will mean in practice, the plan states that the WBG is 'developing rigorous methodologies to assess alignment' and will present its approach at COP26.[21]

It is rarer for an MDB to explicitly address the 2.1c goal in its programming. As an example of this, the Asian Infrastructure Investment Bank's (AIIB) Climate Change Investment Framework, developed together with Amundi Asset Management, 'translates the three [Article 2.1] objectives of the Paris Agreement into fundamental metrics that investors can use to assess an investment's level of progress towards achieving climate change mitigation, adaptation, and low-carbon transition objectives'.[22]

13 Decision 18/CMA.1.

14 Ibid, para. 3.

15 https://unfccc.int/SCF

16 Regulation 2020/852 on the establishment of a framework to facilitate sustainable investment, preambular recital (3), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32020R0852

17 Regulation 2019/2089 amending Regulation (EU) 2016/1011 as regards EU Climate Transition Benchmarks, EU Paris-aligned Benchmarks and sustainability-related disclosures for benchmarks, Art. 1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R2089

18 European Council Conclusions, 17, 18, 19, 20 and 21 July 2020, para. A21, https://www.consilium.europa.eu/en/press/press-releases/2020/07/21/european-council-conclusions-17-21-july-2020/

19 Proposal for a Regulation on European green bonds, explanatory memorandum, p.1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0391

20 World Bank Group, 'Climate Change Action Plan 2021-2025', 2021, p.15, https://openknowledge.worldbank.org/handle/10986/35799

21 Ibid.

22 Working Paper: Climate Change Investment Framework, AIIB Asia Climate Bond Portfolio Case Study, AIIB/Amundi Asset Management, 2020, p.5, https://www.aiib.org/en/policies-strategies/framework-agreements/climate-change-investment-framework/index.html

For each of the three Article 2.1 goals, the framework identifies economic opportunities/risks and investment metrics. The consistency of an investment with the finance flows goal is measured according to risk exposure ('What percentage of a company's revenue stream originates from products and services identified as climate change solutions?') and risk management ('Is the company taking steps to increase the proportion of its green revenue that corresponds to products and services designed for a low-carbon and climate resilient economy?').[23]

Financial markets and transnational cooperation

In addition to work to achieve the finance flows goal through UNFCCC processes and party implementation, the goal is also reflected in a growing host of transnational initiatives driven by financial regulators or by market and other non-state actors. Prominent examples of these initiatives include the Task Force on Climate-Related Financial Disclosures (TCFD), the Green Bond Principles of the International Capital Market Association and the Climate Bonds Standard of the Climate Bonds Initiative.[24]

These processes often have legal salience for parties, because they influence the terms of financial transactions through the standardisation of sustainable finance norms, e.g. for the issue of bonds. They may also inform domestic reform of law and regulation. Many of these initiatives proceeded the 2015 adoption of the Paris Agreement and, indeed, they provided compelling background for the unprecedented creation of a goal on finance flows. The Paris Agreement has nevertheless spurred the creation of further initiatives – and the strengthening of prior standards and processes – to make finance consistent with mitigation and adaptation.

The way ahead?

Despite its significance as one of the three long-term Paris goals, there remains no UNFCCC process dedicated to finance flows. As a result, some are advocating for a dedicated process under the Paris Agreement and there are several proposals to address this through, for example, the creation of a 'work programme … with the aim of assisting all Parties, in particular developing countries, to improve understanding of Art. 2.1(c) and to make informed decisions on practical actions for a context-relevant and economically sound implementation'.[25]

An agenda item of some kind dedicated to Article 2.1c could create valuable space for the exchange of experiences, good practices and lessons learned regarding efforts on finance flows, including through law and regulation. Building on the growing experience in mainstreaming the Paris objectives into financial decision-making, deliberations under the Paris Agreement could further provide a forum for the exchange of good practices and the development of recommendations for multiple legal processes at the international, transnational and domestic levels such as legislation, regulation or contractual standards.

The 2.1c goal looks toward a global financial system which is aligned with the mitigation and adaptation requirements for a safe future for humanity. If the international community finds ways to effectively pursue and eventually achieve this goal, terms like 'climate finance' and 'green bonds' may become as redundant as 'horseless carriage'. All finance flows will have become 'climate finance', in the sense that they are consistent with climate-safe outcomes instead of exacerbating climate change. In the many years until this is achieved, of course, 'climate finance' as traditionally conceived will continue to be required.

23 Ibid, p.12.

24 For a broad survey of relevant initiatives and activities, see ODI/WRI/RMI/E3G, 'Making finance consistent with climate goals', December 2018, https://www.wri.org/research/making-finance-consistent-climate-goals

25 Zamarioli, *et al*, 'The climate consistency goal', 582.

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