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## ‘Under the Authority of the COP’?

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In the current negotiations on the future institutional arrangements for international public climate change finance, one of the most controversial issues that divides developed and developing countries is the concept of ‘authority’, or more precisely, of being ‘*under the authority of the COP*’ (Conference of Parties of the UNFCCC).

This division is by no means new. It dates back to at least the negotiations of the Kyoto Protocol’s Adaptation Fund (AF), where developing countries insisted that the AF Board (AFB) should not only be *under the guidance of* and *accountable to* the relevant UN body (*viz.* the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, or CMP – the governing body of the Kyoto Protocol), but *also under its authority*. This was in reaction to dissatisfaction among developing country with the performance of the Global Environment Facility (GEF) as an operating entity of the UNFCCC financial mechanism, particularly with respect to a wide-spread frustration with regard to non-observance of COP guidance.<sup>2</sup>

The very same issue has resurfaced in the context of how a proposed Executive Board or Body (EB) for the UNFCCC financial mechanism should relate to the COP. The majority of developed countries that have a position on this issue insist that the relationship of the EB to the COP should be modelled on the GEF/COP relation (guidance + accountable), while the G77+China insists that the AFB/CMP model should be followed (guidance + accountable + *authority*). Indeed, the issue of COP authority over an EB (or any climate change finance body) seems to have become a ‘red line’ issue for both sides – a situation which at first sight might not look too promising for the finance negotiations. However, this particular division might be easier to bridge than many of the other differences that threaten success at the Copenhagen COP later this year.

### The Concept of ‘being under the Authority’

What exactly does being ‘under the authority (of the COP)’ mean? In the UNFCCC context, the phrase lacks an explicit definition, leading to widely divergent views of what it means and more importantly, what *others take it to mean*. Unfortunately, as is more often than not the case in these negotiations, this simply reflects the considerable distrust and inability to communicate between the different actors. However, it also leaves open the possibility that there might be a commonly acceptable interpretation of the phrase.

While there is no explicit definition, the phrase has been used to characterize the relationship of the AFB to the CMP. It can be seen as referring to all the characteristics of that relationship over and above the one between the GEF and the COP.<sup>3</sup> In that sense, Decision CMP.3/1 on the Adaptation Fund can be seen as providing an *implicit definition* of the term, which is why a closer look at that decision is warranted.

### The Bali Adaptation Fund Decision CMP.3/1

The first of the Bali CMP decisions starts by designating the Adaptation Fund Board (AFB) as an *operating entity* to *supervise and manage* the Adaptation Fund, and stipulating that it shall be *under the authority and guidance of*, and *fully accountable to* the CMP. It then turns to define twelve permanent functions of the AFB. Of these, three involve the COP, while the rest are functions in the exclusive remit of the AFB. All but one of the latter – *viz.* responsibility for monetizing CERs – are functions that are also carried out by the GEF, key among them:

- *To decide on projects, including the allocation of funds, in line with the AF principles, criteria, modalities, policies and programmes, ...*
- *To develop and decide on specific operational policies and guidelines, including programming guidance and administrative and financial management guidelines, ..., and to report to the CMP;*
- *To develop criteria based on principles and modalities ... to ensure that the implementing and executing entities have the capacity to implement the administrative and financial management guidelines of the AF, and report on it to the CMP; and*
- *To regularly review performance reports on implementation and ensure independent evaluation and auditing of activities supported by the AF.*

The three functions which, by contrast, do require CMP assent are:

- *To develop strategic priorities, policies and guidelines, and recommend their adoption to the CMP;*
- *To develop and agree on additional rules of procedure to those included in this decision and recommend these for adoption by the CMP; and*
- *To develop and approve draft legal and administrative arrangements for secretariat services and the trustee for approval by the CMP.*

Importantly, these are ‘one-off’ functions with only a single interaction with the CMP. Thereafter, the CMP has no direct involvement in the functions of the AFB. This means that – apart from a number of start-up approvals of basic rules and criteria – the meaning of ‘being under the authority’ implied by the AFB Decision is *nothing more than the right to select the members of subordinate body* in question. The fear of COP micromanagement if the financial mechanism were to be ‘under the authority’ of the COP is therefore not well-founded, and the perceived threat can be completely dissipated by an *explicit separation of the functions* of the COP and of the envisaged Executive Board of the financial mechanism, which not only explicitly stipulates what the two entities can do, but also what respectively they *cannot do*.

Before turning to some of the reservations that have been raised to the idea that the COP would have the authority to ‘hire and fire’ the members of the Executive Board, it is useful to have a look at the experience of the AFB which is under the authority its governing body.

### Adaptation Fund Progress<sup>4</sup>

While the first two meetings of the AFB were bedevilled by ‘political’ problems – to do not only with the usual North/South issues, but also with the relation of the AFB and its secretariat service provider (GEF) – the atmosphere in the meetings soon after started to improve considerably, not least because everyone realized that there was a considerable job to be done to get the AF off the ground.

During its seventh meeting (AFB 7 in Bonn from 14 to 16 September 2009), the AFB made critical progress towards full operationalisation, particularly with respect to the idea of ‘direct access’ to funding, without the need for multilateral implementing entities to serve as intermediaries. The *Provisional Operational Policies and Guidelines for Parties to Access Resources from the Adaptation Fund*, the main document that lays out how funds are to be accessed under the AF, was finalised at AFB 7.

One of the core elements in the direct access model which the Adaptation Fund Board is developing are *National Implementing Entities* (NIEs). Traditionally, international funding has been channelled through bilateral aid agencies or international *implementing agencies* such as the World Bank, UNDP etc. Under the AF, however, countries can directly access the funds by nominating an NIE, which will receive the AF resources to be used for in-country activities. NIEs will generally not be the executors of activities (projects/programmes) on the ground, but will have financial and fiduciary oversight function over activities carried out with AF resources, functions which have traditionally been performed by the multilateral implementing agencies.

The challenge in developing these standards has been to balance the need for standards which ensure sound fiduciary management with the need to avoid setting up barriers which impede direct access for many vulnerable developing countries. AFB 7 fine-tuned the standards that has been broadly agreed in previous meeting, made consistency checks, and *approved the document by consensus*.

While the direct access model of the AF still retains the actual funding decisions centrally at the AFB level, the NIEs clearly could very easily become the *National Funding Entities* envisaged in the RFM model and the Indian proposal.<sup>5</sup> Indeed, as concerns the eligibility criteria to participate in the AF direct access, including the fulfilment of international fiduciary standards, the AF has managed to provide an important precedent for the RFM model.

### **The Key to (the AFB) Success**

The fact that the strategic priorities, the rules of procedure, and the draft legal and administrative arrangements for secretariat services and the trustee sailed through the CMP in Poznan,<sup>6</sup> and more importantly, that the developing country Parties in the CMP have taken genuine ownership of the AF is due to one key factor, namely that they trust their own representatives on the AFB, that they know *their interests were properly represented* in the drafting of these documents.

One of the most frequent objections to the selection of members of an EB by the COP is that it would not select the ‘right’ people for dealing with the sort of issues an EB of the financial mechanism would have to deal with. That, of course, all depends what type of functions one envisages an EB to perform. Obviously, if these functions *require detailed technical expertise* of some form or other – such as would be needed in the assessment of project/programme proposals – then the objection might be pertinent. However, given the projections of the magnitude of funding needs (upper tens of billions), it is clear that funding decisions could not be retained at the international level but would have to be devolved to the country level (as envisaged in the Indian proposal and the RFM). To put it more provocatively: the current practice centralised decision-making on what gets funded through multilateral funds is an option only if no significant increase in the level of funding is envisaged.

In the case of the proposed Reformed Financial Mechanism the two key functions of an EB would be:

- to *supervise, on behalf of the COP, the drafting of key rules/criteria* (such as needed for disbursement of funding to the designated funding entities), and

- to *oversee, on behalf of the COP, the operating entity/ies* of the financial mechanism once these are operational.<sup>7</sup>

In other words, the key functions of the RFM EB would not be technical. They are *political functions delegated by the COP*. For this essential delegation to work, it is key that Parties and Party groupings in the COP are convinced *their interests are properly represented* in this supervisory and oversight body.

The very different experiences with existing operating entities (GEF, AFB) strongly suggests that this requires an EB to be ‘under the authority of the COP’ in the AF sense of the term. Unless this is the case, the system is unlikely to inspire the required level of trust among developing country Parties, even if the members of these independently existing bodies represent the same countries/groupings.<sup>8</sup> It is also unlikely to work if members are selected by the COP but not delegated the powers/functions mentioned above. It is highly doubtful whether existing entities with their own rules and procedures would be willing/able to submit to such a regime.<sup>9</sup> The key to resolving the COP authority controversy is to agree on the key functions of the envisaged EB and to genuinely ascertain whether one would trust the AF model in this context.

## Conclusions

It can be argued that for the climate change negotiations, the concept of ‘being under the authority’ is (implicitly) defined in the Bali Adaptation Fund Decision (CMP.3/1) where the Adaptation Fund Board (AFB) is stipulated to be not only accountable to and under the guidance of the CMP (the governing body of the Kyoto Protocol) but also under its authority. By contrasting this relation to that between the COP and the GEF (accountability + guidance only), it is possible to infer two key features of what ‘under the authority’ is implied to mean in terms of an Executive Board (EB) of the financial mechanism, namely that the COP has:

- (i) the authority *to select* (‘hire and fire’) *the members* of the EB, and
- (ii) the authority *to approve general rules and guidelines* proposed by EB.

Such an arrangement has the potential to generate trust among the Parties that their interests are adequately represented in the EB, which in turn is why they would be willing to delegate all operational functions to the subordinate body. Without this trust, it is also unlikely that they would delegate the EB to oversee the operating entities of the financial mechanism, which is the only way to overcome problems such as the ones that have persistently bedevilled the relationship between the GEF and the COP.

Contrary to the fears expressed by some Parties, there is actually no chance of COP ‘micromanaging’ the operations of the financial mechanism under this interpretation of being under COP authority, particularly if the separation of functions/powers between the COP and the EB is made explicit by stipulating what each of the two entities can and cannot do. As witnessed by the latest achievements of the AFB, this sort of governance can be very effective. The fact that the AFB has managed to create a set of international fiduciary standards and accreditation criteria for the envisaged national designated implementing entities speaks for itself: prior to the establishment of the AFB, this sort of North-South consensus would have been unthinkable.

## Endnotes

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<sup>2</sup> For more on this, see, for example, Möhner, A. and Klein, R. J. T. (2007), ‘The Global Environment Facility: Funding for Adaptation or Adapting to Funds?’

<http://sei-international.org/?p=publications&task=view&pid=777>

<sup>3</sup> COP to GEF = guidance + accountable; CMP to AFB = guidance + accountable + *authority*.

<sup>4</sup> This section is largely based on Sven Harmeling and Alpha Kaloga, “Adaptation Fund: Critical progress at the 7th Meeting”, Germanwatch, September 2009

<sup>5</sup> For more on the RFM proposal, see, for example, Benito Müller, “Is There Room for Compromise? The debate on institutional arrangements for climate finance” Oxford Institute for Energy Studies, *Energy and Environment Comment*, October 2009, available at

<http://www.oxfordclimatepolicy.org/publications/mueller.html>

<sup>6</sup> The only real debate erupted over the relationship of the AFB with the GEF as service provider, and the World Bank as Trustee. The former was resolved by putting the secretariat unit (provided by the GEF Sec) under the guidance and *instruction* of the AFB.

<sup>7</sup> Note that one of the key insights behind the RFM model is that the COP is simply not the sort of body that can carry out effective oversight, and that consequently this function has to be delegated to a trusted oversight body, i.e. the EB.

<sup>8</sup> The point here is that UNFCCC delegates are not necessarily selected by the same domestic agencies as those that are sent to the other existing bodies, and that consequently they may have different points of view: finance and economics ministry officials not always see eye to eye with their colleagues from environment or development agencies. If one is therefore of the opinion that an EB should be populated by finance ministry officials, then one should put them forward for selection by the relevant COP constituencies, as opposed to foist them on the COP as externally selected representatives. Note that in the case of single Party constituencies – which are likely to include all the major Parties – it would be the respective governments who select their EB member, and they are completely free to decide which agency they are from.

<sup>9</sup> For example, even if the World Bank CIF Committees were to be selected by the COP, it is highly unlikely whether the WB would be able/willing to accept operational procedures other than their own.