<u>**Outcome Report:**</u>

Legal Roundtable on Article 2.1(c) of the Paris Agreement

Co-convened by King's College London and Aviva Investors on 21 February 2020

The Paris Agreement contains three objectives. The first two relate to limiting global temperature rise and enhancing climate resilience (Articles 2.1(a) and (b)). The third objective calls for "…making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development" (Article 2.1(c)). Achieving this consistency of direction for *all finance* flows (and not just public capital or project finance) towards green, sustainable and resilient development will be an essential part of meeting Paris objectives. Yet currently there is an absence of imperative and specificity for interpreting and implementing Article 2.1(c). The Paris Agreement does not specifically operationalise this objective, and governments and other stakeholders are largely unaware of what tools they need to map their progress in responding to it. It is not yet clear how best to monitor finance flows in-country or assess "distance to target"[1] for alignment with countries' Nationally Determined Contributions (NDCs) let alone the Paris 2°C ceiling. Moreover, operationalising Article 2.1(c) may necessitate fundamental shifts in the entire financial system, which is more starkly appreciated in a COVID-19 impacted world. Heading into COP26 in Glasgow and beyond, we need leadership on how this complex task could be achieved.

This outcome report summarises the main findings from a legal specialist roundtable co-convened by King's College London and Aviva Investors on 21 February 2020. The agenda and participating organisations of the roundtable are annexed. The purpose of the roundtable was twofold:

(1) To analyse legal and practical dimensions of Article 2.1(c) regarding its legal bindingness on Parties to the Agreement and key considerations for its operationalisaton; and

(2) To discuss legal and practical considerations regarding the potential creation, purpose, value-add, and placement of a proposed International Platform on Climate Finance (IPCF). The IPCF proposal aims to support implementation of Article 2.1(c). It is being developed by a coalition of business and civil society (the IPCF Coalition), and arose initially from Aviva's *Marshall Plan for the Planet*.[2]

[1] Nick Robins (2018) 'Making Finance Climate-Consistent: How Could the UK Implement Article 2.1.c of the Paris Agreement?' *LSE Commentary* (24 Sept 2018).

[2] Aviva, *A Marshall Plan for the Planet: How governments and the private sector must work together to finance the Global Goals* (2019), marshall-plan-for-the-planet.pdf

Aviva Investors: Public

The roundtable was held prior to the COVID-19 global pandemic and therefore the discussions that are documented in this report did not cover its potential impacts. However, this expert dialogue on operationalising Article 2.1(c) shows that making all finance flows consistent with the objectives of the Paris Agreement could provide the foundation for recovery and stimulus packages around the world. As stated recently by Mark Carney, UN Special Envoy for Climate Change and the UK Primeminister's Finance Adviser for COP26, "The current tragedy [of COVID-19] proves that we can't wish away systemic risk; and we need to invest upfront in order to avoid disaster down the road."[3] The current pandemic presents an unprecedented learning opportunity for financial decision-makers in the context of addressing climate change.

1. Legal Bindingness of Art 2.1(c) on Parties to the Paris Agreement

The Paris Agreement could be considered binding on Parties collectively by virtue of its status as an international treaty within the meaning of the Vienna Convention on the Law of Treaties. However, the main issue regarding Article 2.1(c) is its lack of prescription of specific actions for individual countries the violation of which could be penalised. Thus, roundtable participants agreed that Article 2.1(c) *on its own* does not impose legally binding obligations on individual Parties and that operationalising it requires other legal 'hooks' within the Paris Agreement.

Nonetheless, given that the entire Paris Agreement is framed around Article 2, there are legal arguments for how that Article can inform the interpretation of the legal obligations of individual Parties. Specifically, Article 2 is referenced elsewhere in the Agreement, including:

- Article 13.5 links the purpose of the transparency framework to Article 2.[4] That framework is the basis for strong individual obligations regarding "clarity and tracking of progress" towards achieving Parties' individual NDCs (under Article 4) and adaptation actions (under Article 7) to inform the global stocktake (under Article 14).

- Article 4.19, in the context of individual NDCs, provides that Parties "should strive to formulate and communicate long-term low greenhouse gas emission development strategies, mindful of Article 2".

- Article 15 establishes the compliance committee "to facilitate implementation of and promote compliance with the provisions of this Agreement" (Art 15.1). The terms of reference of that committee explicitly mention Article 2 whereby the committee "shall be guided by the provisions of the Paris Agreement, including its Article 2". [5]

2. Operationalising Article 2.1(c)

By way of background, Article 2.1(c) is an anomalous objective. Unlike the other Article 2 sub-objectives, Article 2.1(c) is not cross-referenced throughout the Paris Agreement;[6] and the finance-

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[3] Per Mark Carney, *Petersburg Climate Dialogue: Financing Climate Ambition in the Context of COVID-19*, virtual side meeting co-hosted by Germany, the UK, and Climate Policy Initiative (29 April 2020), https://www.youtube.com/watch?v=8sLyUMokSvI&feature=youtu.be

[4] Art 13.5: "The purpose of the framework for transparency of action is 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"

[5] "Modalities and procedures for the effective operation of the committee referred to in Article 15, paragraph 2, of the Paris Agreement", which were decided at CMA 1 in Katowice : Decision 20/CMA.1, Annex, para 2.

[6] Neither is it explicitly mentioned in the subsequent Paris Work Programme, however it is cross-referenced in Decision 4/CP.24 (para 10) and also Decision 14/CMA (para 2), distributed 19 March 2019, which are part of the

related provisions of the Agreement and its decision, including the transparency framework in Article 13, address financial issues in other ways.[7] Although this is not relevant to the question of legal bindingness, it could be relevant to the potential reception by Paris Parties of proposals for its operationalisation.

As part of the Paris decision, developed countries continued their commitment to mobilise US$100 billion per year for mitigation/adaptation until 2025. Nonetheless, the Parties will decide on a new collective mobilisation goal before 2025. Those negotiations, which will include issues such as amount and donor base, are expected to begin in 2020 even despite the delay of COP26 due to COVID-19. The UK Presidency will be looking for a 'global shift' on climate finance by, for example, not just increasing 'green' finance but also reducing 'brown' finance.[8]

Roundtable participants discussed the ways in which Art 2.1(c) might be operationalised under the Paris Agreement, collectively or individually.

Collectively: All participants agreed that Art 2.1(c) could be operationalised collectively by including related issues/assessments in the periodic Global Stocktake under Article 14; its scope already provides for assessment related to all three of the Agreement's objectives. However, some participants were wary of relying solely on the Stocktake for reasons that, amongst others, it may be overly politicised or not yield meaningful results.

Individually: In terms of individual commitments, participants noted that Article 2.1(c) might be addressed, at least in part, through the transparency framework (reporting/review) under Article 13. Moreover, individual Parties might voluntarily include information on their implementation of Article 2.1(c) in their NDCs under Article 4, and this could provide an additional hook for Parties to provide information on Article 2.1(c) in their Article 13 reporting.[9]

Also key to the discussion was the *scope* of finance flows within Article 2.1(c). Participants considered that its meaning is broad, encompassing public finance and also private finance (as the $100 billion mobilisation goal also does) and including not just developed to developing country international flows but also domestic, regional and between developing countries. It may also extend to the underlying systems that govern the flows of finance, such as national treasuries, central banks, regulators and any other channels through which finance flows.

Other key considerations for operationalising Article 2.1(c):

- Measurement. Generally, what does "Paris aligned" mean and, specific to Art 2.1(c), what does "consistency" mean? Should we consider aiming for consistency at institution level, by sector, by economy? What metrics or mode of measurement should be used?
- How and where should finance be spent regarding mitigation and resilience?
- The speed of the pathway? What is the timescale and trajectory? How much more action is needed?

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deal made at COP24 in Katowice, see https://unfccc.int/sites/default/files/resource/CMA2018_03a02E.pdf and https://unfccc.int/sites/default/files/resource/10a1.pdf

[7] Note however that paragraph 121(q) in the modalities, procedures and guidelines for the enhanced transparency framework for Article 13 refers to long term goals of the Paris Agreement (Decision 18/CMA.1): https://unfccc.int/sites/default/files/resource/CMA2018_03a02E.pdf

[8] Support for this approach is found in the summary and recommendations on the 2018 Biennial Assessment and overview of climate finance flows of the UN Standing Committee on Finance, as contained in Annex to decision 4/CP.24. See p24 paragraph 49 here: https://unfccc.int/sites/default/files/resource/10a1.pdf

[9] See Article 13.7(b): "Each Party shall regularly provide the following information: Information necessary to track progress made in implementing and achieving its nationally determined contribution under Article 4."

- Attention to the text of developmental "pathway" in Article 2.1(c) is just as important as considering the "finance flows" when contemplating its operationalisation. Importantly, when Article 2.1(c) is read in the context of the overarching objective that the Agreement "aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty" (Art 2.1), we can see that Article 2.1(c) sets a clear trajectory for finance flows to support country-specific outcomes. Understanding that countries are on a sustainable development *journey* is key, and that for many countries the flow of know-how as well as finance is a priority on that pathway.

3. Establishing an IPCF: Legal basis and institutional gaps

3.1 Creation

Companies and financial markets will not become more sustainable without having clear, consistent information about the risks they face due to climate change. And countries will not be able to achieve the goals they have set out in their NDCs unless they, too, have clear sight of how they will fund them. With a few exceptions, there is a lack of transparency about whether or not money is flowing towards the infrastructure we need for a more sustainable future. The overarching aim of an IPCF would be to monitor how well - or badly - the world is doing on its Article 2.1(c) commitment to align all finance flows with Paris Agreement goals.

Whether or not Article 2.1(c) is legally binding does not materially affect the issue whether the COP or CMA has the legal authority to create a subsidiary body such as an IPCF; they both can. However, as noted previously, whether the proposed IPCF could draw on Article 2.1(c) as a legal basis to *require* individual Parties to take particular action would depend upon the existence of other legal hooks in the Agreement.

In addition, while a COP President (such as the UK) could take steps to address Article 2.1(c) as part of its COP such as by holding roundtables or panels, it could *not* unilaterally establish a body under the UNFCCC or Paris Agreement. In short, establishing an IPCF through UNFCCC processes would require consensus amongst country Parties. In addition, if Parties were to consider establishing an IPCF under the UNFCCC or Paris Agreement, they would want to consider its relationship, if any, to the mandate of the Standing Committee on Finance and other existing bodies. If relevant, they may want to enquire if/why those mandates are being delivered or not.

Importantly, the legal (or non-legal) character of Article 2.1(c) would not affect the ability of organisations/institutions outside the UNFCCC to establish a body like the IPCF.

3.2 Purpose

Key to the roundtable was discussion of the purpose of the IPCF. It was agreed that alignment with the objectives of the Paris Agreement, in particular the temperature goal to keep to well below 2 degrees of warming, has become an objective that public and private stakeholders are starting to act upon voluntarily. The IPCF could encourage a similar rallying cry and enthusiasm regarding alignment of finance flows. More specific questions arose about purpose, function and scope regarding what the IPCF will seek to do and achieve. One of the key questions was how the IPCF could best drive system-level change to harness the power of the capital markets to remodel a sustainable system that delivers rather than undermines the Paris goals.

There are a limited number of deep capital markets whose alignment with the Paris objectives would make a material difference to global alignment from a private finance flows perspective. There are also a significant number of developing countries whose financial systems either do not feature capital markets or are not yet fully established or developed. For these countries, an 'assessment of finance flows' that relates solely to capital markets is not meaningful. This raises two considerations. First, for an IPCF to be globally relevant, it may need to include alignment of flows within developed capital markets, embedding of climate finance as emerging markets' capital markets develop, and also the flows of developmental climate finance. Second, an IPCF should not seek to deliver the same outcomes for all countries or markets: for some the 'market thermometer' and alignment of private market flows will be material; for others the raising and deployment of capital to create a Paris-aligned economy will be more important; whilst for others an information portal or platform that builds upon and enhances existing initiatives and resources will be crucial.

Some developing country participants emphasised a significant knowledge gap by Treasuries/Financial ministries regarding the relevance of climate risk to domestic financial systems, especially the integration into national development and economic agendas. Articulated needs included a clearer focus on private capital such as harmonised criteria of 'climate finance' to include and prioritise private capital, and increasing financial system knowledge such as what private finance can be used for and how to attract investment. Other participants mentioned informational requirements/tools for Paris implementation; sharing practices for Paris Agreement alignment that are 'helpful' or 'inspiring' as opposed to 'best practice' which will not fit varied local country contexts in a heterogenous world; regular assessment of the extent of collective implementation by parties; assessment of broader implementation by all actors (including non-Parties); helpdesk assistance to individual countries.

Discussing these purposes necessarily raised the issue of complementarity and duplication. This is a crowded space comprising UNFCCC and non-UNFCCC actors/mechanisms, for example, the Standing Committee on Finance (SCF), the Global Stocktake (Art 14), the Network for Greening the Financial System (NGFS), the Taskforce on Climate-Related Financial Disclosures (TCFD), the Green Growth Knowledge Platform, the Coalition of Finance Ministers for Climate Action, the Joint Framework of Multilateral Development Banks for aligning their activities with the goals of the Paris Agreement, and the work of various NGOs that provide climate and finance related information. Moreover, there are at least 30 sustainable finance measures supporting the alignment of finance flows with Paris and the Sustainable Development Goals (SDGs), in addition to the many UN special reports addressing financial system reforms relative to past financial crises and the work of the United Nations Department of Economic and Social Affairs (UNDESA) on integrating SDGs into finance flows.

Particular emphasis was placed on the existence of the SCF which is the ordained UNFCCC 'finance body' to assist the COP. It has a technical mandate that may overlap with that of the proposed IPCF, including to help mobilise financial resources, and improve coherence and coordination in delivering climate finance. Importantly, every two years it produces a 'Biennial Assessment and Overview of Climate Finance Flows' that collects data and tracks trends in global climate finance flows;[10] and every four years (from 2020) it will report on the 'determination of

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[10] The SCF recently initiated the preparation of the 2020 Biennial Assessment and Overview of Climate Finance Flows, and will consider evidence on: methodological issues and data relating to climate finance flows; assessment of the effectiveness of climate finance flows; and information relevant to Art 2.1(c): https://unfccc.int/sites/default/files/resource/Call_for_evidence_2020BA.pdf

needs' of developing country Parties to implement the UNFCCC and Paris Agreement and parties' progress on operationalising Art 2.1(c).

Yet, roundtable participants noted that the SCF itself is a highly politicised body and that the biennial assessment has historically focused on development finance. These points of difference could be the distinguishing feature of the IPCF, helping to clarify its distinct value add. Moreover, information from all the other bodies/sources is highly dispersed and therefore difficult to collate and navigate for Paris Parties and other actors. Therefore, to implement Article 2.1(c), a collaborative effort is needed that can bring together regulatory, political and market agendas under a social and environmental mandate.

3.3 Placement

Closely related to the purpose of the IPCF, a key question arose regarding where best to establish it. Within the UNFCCC and/or Paris framework (legal authorisation by the COP or CMA); outside that framework (other international, national, financial and corporate policies); or a hybrid?

In short, roundtable participants agreed that it is legally and theoretically possible to create a new institution such as an IPCF but it is practically and politically very difficult to do so through UNFCCC processes. Importantly, the legitimacy of an institution is not dictated by where it is situated but rather by the perceived integrity of its processes and outputs. It seems the IPCF Coalition should not be wedded to a single option as the various functions of the IPCF could fall both within and outside the UNFCCC process.

Inside the UNFCCC/Paris Agreement process:

- Key mechanisms that were discussed included the Global Stocktake (Art 14), the NDCs (Art 4), financial needs under the Transparency Framework (Art 13) and the Compliance Committee (Art 15). Specifically, the IPCF could provide input via the Global Stocktake, which is within the UNFCCC process but also flexible as it can receive input from external bodies.

- The Technology Mechanism was given as ann example of a body that seems to function well within the UNFCCC process, and which comprises party negotiations as well as a technology executive committee and broader technology network.

Generally however, concern was expressed about creating a new body inside the UNFCCC framework due to reasons of difficulty in establishing it, overlap with pre-existing bodies (such as the SCF), and politicisation of implementation. Indeed, some felt strongly that, based on previous cautionary experiences, the value-add of the IPCF could be hi-jacked by political processes, which would undermine the efficacy and trust so crucial to its legitimacy.

Outside the process:

- Many regarded an arrangement outside of the UNFCCC process as potentially more effective, easier to establish, and quicker to mobilise.

- Examples were given of other entities doing this well, such as the UNEP Emissions Gap Report, Climate Action Tracker's assessments of NDCs, and the Climate Policy Initiative's Global Landscape of Climate Finance reports.

- It was agreed that if the IPCF is established outside the UN process then it must nonetheless engage and connect with the UNFCCC and be perceived as having value to a broad number of Parties to the process.

4. Forward-looking considerations

Despite the multi-faceted and tragic impacts of the COVID-19 pandemic and the delay of COP26, the year 2020 is still intended to be one of ambition in tackling the climate crisis, not least through countries submitting updated NDCs. Moving forward, big picture questions include: What does ambition look like for climate finance and operationalising Article 2.1(c)? How can the link between ambition on climate and the role of finance be articulated, prioritised, measured and acted upon? Who is responsible for the operationalisation of Article 2.1(c) and delivering a sustainable finance system? Whilst governments have ratified the Paris Agreement, what role should private actors take in pushing governments and market regulators to create a transparent system which can incentivise consistency of finance flows, and monitor its impact on the achievement (or failure) to meet Paris objectives?

The IPCF proposal is one approach to help operationalise Article 2.1(c). Ahead of COP26, the IPCF Coalition will continue to develop and refine the proposal, including how the governance of the IPCF might work and what templates for capital raising plans will be needed to help deliver consistency of finance flows to meet Paris objectives.

Report co-authors: Dr Megan Bowman (King's College London) and Thomas Tayler (Aviva), June 2020. We would like to thank all participants for their invaluable and lively contributions during the roundtable and additional input to this report, and also to acknowledge helpful contributions from experts who were unable to attend the roundtable on the day.

To join the IPCF Coalition, please contact Patrick Arber at patrick.arber@aviva.com

APPENDIX A

REFERENCES AND FURTHER INFORMATION

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APPENDIX B

AGENDA

International Platform on Climate Finance Coalition:

Legal roundtable on Article 2.1(c) of the Paris Agreement

Timing:	10.30am-4.30pm Friday 21 February 2020
Venue:	King's College London, School of Law, Strand, WC2R 2LS, London UK
Co-Conveners:	Dr Megan Bowman, King's College London; Mr Thomas Tayler, Aviva Investors
Contacts:	megan.bowman@kcl.ac.uk and thomas.tayler@avivainvestors.com

Purpose & Format

The overarching Paris Agreement objective to contain global temperatures to "well below 2 °C above pre-industrial levels" cannot be met without making *all finance* - not just public capital or privately-funded projects in niche areas - consistent with the Paris Agreement goals on mitigation and adaptation. At a global scale we need to start 'greening finance' by mainstreaming sustainable investment as well as 'financing green' by scaling up sustainable projects. Arguably, this vision is embodied in Art 2.1(c) of the Paris Agreement: "This Agreement…aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by…making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development". Yet currently there is an absence of guidance for implementing Article 2.1(c) and governments lack clear tools for monitoring finance flows in-country and assessing their alignment with Paris and Nationally Determined Contribution (NDC) goals. Heading into COP26 in Glasgow, we need leadership on how this complex task could be achieved.

This roundtable is part of a wider proposal by a coalition of business and civil society arising from a broader *Marshall Plan for the Planet* created by Aviva Investors. Specifically, the roundtable will **analyse legal dimensions of operationalising Art 2.1(c), including the proposal for an International Platform on Climate Finance (IPCF).** It is a forum for dynamic discussion under the Chatham House Rule of non-attribution. Lead speakers will give 6-8 minute presentations to kick off full group discussion and debate.

Intended outcomes

- Identifying legal arguments, if any, that support the proposal;
- Considering the legal and practical arguments for and any impediments to the operationalisation of Article 2.1(c);
- Identifying potential questions regarding governance and structure for subsequent working groups.

Outcomes from the roundtable will be shared with Coalition members to inform next steps.

Programme

10.30 - 11.00	**Welcome, Purpose, Introductions**
	Dr Megan Bowman, King's College London Mr Tom Tayler, Aviva Investors
11.00 - 11.45	**Session 1**
	The Paris Agreement 101: legal bindingess and contextualising Article 2.1(c) *For group discussion:* • What was the genesis of Article 2.1(c) and how might that affect its legal effect and interpretation? • What, if any, legal arguments can be made regarding the interpretation and binding nature of Art 2.1(c) on Parties? • How might these be informed by its development, iterations, and intention, especially in the context of Paris Agreement goals '5 years on'?
11.45 - 13.00	**Session 2**
	Mind the Gap: identifying the need and appreciating global perspectives • *Historical and Current initiatives* • *Developing Country perspectives regarding market interactions* *For group discussion:* • Where are the gaps and what is the need for this proposal internationally? • What are the possibilities for going beyond a 'market thermometer' to create a toolbox of best practices to steer or inform capital raising and capacity building in-country? • Complementarity of IPCF with other initiatives: value-add or duplicative? • Global perspectives on disseminating standards nationally and to whom?
13.00 - 14.00	**Lunch**
14.00 - 16.10	**Session 3**
	Operationalising Art 2.1(c): legalities, legitimacy, acceptability, efficacy *For group discussion:* • Contextual challenges and opportunities: defining 'consistency' in Art 2.1(c); utilising the stocktake provision in Art 14? • Optimal forum for an IPCF: within the UNFCCC framework (including legal authorisation of the CMA), outside that framework (indirect national, financial and corporate policies), or a hybrid? • Operationalising Art 2.1(c) more broadly?
15.45 - 16.10	**Afternoon Tea**
16.10-16.30	**Roundtable wrap up and Looking Forward**

Roundtable Participants (by Organisation)

- Arizona State University, Sandra Day O'Connor College of Law
- Aviva Investors
- Clifford Chance
- Climate Connection (Mexico)
- Ecologic Institute
- Government of Antigua and Barbados
- King's College London, The Dickson Poon School of Law
- Legal Response International (LRI)
- London School of Economics (LSE)
- Overseas Development Institute (ODI)
- UK Cabinet Office
- United Nations Environment (UNEP), Legal Division
- United Nations (UN) Foundation
- United Nations Framework Convention on Climate Change (UNFCCC) Secretariat
- University of Oxford, Environmental Change Institute
- University of Sussex, Science Policy Research Unit
- World Resources Institute (WRI)
- Yale Law School