

Intense wrangling on modalities for addressing ex-ante information on public finance

Penang, 23 Nov (TWN) — Developed countries' reluctance to address the modalities for the ex-ante information on public financial resources to be provided to developing countries referred to in Article 9.5 of the Paris Agreement (PA) delayed the closing of the UNFCCC's 23rd session of the Conference of the Parties (COP23) as well as the closing of the Ad hoc Working Group on the PA (APA).

Resolution was found in the final hours, which eventually led to the closing of the APA and the COP early morning of Saturday, Nov. 18 in Bonn, Germany, when the talks were officially scheduled to end a day earlier.

The need to address the Article 9.5 issue was first raised by **South Africa** on behalf of the **African Group**, and was supported by other developing countries including the **G77 and China**, but was strongly resisted by developed countries.

The **G77 and China** fought tooth and nail to keep the issue on the table and stated repeatedly that ex ante information on public financial resources from developed countries to be provided to them would help developing countries plan and implement their nationally determined contributions (NDCs) under the PA and that the issue was intrinsically linked to the PA Work Programme (PAWP) that relates to the implementation of the PA.

It took several rounds of informal consultations with COP 23 Presidency (Fiji) to resolve the deadlock in the final hours of the COP on 17 Nov, and a compromise was eventually reached on the issue.

(Article 9.5 of the PA reads: “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.”)

(Article 9.1 states that “developed countries shall provide financial resources to developing countries...”; and Article 9.3 states that “developed countries should continue to take the lead in mobilizing climate finance...”)

The discussions on Article 9.5 cut across two different agenda items under two different bodies of the UNFCCC: agenda item 8 of the APA and agenda item 10 (f) of the COP.

Agenda item 8 of the APA deals with “Further matters related to the implementation of the PA”. This item comprises a sub-item, titled, “Modalities for biennially communicating finance information on the provision of public financial resources to developing countries in accordance with Article 9.5”.

(The Article 9.5 issue under agenda item 8 of the APA is in relation to what Parties refer to as the ‘homeless’ or ‘orphaned’ issues. In Paris in 2015, COP 21 assigned various tasks related to the PA implementation to several bodies, which included the APA, and the Subsidiary Bodies of the Convention among others. There were several matters that were not assigned to any of the bodies, which Parties referred to as the “homeless” issues. ‘Modalities for biennially communicating finance information on the provision of public financial resources to developing countries in accordance with Article 9.5’ is one of the ‘homeless’ issues, which is being discussed in the APA. For more information, read this [TWN Update 17](#).)

The COP under its agenda item 10-(f) deals with the “Process to identify the information to be provided by Parties in accordance with Article 9.5 of the PA”.

Developing countries wanted the discussions under both the agenda items to continue because they argued that the nature of the discussions is fundamentally different in the two agenda items. They said that the COP deals with only the “process” to identify information, whereas the issue of “modalities” for the information under the APA agenda, goes beyond just

identifying information and includes setting up processes in place such as methodologies, definitions, reporting formats, underlying assumptions etc. Besides, said developing countries, there had not been any substantive progress under the COP agenda item except for a workshop held during the May session this year.

Given the importance of the issue, developing countries proposed that they find a 'home' or 'body' for the item and suggested that the APA deal with the matter to advance work on the issue. Developed countries did not agree and opposed this.

The developed countries were of the view that the matter of Article 9.5 was already being handled under the COP through its agenda item 10 (f). No amount of arguments by developing countries clarifying the difference between the "process" for identifying information and "modalities" to address them helped during the APA discussions.

Sources said that the word "modalities" was a red line for the **European Union (EU)**.

The COP 23 Presidency took up the matter, given the lack of consensus in the APA to address this issue. (See TWN Update 19 for further details). The Presidency conducted several rounds of informal consultations on 16-17 Nov. Various proposals on how to resolve the issue emerged (see below details on how a resolution was reached).

During the first round of informal consultations with the heads of delegations by the COP Presidency on 16 Nov, sources revealed that the **G77 and China** wanted to table a proposal on how to deal with the issue, but the **United States** and the **EU** raised points of order, to the surprise of developing countries, and did not allow the proposal to be tabled.

The **EU** said it could accept conceptual discussions but no textual proposal could be put forth. The **G77 and China** thus had to verbally explain the proposal, the crux of which was to have an appropriate mandate on Article 9.5, in addition to the COP agenda item. It also wanted the issue to be discussed at the next inter-session (in May 2018) and any additional session likely to be convened next year because Article 9.5 was integral to the PAWP. There was no consensus and the meeting had to be closed.

A couple of hours later, the Presidency convened another round of informal consultations and presented a proposal to Parties. The proposal took developing countries by further surprise, as none of what they had proposed was included in there. The Presidency

proposed that a pre-sessional dialogue, or a pre-sessional structured dialogue, or a forum be convened on the issue in conjunction with the May inter-session next year and any additional session next year. The G77 expressed concerns regarding the outcome of such events and wanted the outcome to be time-bound and linked to the PAWP. They also insisted that Article 9.5 under the APA agenda should continue being considered, which developed countries did not agree to. The discussions went on till midnight on 16 Nov, with no resolution in place.

On 17 Nov, the COP23 Presidency issued another proposal, which developing countries were willing to consider. Developed countries, however, pursued giving up the Article 9.5 issue to be discussed under the APA agenda. After further negotiations, it was eventually agreed that that COP Item 10 (f) would be handled by the Subsidiary Body for Implementation (SBI) for its consideration at the May session next year, while the APA would continue deliberation of the issue under agenda item 8.

A senior negotiator described the fight as a "battle won" in terms of securing space for discussions on Article 9.5 next year during the inter-session. "It was an important fight to have. We have now secured space for further deliberations on Article 9.5, which the developed countries wanted to kill altogether," the negotiator told TWN.

The negotiator also described it as a story of success of how an issue initially pushed by the **African Group of Negotiators (AGN)** was supported by the **Like Minded Developing Countries (LMDC)**, the **Arab Group**, the **Alliance of Small Island States (AOSIS)**, the **Least Developed Countries (LDC)**, leading to the G77 and China owning the proposal.

"Information on ex ante financing by developed countries will help us plan our future climate action. We could not have afforded to bury the issue, which our negotiating partners wanted," another negotiator told TWN.

Highlights of how the matter was resolved

APA informal consultations on Article 9.5 under agenda item 8.

During the informal consultations on 9 Nov, **APA Co-chair Jo Tyndall (New Zealand)** said that it was clear from previous discussions (at previous sessions) that there was no consensus on the Article 9.5 issue. She said that some Parties were of the view that the COP could mandate the APA or the SBI to undertake work on the possible additional matter; other Parties

considered no additional mandate was necessary given that the work was already happening under the COP agenda Item 10 (f); while some Parties did not agree that the COP agenda item addressed the issue at hand.

Several developing countries explained the rationale to keep the mandate on modalities of information alive. Developed countries, however, maintained that Article 9.5 and its associated paragraph 55 in Decision 1/CP.21 (from Paris) were reflected in the COP agenda (item 10-f).

(Paragraph 55 of 1/CP.21 reads: “*Decides to initiate, at its 22nd session, a process to identify the information to be provided by Parties, in accordance with Article 9, paragraph 5, of the Agreement with a view to providing a recommendation for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session (CMA 1)*”)

According to **Canada**, the agendas of the APA and the subsidiary bodies were full in order to finalize the “Paris rulebook”. “It would not be to our advantage to add new items that are taking place in other agenda items,” it said further adding that it was not neglecting the concerns of those countries that said that the issue might not be being discussed to their satisfaction, “but whatever discussion needs to take place might happen within the existing discussions taking place in the COP”.

The **EU** said neither Article 9.5 nor paragraph 55 talked of ‘modalities’ and therefore, it would only be a procedural decision to take on whether to discuss 9.5 under APA or not. It said that it looked forward to discussing Article 9.5 and paragraph 55 of 1/CP.21 under the COP item 10 (f). **Australia, Japan** and the **US** echoed the **EU**.

India said that Article 9.5 is a very important issue for developing countries because it is expected to provide clarity and predictability of climate finance flows and how these flows take into account the country-driven strategies and needs and priorities of developing countries, and relates to ex-ante information.

China said that Parties had agreed that work would progress in a balanced manner on all the PAWP elements and stressed that Article 9.5 was one of them, calling for substantive discussions on the matter.

Egypt said that operationalization of the PA means covering all the elements, which includes Article 9.5 and therefore it must be reflected in the APA agenda. Egypt further added that because ‘modalities’ were not mentioned did not mean it could not be discussed. “The work of the APA should have a placeholder for

Article 9.5. The COP is dealing with the issue of ‘information’ and there is nothing happening there. There was one roundtable in the last session and that was it. If we are talking about balanced progress, we have to include Article 9.5 (in our work) and that will be the way to move forward,” it said further.

Ecuador for the **LMDC** said that two types of reporting needed to be done on finance. One was ex-post information, which is being discussed by the Subsidiary Body for Scientific and Technological Advice (SBSTA) and which is discussing both elements of ‘information’ and ‘modalities’. It further said that while ‘information’ includes categories of data, ‘modalities’ include methodologies, definitions, reporting formats, and underlying assumptions. The idea is to have overall information (from developed countries) so that it is comparable. Further, under the COP, Parties were only discussing only ex-ante information, said Ecuador.

“If we do not discuss modalities, we will end up with information without explanation on methodologies, definitions, underlying assumptions and so on. We heard opposing arguments that there is no mandate to discuss modalities under COP agenda item 10 (f), but we are not dealing with this agenda item here. We heard people say this is being dealt with in 10 (f), but that is not true. Without modalities, ex-ante information will be impossible to aggregate, and we need to aggregate the information for planning and implementing our NDCs and reaching the goals of the PA,” emphasized Ecuador. It also proposed that APA should take up the work.

South Africa, for the **African Group** lamented on the “clear lack of political will to launch discussions”.

With no consensus, the matter was next taken up at a subsequent informal consultation on 10 Nov.

APA informal consultations on 10 Nov, agenda item 8.

Speaking for **G77 and China, Philippines** said that there has been no real progress on Article 9.5 under the COP agenda and it underscored the need for balanced treatment of all elements of the PA.

South Africa, for the **African Group** said it would submit a conference room paper (CRP) on Article 9.5 in relation to the modalities, which should be included in the APA Co-chairs’ informal note. (The CRP is available [here](#). It includes a draft decision to establish a process under the APA to define modalities for biennially communicating information on the provision of public financial resources to developing

countries; it states the objective of the modalities which including supporting the communication, recording and consideration of information, facilitating multilateral consideration of the biennial communications, and addressing timeframes.)

Reacting to developing countries stressing on balanced progress, **New Zealand** said it was continuously hearing the word ‘balance’ but balance would mean on what was agreed and not to add new mandates. “For us to proceed, we do not support a new item. We need to stick to the mandates we got from Paris,” it stressed.

Canada also spoke about balance and said that it was important to realize that all Parties compromised in Paris and that every Party can “air a ton of things they have with decision 1/CP.21 and even the PA”.

Philippines for the **G77 and China** asked what action would follow once a process to identify information was initiated? “We need to have the negotiating space in which we could discuss the substance of this and come to a decision, which we can bring to the attention of CMA,” it stressed further.

Egypt said operationalization of Article 9.5 means including ‘information’ as well as ‘modalities’ and called for balanced progress of the PAWP.

The **US** however said that the list comprising “homeless” matters under APA agenda item 8 were only about “possible additional matters” with no status and there was no consensus that the additional matters should be added to the agenda “either now or in the future”. **Norway** said adding a new element to an already full work programme would be highly controversial.

Informal Consultations with the Presidency, Nov 16 at 3 p.m

According to sources, during the informal consultations with the COP Presidency on 16 Nov, the COP Presidency made it clear that the discussion during the informal consultations should be focused on how to create a space to discuss Article 9.5 and asked Parties to get into the substantive elements of the issue.

Ecuador stressed on the need to discuss the issue of Article 9.5 in the inter-session, rather than leaving it to be discussed at the COP at the end of the year.

Egypt said it was concerned about going into the ‘where’ and ‘how’ of the issue rather than addressing ‘what’ of the issue. Egypt said the G77 and China had a proposal in the form of a paragraph on the way forward.

South Africa, speaking for **G77 and China**, requested the COP Presidency to have the text projected on screen so that Parties could engage and attempted to provide an introduction to the text when the **US** and the **EU** raised points of order one after the other.

The **US** and **EU** were against any text being projected on screen. **Canada** further said that it had no idea of the text certain Parties were referring to and suggested that Parties meet in a bilateral setting first. **Australia** also said that Parties could not put text up and suggested moving to bilaterals.

Responding to the points of order raised, **South Africa** said it was an informal consultation and it did not understand the relevance of a point of order in an informal consultation. It said the G77 and China was contributing to the discussions through a proposal and it failed to understand how there could be opposition to that.

In response, the **COP 23 Presidency** said that if South Africa provided text, others would also begin to provide text and the Presidency could not have “text raining on us to hold conversations in an effective way”.

Brazil expressed grave concern that the Article 9.5 issue would not receive adequate treatment between COP23 and COP24.

Tuvalu for the **LDCs** said the issue was fundamental and was part of the Paris package that had to be delivered upon. It added that Parties would have to find “formal means” to create inter-session work for Article 9.5. It further requested that the G77 and China text be put on the screen, but the **EU** objected and said that they were willing to discuss the issue at a “conceptual level”.

Maldives for the **Alliance of Small Island States (AOSIS)** said that it was legit for Parties to have a look at the text. “It is fair to have a look at that (the text) and then see where we move. We do not see a reason why we cannot entertain to even have a look at the proposal,” it said and added that procedurally, it was unfair to turn to points of order.

At this point the **COP 23 Presidency** said that she had heard calls for a strong need to have a space for discussion on Article 9.5, and that she was also hearing about balanced progress of the PAWP, and that it was not enough to put off the issue of Article 9.5 for discussions until COP24. She also said that she did not hear anyone say that the discussions should not be under the COP. She further added that Parties would have to decide on whether to have space for

discussions and in what form and in which manner would the conversation take place in the space.

China clarified that while it was ready to engage with the three questions of the COP Presidency, the **G77 and China** was asking for an appropriate space for addressing the mandate on Article 9.5 in addition to the COP agenda item. Responding to the Presidency's questions, China said that it was necessary to have more space and time to discuss Article 9.5 "We have just one session for the COP each year. We think it would be necessary that any session we have, either the inter-session in May 2018 or an additional session (later in the year in 2018), this agenda item should also be on the table, which is under the COP now. That will mean we will have equal treatment. That's the space and time issue," it clarified. China also said that it was flexible about the APA or one of the subsidiary bodies taking up the job.

Ecuador, referring to the stance of developed countries said that "when you ask Parties whether inter-sessional work is needed, you will hear that the mandate sits with the COP. You will hear that it is not on the subsidiary bodies' agenda. It is a matter of willingness. If we want to change the work being given to one of the subsidiary bodies, we can do that. Looking at space, it is definitely something we need."

South Africa said the **G77 and China's** view is that the SBI will be the appropriate platform for addressing the question of space and time. South Africa also said that what Parties should reflect in the discussions matters related to the communication of the information, which was linked to discussions under the APA agenda item 8. The idea is to provide further guidance on communication on information, it explained further.

Norway said that on the COP agenda item 10 (f), the question was how to proceed with the work next year. On Article 9.5 under the APA, it said the issue is whether to include the matter in the PAWP. Having said this, it wanted to move to smaller consultations to find a solution.

Ecuador responded that Article 9.5 was an integral part of the PAWP. "The compilation of informal notes may turn into a decision that the CMA might adopt next year. The APA is not addressing several issues emerging from decision 1/CP.21, and these are recognized by placeholders. Article 9.5 does not have such recognition now. It needs to be part of the outcome in the PAWP," Ecuador emphasized.

In response, the **US** said that Parties had trouble in the

existing space on the COP Agenda item 10 (f) because there was an argument on the mandate. "Any outcome should resolve both space and what the mandate is. Until we can reach that type of understanding, we cannot provide additional space to the issue," it said further.

In response the COP23 Presidency said that Parties had exhausted the format and there was a need to have discussions in smaller setting, with the heads of delegations only.

Informal Consultations with the Presidency, Nov 16, 5.15 p.m.

According to sources, the COP23 Presidency presented the following proposal to the heads of delegations, during the informal consultations:

*"1. **Pre-sessional dialogue** to exchange views and deepen Parties' understanding with respect to the information to be provided by Parties in accordance with Article 9.5 of the PA. In conjunction with the session of the SBs in April-May 2018. The co-facilitators, to be appointed by the Presidency, to prepare a report on the dialogue under their own responsibility.*

2. Pre-sessional structured dialogue

- *to advance consideration of the recommendations to be finalized at COP24 pursuant to paragraph 55 of decision 1/CP.21*
- *to provide an opportunity to further explore the possible additional matter being considered under agenda sub-item 8 (a) of the APA with respect to the modalities for biennially communicating the finance information on the provision of public financial resources to developing countries in accordance with Article 9.5 of the PA.*

Immediately before the session of the SBs in April-May 2018. To be facilitated by two co-facilitators to be appointed by the Presidency.

3. Forum *on matters related to the implementation of Article 9.5 of the PA and paragraph 55 of 1/CP.21. In conjunction with the session of the SBs in April-May 2018 and with any additional session of the SBs. To be facilitated by the Presidency. The report on the Forum to be considered by COP24 in the context of finalizing the recommendations under agenda item 10 (f)."*

Sources also said that there were no hard copies of the proposal made available and the G77 and China had a number of things it wanted to reflect on. **South Africa** for the **G77 and China**, it seems, said that they needed to understand the format and the scope of issues and the ability for the format to convene and whether the output would be out in time to reach a balanced

PAWP. South Africa also said that the proposal did not provide a treatment to COP item 10 (f) in a manner that would allow an outcome by COP24.

The meeting with the heads of delegations was suspended for Parties to further consult on the proposal among themselves.

Informal Consultations with the Presidency, Nov 16 past 10 p.m.

According to sources, the consultations started with COP23 Presidency drawing out convergences. According to the COP 23 Presidency, there was agreement among Parties that: there should be a space to talk; need to make progress; the event that would provide the space should be in conjunction with the inter-session or pre-sessional; the space was to discuss content of COP agenda item 10 (f); discussion should be recorded; and that COP should use the report emerging from the event.

The Presidency, it seems, said that it was uncertain what would happen to the APA agenda item since the **EU**, the **Umbrella Group** and the **Environment Integrity Group** were of the view that the Article 9.5 issue under agenda item 8 should no longer be discussed.

Sources revealed that speaking for **G77 and China**, **South Africa** said that it saw the SBI as the body to take up the work and that the perceived convergence on space by the COP 23 Presidency did not reflect the views of G77 and China. South Africa said that the SBI needs to address how the information is communicated, how it is recorded and how it is synthesized. It further said that the outputs of the agenda item should have sufficient standing for a decision to be taken by the CMA and that it was not the group's view that the event should be in conjunction with the inter-sessional or pre-sessional. It also added that in the light of an event, it could not accept the view that the issue under agenda item 8 of the APA will not be further considered.

With no further interventions, the consultations came to an end and the COP Presidency informed Parties that it would inform them on the next steps.

Informal consultations, Nov 17, around 11 a.m.

When the consultations convened, sources said that the COP23 Presidency had a different proposal for Parties. According to the new proposal, the COP would have a place for work on Article 9.5 in the May session in 2018 and COP23 would request the SBI to build on the work of the COP.

According to the proposal, an informal note would be prepared and if there was to be an event, the informal note would feed into it. The Presidency said that if there would be an additional session, the SBI's work on Article 9.5 would be included in it. The Presidency also said that the discussion on possible additional matters would remain under the APA.

According to sources, in response, **South Africa** for the **G77 and China** said that its' understanding of the proposal was it did not impact the work under APA agenda item 8, and with that understanding and with some minor changes, it was willing to go along with the proposal. It also said that there should be an additional item on the organization of a one-off workshop on matters related to Article 9.5, especially on the process of communicating the information. The intent of the workshop would be to discuss how the information is communicated; how the information is recorded; and how the information is synthesized.

The **US** however said that while Parties seemed to be getting closer to a resolution, they were "not there yet". It said that the overarching point was that conclusion of the item was related to the conclusion of other items that were still open. It further added that discussion on agenda item 8 of the APA would need to be concluded if Parties were seeking additional time at the COP on item 10 (f). "We continue to believe that this should not be a new agenda item under the SBI. It should be a workshop or roundtable," said the US and also wanted a reference to Article 9.5 linked to the PAWP removed.

Switzerland said that Parties would have to deliver on the agreed mandate under the COP agenda item 10 (f) and if they did not close discussions under item 8 of the APA, that meant that there was no common understanding of the mandate. The **EU** was reported to have said that having a workshop or a roundtable was a step forward to a compromise and that any output would need to conclude the discussion of Article 9.5 under the APA agenda item 8.

Sources revealed that with the deadlock, the Presidency asked of Parties to consult among themselves, and said that another meeting would be called later in the day.

Informal consultations with Presidency, Nov 17, around 8 p.m.

According to sources, in the informal consultations, the COP Presidency made the a proposal which read as follows:

"Proposed paragraphs in relation to Article 9, paragraph 5 of the PA

Requests the SBI to consider, beginning at its 48th session and at any subsequent sessions, in the context of the Paris Agreement Work Programme, identification of the information to be provided by Parties, in accordance with Article 9, paragraph 5, of the PA and to forward a recommendation for consideration and adoption by COP24 in accordance with the mandate set out in paragraph 55 of decision 1/CP.21.

Requests the SBI to consider the matter referred to in paragraph X above taking into account the deliberations among Parties under agenda item 10(f) at COP23.”

Sources revealed that the **EU** in response said that Parties had stretched their limits and had finally come to an agreement on how to handle the Article 9.5 issue. It said that according to the proposal presented, agenda item 10 (f) under the COP would go to the SBI and APA agenda item 8 would remain part of the discussions.

The **G77 and China** supported the proposal.

The **US** it seems said that it had drafted a text along the lines of the proposal, which “several Parties” had seen. The session was adjourned with **South Africa** reiterating its understanding that the G77 accepted the Presidency’s proposal, with APA item 8 staying as is. It added that it could not endorse the language proposed by the US since it had not seen it.

In the [decision](#) that got adopted under the COP 23 agenda item 10 (f) on the ‘process to identify the information to be provided by Parties in accordance with Article 9.5 of the PA.’, the relevant parts of the

final compromise agreed to is as follows:

“5. Requests the Subsidiary Body for Implementation to consider, beginning at its 48th session (April–May 2018) and at any subsequent sessions on the Paris Agreement work programme, identification of the information to be provided by Parties, in accordance with Article 9, paragraph 5, of the Paris Agreement, and to forward the outcomes to the COP at its 24th session (December 2018), with a view to the COP providing a recommendation for consideration and adoption by the CMA at the third part of its first session (December 2018);

6. Also requests the Subsidiary Body for Implementation to consider the matter referred to in paragraph 5 above taking into account the informal note...”

(The informal note refers to the note by the co-chairs of the contact group that discussed agenda item 10 (f) on the ‘process to identify the information to be provided by Parties in accordance with Article 9.5 of the PA.’).

As agreed to under the APA, Parties will continue the consideration of Article 9.5 under agenda item 8 on the issue of ‘modalities for biennially communicating finance information on the provision of public financial resources to developing countries in accordance with Article 9.5 of the PA.

The May session next year is bound to see continued intense wrangling between developed and developing countries over the issue of ‘information’ and ‘modalities’ in relation to the Article 9.5 mandate under the PA.