COP28: Key outcomes and where to next?

The 28th iteration of the annual conference under the United Nations Framework Convention on Climate Change (UNFCCC) came at a critical moment in time, with 2023 set to be the warmest year on record and the impacts of climate change rapidly accelerating.[1] International climate change negotiations at the COP28 conference in Dubai concluded on 13 December 2023. Baker McKenzie's Global Climate Change practice was on the ground in Dubai, continuing a decade-long commitment to being actively engaged in understanding how UNFCCC negotiations create opportunities for the private sector.

COP28 continues a theme we have seen emerge in recent years. On the one hand, there was a raft of ambitious commitments made at COP28 that could drive action by the public and private sectors, but which sit outside the formal Paris Agreement processes. Against this, those formal processes failed to move forward with the ambition that many stakeholders consider key to addressing scientific warnings. On balance, despite COP28 failing in some respects, the direction of travel remains clear. Even if mitigation actions by countries do not proceed as fast as some call for, the planned pace of decarbonization across almost all economic sectors creates significant opportunities in the near and medium term.

Key developments

Before considering outcomes on the topics of our three previously published briefing papers[2], it is worth noting some of the other key developments at COP28: loss and damage, adaptation, and commitments from the public and private sectors.

Firstly, the framework to operationalize the Loss and Damage Fund ("L&D Fund") was agreed on the first day of COP28.[3] The purpose of the L&D Fund is to assist developing countries that are particularly vulnerable to the adverse effects of climate change (such as small island nations) to respond to loss and damage suffered as a result of extreme weather, sea level rise, climate migration, and other climatic events. By the conclusion of COP28, countries had committed more than USD 700 million of capital towards the L&D Fund.[4] The World Bank will host the L&D Fund in the interim over the next four years.

The challenge for the L&D Fund as it moves forward will be to see if it can do so in a manner that addresses the developing nations' critiques of international climate finance, particularly the speed of deployment and its effectiveness.

Secondly, countries set a number of targets for the Global Goal on Adaptation and its framework and contributed new pledges of nearly USD 188 million (as of 13 December 2023) to the Adaptation Fund.[5] These targets include to enhance resilience of water security, in food and agricultural production and supply, and implement adaptation action and support relating to impact, vulnerability and risk assessment, planning, implementation, and monitoring, evaluation and learning.

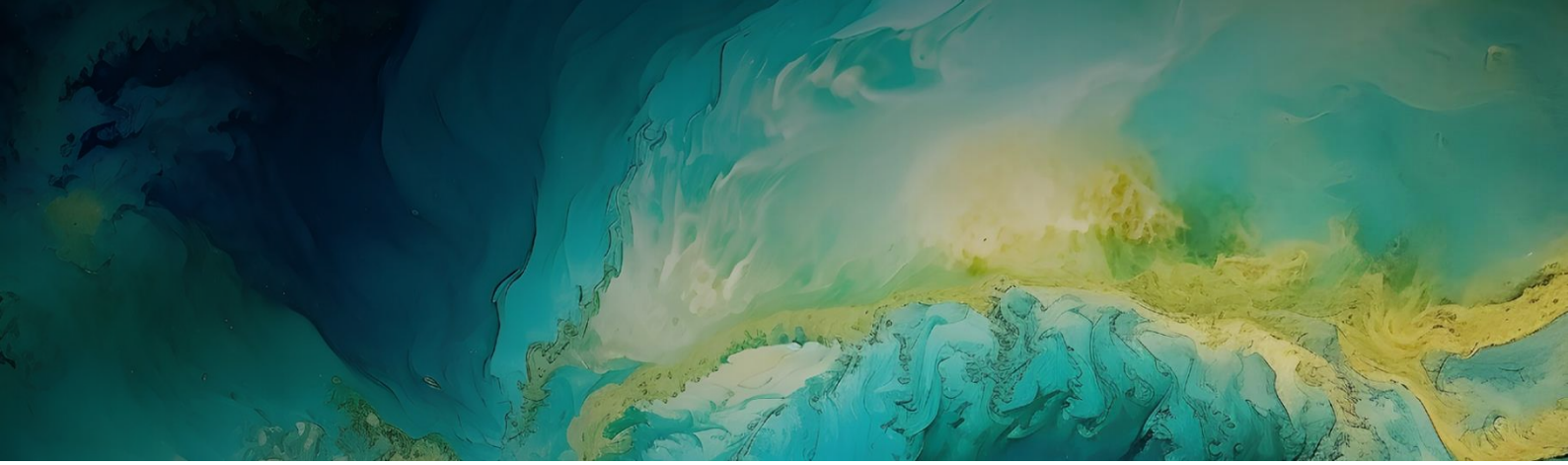
Finally, in relation to commitments from the public and private sectors, several significant announcements were made. These represent a success for the COP28 Presidency, which pushed hard for these as part of the COP28 Presidency's Action Agenda. The following are of note:

- **Global Renewables and Energy Efficiency Pledge:** 130 countries[6] have pledged to triple the world's installed renewable energy generation capacity to at least 11 terawatts by 2030 and double the global average annual rate of energy efficiency improvements from around 2% to over 4% every year until 2030.[7] This pledge has been built into the text of the outcomes of the first global stocktake discussed below.
- **UAE Hydrogen Declaration of Intent:** 37 countries[8] have agreed to work towards mutual recognition of hydrogen certification schemes.[9] While perhaps less headline-grabbing as other commitments, this is an important element in building cross-border markets in this new sector.
- **Oil & Gas Decarbonization Charter:** 50 companies (representing over 40% of global oil production) have committed to reach net zero operations by or before 2050, achieve near-zero upstream methane emissions by 2030, and eliminate routine flaring by 2030.[10]

The global stocktake

COP28 was host to the first global stocktake (GST) of Nationally Determined Contributions (NDCs) under the Paris Agreement. NDCs communicate the domestic measures that a country is taking to pursue emissions reductions.

After much deliberation, the outcomes of the GST were agreed upon in the final moments of COP28 ("GST Outcomes Text").[11] The GST Outcomes Text underlines that the world is not on track towards achieving the purpose of the Paris Agreement and its long-term temperature goals – to hold the increase in global average temperature to well below 2°C above preindustrial levels, and pursue efforts to limit the temperature increase to 1.5°C above preindustrial levels. At the scale of implementation based on current NDCs, temperatures are projected to overshoot toward an increase of 2.1°C to 2.8°C above preindustrial levels, highlighting the need for urgent action. To align with the temperature goals, emissions reductions targets should be 43% by 2030 and 60% by 2035 relative to 2019 levels, and reaching net zero by 2050.



With this recognition of the need for deep, rapid and sustained emissions reductions to align with 1.5°C pathways, one key takeaway from the GST Outcomes Text is the call on parties to contribute to the "transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science". This call was the subject of significant negotiation between countries and is a strong signal in the push for decarbonization. Other key takeaways include the call for tripling renewable energy capacity globally and doubling the global average annual rate of energy efficiency improvements by 2030,[12] accelerating efforts toward the phasedown of unabated coal power,[13] accelerating zero and low emissions technologies including renewables, nuclear, abatement and removal technologies (e.g., carbon capture utilization and storage (CCUS)), and low-carbon hydrogen production.

The GST Outcomes Text also recognizes the role of transitional fuels in facilitating the energy transition while ensuring energy security, and at the same time calling for the phasing out of inefficient fossil fuel subsidies that do not address energy poverty or just transitions.[14]

Article 6 and global carbon markets

While the GST Outcomes Text highlights the "urgent need" to use cooperative approaches under Article 6 of the Paris Agreement, decision texts were not agreed upon at COP28 in relation to Article 6.2 and Article 6.4. As a result, the items for discussion outlined in our initial briefing paper remain unresolved.[15]

For Article 6.2 – the accounting framework for the bilateral trading of internationally transferred mitigation outcomes (ITMOs) between countries – negotiations centered around the definition of "cooperative approaches", the timing of host country authorization of ITMOs (and whether such authorizations can be later revoked), rules for reporting, review mechanisms and the architecture for an international registry. The dynamics of negotiations under this workstream were some of the most heated in recent years, with many developing countries stating that the EU's push to better define the nature and requirements for cooperative approaches amounted to a re-opening of matters resolved at previous COPs. In response, the EU argued that it was trying to ensure the integrity of activities under Article 6.2. These differences will hopefully evolve into constructive negotiations in the buildup to COP29. In the interim, Article 6.2 transactions can, and will, continue to develop.

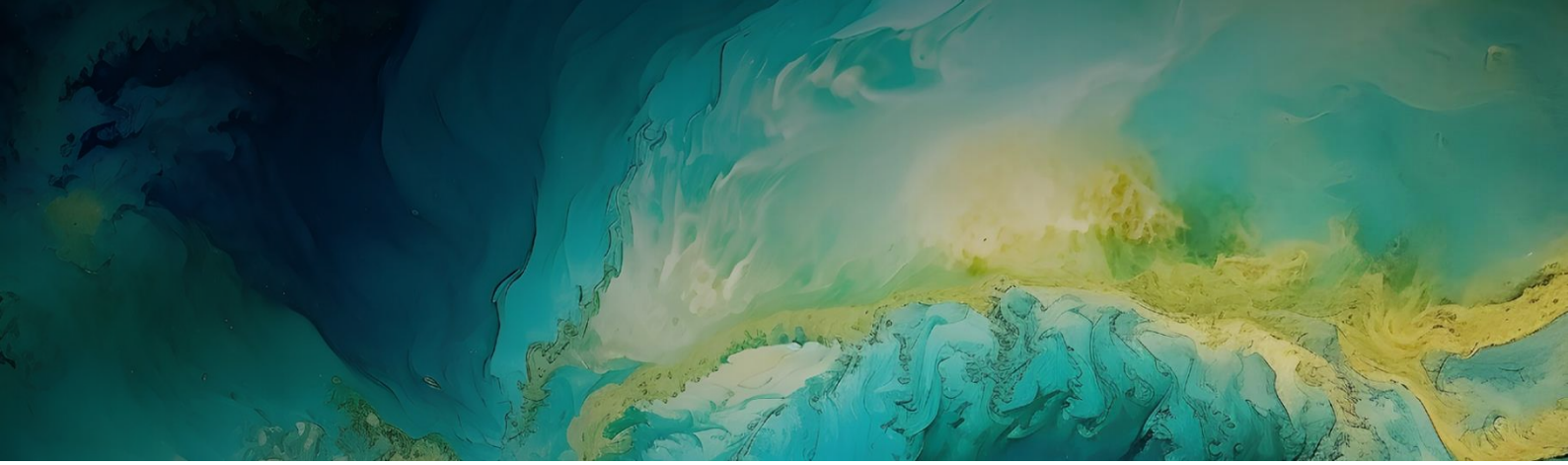
For Article 6.4 – the centralized UNFCCC crediting mechanism for mitigation activities – the rules, modalities, and procedures of the mechanism, as well as the crediting standards, remain undecided. The sticking points for negotiations related to the framework for developing methodologies, the methodological principles to govern removals (particularly ongoing requirements for ongoing monitoring and liability) and whether emissions avoidance activities and conservation enhancement activities (such as REDD+ projects) should be permitted to generate emissions reduction units under the mechanism. Many developing country NDCs are conditional on climate finance, including financial flows that could occur under ambitious Article 6.4 programs. The increasing number of countries implementing regulatory reforms to support Article 6 initiatives will be disappointed that key methodological guidance remains missing (as was flagged by African countries in the final attempts to reach a resolution).

In more positive news, a decision text on Article 6.8 was adopted[16], which requests that further work be done to develop a programme for implementing non-market approaches and capacity building. Building capacity for the identification, development and scaling-up of non-market approaches including by encouraging the participation of relevant stakeholders (including Indigenous peoples and local communities) is an important step in the aim to promote climate justice.

Rise of nature-based solutions and prospects for biodiversity markets

There is a clear recognition under mainstream UNFCCC negotiations that the impacts of climate change will critically threaten biodiversity and billions of livelihoods that depend on nature. This is reflected in the GST Outcomes Text, which explicitly recognizes the need for alignment with the Kunming-Montreal Global Biodiversity Framework – often described as the "Paris Agreement for nature" – and the need to conserve, protect and restore nature and ecosystems to achieve the goals of the Paris Agreement.

Furthermore, the COP28 Joint Statement on Climate, Nature and People[17] aims to foster stronger synergies, integration and alignment in climate and biodiversity plans and strategies, including emphasis on convergence between the next round of NDCs, updated National Adaptation Plans, and National Biodiversity Strategies and Action Plans (which serve a similar purpose to NDCs under the Convention on Biological Diversity (CBD)). The statement also calls for the scaling up of finance and investments for climate and nature. At the time of writing, the statement has been endorsed by 18 countries.[18]



Outside of mainstream plenary sessions, nature-based solutions and biodiversity played a leading role. This included the announcement of new biodiversity crediting mechanisms, such as Australia's national "Nature Repair Market" and UNESCO's pilot program to generate biodiversity credits at World Heritage Sites. Disclosure of nature-related financial risks was another key topic, following the publishing of the final recommendations of the Taskforce on Nature-related Financial Disclosures (TNFD) and the implementation of the EU Corporate Sustainability Reporting Directive. Notably, the TNFD released draft sector guidance during COP28 for eight priority sectors of the economy with high impacts and dependencies on nature, designed to help organizations interpret the TNFD recommendations (and the LEAP assessment approach).[19] Draft sector disclosure metrics are included in this guidance, which focuses on the aquaculture, biotechnology and pharmaceuticals, chemicals, electricity, food and agriculture, forestry, mining, and oil and gas sectors.

Where to next?

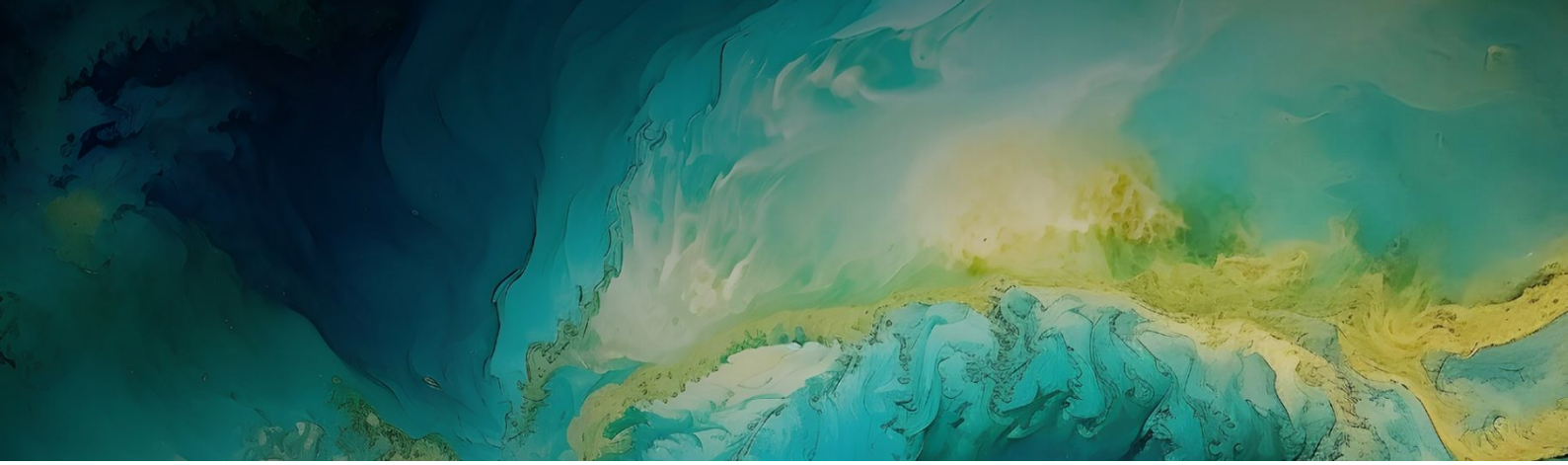
What is clear is from COP28 is that, despite progress, more needs to be done. All countries are required to submit updated NDCs in 2025. The GST Outcomes Text encourages countries to align the next round of NDCs with the 1.5°C temperature goal with ambitious, economy-wide emissions reduction targets covering all greenhouse gases and from all sectors. The targets that are set will necessarily funnel down into domestic emissions reduction measures and targets, which will likely drive growth in renewables, hydrogen, nuclear, CCUS, direct air capture, and other storage technologies to decarbonize heavy-emitting industries, as well as the adjustment of domestic and regional policy settings to facilitate such initiatives. Even where updated NDCs show that there is not a step-change in ambition, there will continue to be fundamental changes to many sectors. This COP has shown that, despite delays and challenges, the direction of travel toward significant decarbonization is not going to shift in the medium term.

Voluntary carbon markets will again return to the forefront in 2024, given the shortfall of Article 6 negotiations at COP28. While we may not see crediting under Article 6.4 until 2025-26, the development of voluntary carbon market initiatives to align with Article 6 is a key area of opportunity for the private sector. The first carbon credits under voluntary crediting standards with Article 6 labels were also issued against the backdrop of COP28 and we expect many more to be issued in 2024.

There is plenty of momentum that can revitalize voluntary carbon markets, with the release of the Integrity Council for the Voluntary Carbon Market's Core Carbon Principles and Assessment Framework (supply-side) and the Voluntary Carbon Markets Integrity Initiative's Claims Code of Practice (demand-side) in the lead up to COP28. These initiatives will be supported by the integrity measures announced during COP28, including collaboration between major standards bodies to promote standardization and integrity[20] and the publication of an animation and infographic by six organizations setting out an end-to-end high integrity framework for corporate decarbonization[21]. Furthermore, a number of European countries proposed joint recommendations to prevent greenwashing and restore the integrity of the voluntary carbon market.[22] An active voluntary market is crucial to encouraging scaling up action to reduce emissions, and these initiatives will promote investor confidence around issuance, trading and the retirement of credits and liquidity in the broader global market.

Despite this lack of progress at COP28, cooperative approaches under Article 6.2 can be readily implemented, and Baker McKenzie has already advised on establishing the frameworks for ITMO transactions. There is also increased appetite to engage with Article 6.2 across both developed and developing nations, with nine new bilateral partnerships announced at COP28. These provide opportunities for the private sector to engage with governments in relation to project development and funding. One area we believe has significant potential is the manner in which Article 6.2 transactions can be used to drive technology transfer into decarbonizing industrial sectors in host countries. Announcements such as those related to the Energy Transition Accelerator[23] and other similar proposals at COP28 indicate that there is a growing focus on using climate finance to enable this, particularly in Asia.

We also expect to see increased piloting of biodiversity crediting schemes, moving towards commercialization of biodiversity projects. Disclosure frameworks like the TNFD will drive investment in nature to mitigate value chain impacts and encourage businesses to leverage biodiversity markets to meet "nature positive" commitments. Further developments on biodiversity markets are expected at COP16 under the CBD next year.



Our expertise

With a long-standing history of participation and involvement at COP events, Baker McKenzie is leading on the development of both international and domestic climate change markets and climate finance. As the only law firm ranked Band 1 – Climate Change Global Market Leaders Chambers for 15 consecutive years, we have unrivalled knowledge and expertise in climate change law and climate finance, which we are applying seamlessly to assist our clients with navigating nascent biodiversity markets and nature finance.

We are currently engaged on multiple levels advising governments, companies and other entities on the implementation of the Paris Agreement, emerging compliance and disclosure regimes and innovative approaches to carbon markets and climate finance transactions. We look forward to sharing our insights from COP28 with our clients and continuing to offer cutting-edge advice on global issues.

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[1] Outcome of the first stocktake, paragraph 5; World Meteorological Organization, "2023 shatters climate records, with major impacts,“ media release, 30 November 2023.
[2] [Baker McKenzie website / COP28].
[3] The decisions on the L&D Fund, the global stocktake, the UAE Just Transition work programme,the mitigation ambition and implementation work programme, the Global Goal on Adaptation and the Presidency youth climate champion are referred to as the "UAE consensus".
[4] United Nations Climate Change, "COP28 Agreement Signals "Beginning of the End" of the Fossil Fuel Era," press release, 13 December 2023.
[5] Ibid.
[6] COP28 Declaration Status Report (as of 18 December 2023).
[7] COP28 website /global-renewables-and-energy-efficiency-pledge.
[8] COP28 Declaration Status Report (as of 18 December 2023).
[9] The formal name of the declaration is "COP28Declaration of Intent on mutualrecognition of certification schemes for renewable and low-carbon hydrogen and hydrogen derivatives."
[10] COP28UAE, "Oil & Gas Decarbonization Charter launched to accelerate climate action," press release, 2 December 2023; Oil & Gas Decarbonization Charter.
[11] unfccc.int/sites/default/files/resource/cma5_auv_4_gst. pdf.
[12] This text echoes the Global Renewables and Energy Efficiency Pledge.
[13] AtCOP26, parties adopted the Glasgow Climate Pact (Decision 1/CMA.3), which included text calling parties to accelerate efforts toward the phasedown of unabated coal power and phaseout of inefficient fossil fuel subsidies, while providing targeted support to the poorest and most vulnerable in line with national circumstances and recognizing the need for support towards a just transition.
[14] Ibid.
[15] [Baker McKenzie website / COP28].
[16] unfccc.int/sites/default/files/resource/cma5_auv_14c_art6.8. pdf.
[17] Led by the UNFCCCCOP28Presidency (UAE) and the CBDCOP15Presidency (China).
[18] COP28Declaration Status Report (as of 18 December 2023).
[19] https: // tnfd.global/tnfd-publications/?_sft_framework-categories=additional-guidance-by-sector.
[20] COP28independent crediting program joint statement.
[21] The Integrity Council for the Voluntary Carbon Market, "Achieving high-integrity corporate climate action: animation and infographic launched by international organizations driving and supporting corporate climate transitions," press release, 4 December 2023.
[22] Government of the Netherlands, "COP28: Netherlands, Germany, France, Spain, Finland, the federal government of Belgium and Austria propose framework to prevent greenwashing and restore integrity in voluntary carbon markets," news release, 10 December 2023.
[23] Energy Transition Accelerator, "Countries, Companies Signal Support for Energy Transition Accelerator," news release, 3 December 2023.