

Submission to the High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities

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About this submission

In June 2022, the UN Secretary-General’s High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities launched a public consultation on how to hold non-state of entities accountable for net zero pledges and deliver immediate climate action. More information on the consultation is available at: https://www.un.org/sites/un2.un.org/files/hleg_call_for_submissions_-_press_release_-_cleared_for_distribution_on_06.27.22.pdf.

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Summary

- While there has been recent wave of net zero pledges made by a range of actors, including companies, investors, civil society and subnational governments, **more needs to be done to ensure the accountability and credibility of these commitments.**
- This submission presents evidence to the High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities on the topics of **standards, credibility criteria, transparent governance and regulation**, drawing on work from the Climate Change Laws of the World project, the Grantham Research Institute's Sustainable Finance research theme and the Transition Pathway Initiative.
- **Standards for net zero must be sector-specific and include interim targets.** They should include sectoral benchmarks aligned with the target of limiting warming to 1.5°C to result in effective decarbonisation. Emissions reductions must be the priority, with high-integrity offsets used only for residual emissions.
- **Examples of how existing standards have been used in legal challenges relating to net zero commitments can advance our understanding of what credible commitments look like** and also indicate where credibility most urgently needs to be strengthened.
- **An important credibility consideration is whether a company's climate lobbying – direct or indirect – is aligned with its stated climate commitments and goals.** The HLEG should incorporate into its recommendations on the credibility of non-state actor commitments a set of core principles on corporate climate lobbying derived from the academic literature.
- **Standards for net zero should also include transparency requirements**, such as setting clear plans and targets, carrying out high-integrity monitoring, reporting and verification, and clarifying processes by which grievances may be raised by civil society and others. Transparency should also be conceived of broadly, including, for example, financial information as well as information regarding emissions reductions.
- **The net zero transition will be most effectively governed by regulatory action from national and subnational governments.** Net zero governance should be aligned with existing international standards and frameworks for responsible business conduct. It is also important to account for differences in regulatory capacity across states.

Introduction

Companies, investors, civil society and subnational governments all have a vital role to play in the transition to net zero emissions. The recent wave of net zero commitments and pledges by these groups is therefore key to the global movement towards limiting warming in line with the Paris Agreement. However, as was evident during COP26, a lack of trust between key constituencies presents a major challenge to climate action over the next decade (Higham, 2021). In this regard, the work of the High-Level Expert Group (HLEG) is a welcome development, and one which the Grantham Research Institute on Climate Change and the Environment believes has great potential to consolidate and accelerate ongoing efforts to ensure accountability and credibility in this fast-moving area. In particular, the HLEG's recommendations can help to confirm the broad applicability of standards and credibility criteria for net zero commitments across a range of actors, including those that are not yet a part of coordinated voluntary initiatives such as the UNFCCC Race to Zero.

This submission aims to support the work of the HLEG by highlighting relevant research and resources, drawing on work from the Grantham Research Institution, including its Climate Change Laws of the World project, its Sustainable Finance research theme and its contribution to the Transition Pathway Initiative.

Our primary focus is on the governance of targets set by corporate actors, but many of the points raised also relate to targets set by subnational governments and non-state actor entities such as universities and non-governmental organisations.

We focus on the following key issues:

- **Standards for net zero.** These must include credible sectoral benchmarks aligned with the target of limiting warming to 1.5°C to ensure that net zero commitments truly result in effective decarbonisation. Emissions reductions must be the priority, with high-integrity offsets used only for residual emissions.
- **Credibility criteria and transparent governance.** Addressing the credibility gap requires actors to: align their lobbying efforts with stated emissions targets; be fully transparent about planned measures to achieve transition goals; and ensure that entity-wide governance processes align with existing standards for responsible business conduct. Lessons can be learned from the experience of state actors' net zero pledges. In particular, the HLEG should consider integrating some consideration of an entity's past performance on environmental, social and governance (ESG) criteria into assessments of credibility.
- **Pathways to regulation.** The net zero transition will ultimately be most effectively governed by regulatory action from national and subnational governments. The HLEG should encourage the explicit alignment of net zero governance, including regulatory policy and legislative innovations and transnational governance initiatives, with existing international standards and frameworks for responsible business conduct. The HLEG should also ensure that the UN (whether through the HLEG itself or through other UN bodies) plays an orchestrating role, with voluntary initiatives to ensure widespread adoption of these strategies at scale by non-state entities. The UN should also promote legislation among national and subnational governments. Without explicit regulation, courts and other bodies may be called upon to address credibility concerns. Such cases can be instructive but may lead to a lack of legal certainty in the absence of explicit and proactive regulatory action.

Recommendations

Standards: sectoral benchmarks, integrity in offsets and incorporating the just transition

Standards for net zero must be sector-specific and include interim targets.

In formulating recommendations regarding standards for entity-wide net zero emissions targets, including the scope of emissions covered in each sector, the HLEG should look to the work of organisations already engaged in the assessment of net zero targets, such as the Transition Pathway Initiative (TPI)¹ and the Science Based Targets Initiative (SBTi). TPI, of which the Grantham Research Institute is the academic partner, was designed with and for investors to help them engage with carbon-intensive companies to drive decarbonisation. The corporate assessments and underlying benchmarks are open-source and freely available for use by government regulators, academics, civil society and other actors. TPI indicators are already incorporated into the Climate Action 100+ framework, which aims to establish a standard of corporate disclosure and action.

The ambition of an entity's emissions reduction targets can be assessed by comparing them to sector-specific benchmarks for emissions intensity that are aligned with the target of limiting warming to 1.5°C. If a company's intermediate targets are aligned, this provides a degree of credibility to its net zero ambition. TPI has developed dedicated sector-specific benchmarks across 10 high-emitting sectors assessed on 'Carbon Performance', including oil and gas and diversified mining.

Beyond sector-specific emissions pathways, TPI also provides assessments of companies' 'Management Quality' through a series of qualitative questions about their governance of climate change as a business issue. As with intermediate target alignment, these qualitative indicators provide a degree of credibility to a company's net zero ambition.

Across the universe of over 400 companies assessed by TPI, a few patterns emerge (Dietz et al., 2021):

- Basic carbon management practices have become standard, but most companies have not yet adopted a truly strategic approach to climate change.
- Companies in electricity, steelmaking and automobile manufacturing lead in terms of aligning their emissions reduction targets with at least a below-2°C warming benchmark. The clear laggards in target alignment are the oil and gas sector and aviation sector.
- Historical emissions reductions over the past few years are not steep enough for companies to meet their targets, even in sectors with sufficiently ambitious targets.
- Although there is encouraging momentum in the increasing number of companies that now have net zero commitments, these targets often fail to cover the most significant emissions in a given sector. For example, net zero pledges in the oil and gas sector typically cover operational emissions (Scopes 1 and 2) and only sometimes include downstream emissions (Scope 3) from the use of companies' products (which represent the vast majority of the lifecycle emissions for oil and gas products lifecycle emissions). In other sectors such as electricity, steelmaking and automobile manufacturing, corporate emissions targets usually cover the most important emissions: Scope 1 in electricity; Scopes 1 and 2 in steelmaking; and Scope 3 from driving sold vehicles in automobile manufacturing. To determine whether a net zero target is considered genuine, in the sense that it will bring the company's *material* emissions to net zero, closer attention should be

¹See <https://www.transitionpathwayinitiative.org/sectors>

paid to the sources of emissions – including Scope and type of greenhouse gas – covered by net zero targets.

These results indicate that sectoral standards for net zero, detailing the need to cover all relevant emissions, may be helpful. Some sectors and industries may be required to go beyond net zero to net-negative emissions (for example TPI's 1.5°C benchmark for the electricity sector is negative after 2040), to account for the fact that other sectors may struggle to decarbonise as rapidly.

The HLEG's recommendations must address concerns regarding overreliance on greenhouse gas removals and offsets to achieve net zero commitments.

Although the concept of net zero targets derives from climate science, there are legitimate concerns that the widespread adoption of the concept has led to its dilution (Fankhauser et al., 2022). One area of concern is the overreliance on greenhouse gas removals by entities setting net zero targets, whether through purchasing offsets on voluntary carbon markets or through the planned direct deployment of (often unproven) greenhouse gas removal technologies. While there is a clear role for both these approaches in addressing residual emissions from hard-to-decarbonise activities, the HLEG must develop recommendations for standards that prioritise the reduction of non-state actors' own Scope 1, 2, and 3 emissions over beyond-value chain removals or offsets in the first instance, building on the work done in this area by actors involved in the Race to Zero, among others. Where companies turn to beyond-value chain mitigation, the HLEG's recommendations should include high benchmarks for the integrity of offsets purchased on the voluntary carbon markets and strong transparency requirements regarding the use of greenhouse gas removal technology.

The HLEG can build on leading initiatives in the voluntary carbon market, but it should also seek to build momentum towards a more robust system of governance. The Core Carbon Principles (CCPs), due to be released by the Integrity Council for the Voluntary Carbon Market in Q4 of 2022, will define a benchmark for high-quality credits (to supplement rules under Article 6 of the Paris Agreement), while the Voluntary Carbon Market Integrity Initiative (VCMI) will provide guidance to non-state actors looking to make claims about their climate performance based on the use of high-quality offsets. Between them, these processes cover rules for the supply and demand of carbon credits, but widespread and credible uptake of those standards may require stronger incentives. The HLEG should consider how the impact of and adherence to the CCPs and VCMI claims code will be evaluated over time, and target its recommendations at national authorities to identify a pathway for these voluntary rules to be integrated into regulation or linked to other explicit standards. Furthermore, the HLEG should give due consideration to non-state actors seeking to take responsibility for their unabated emissions in ways that do not rely on carbon credits (e.g. paying an internal carbon fee and donating the proceeds to pro-climate advocacy). Important priorities are the implications of these alternative approaches under existing standards for corporate responsibility (see below), and how different actions can be made into comparable claims for consumers, investors and other stakeholders.

To be credible and effective, net zero commitments and associated transition plans must facilitate a 'just transition', taking into account geographic and sectoral specificities.

As set out further in the Grantham Research Institute's forthcoming report, *Making Transition Plans Just* (available on request), the just transition is a strategic approach to making sure that the road to net zero is fair for all, notably for workers, suppliers, communities and consumers. Companies, in particular financial institutions, should commit to embedding just transition principles into their overarching goals and ambitions and the foundations of their net zero transition plans. As well as considering the just transition when setting net zero objectives, targets and timelines, these should also be backed up by: social principles in engagement and advocacy; measurement, monitoring and reporting; and institutional decision-making structures, skills and culture.

Demonstrating how net zero commitments will account for the impacts that transition plans may have on people is necessary for their credibility, and to ensure their effective and lasting

implementation. To develop adequate plans, entities will need to incorporate geographic and sectoral specificities into their considerations. An example of the way in which financial institutions are applying these considerations in the energy sector is the Just Energy Transition Framework from the Council for Inclusive Capitalism. Similar tailored approaches are needed for other sectors and geographies.

Credibility criteria: alignment with existing standards of conduct, consistency of lobbying efforts, and consideration of past performance

Existing standards governing responsible corporate conduct can provide frameworks for ensuring accountability (and therefore credibility) of net zero commitments at the organisation/entity level.

Although the emergence of net zero commitments by non-state actors is a relatively recent phenomenon, these initiatives can also be understood in the broader context of established and evolving international standards regarding responsible business conduct and corporate governance, including the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights. Such standards, while voluntary, have led to national legislation on human rights and environmental due diligence and informed court decisions in climate litigation.

As documented in the Grantham Research Institute's *Global Trends in Climate Litigation: 2022 snapshot* report, corporate net zero commitments have already been the subject of legal challenges, in which litigants refer to existing standards to strengthen their claims against companies before domestic courts and quasi-judicial bodies around the world (Setzer and Higham, 2022). It also notes that the number and scale of such challenges is likely to increase over time. In addition to drawing on existing international standards, these cases often take account of domestic legislation aimed at protecting consumers and shareholders from corporate misinformation and mismanagement. Challenges have been brought both on the basis that an entity's emission reduction targets is insufficiently ambitious to comply with global pathways to achieving net zero emissions by 2050 (*Milieudéfense v Shell*; *FoE Australia v ANZ Bank*; *DUH v Mercedes-Benz AG*), and that more ambitious targets are insufficiently transparent and credible (*ACCR v Santos*). Shareholder actions seeking to argue that inadequate net zero transition planning is a violation of directors' duties are also on the increase (see, e.g., *ClientEarth v Shell Board of Directors*).

The application of existing standards to the issue of net zero commitments through case law has an important role to play in advancing our understanding of what credible commitments look like and how they should be governed. Litigation on this issue can provide a way of assessing where civil society concerns regarding corporate conduct are most acute, and where credibility most urgently needs to be strengthened. However, the potential for court rulings is no substitute for explicit regulation and standards, particularly where they are fully integrated into existing regimes.

Lobbying activity must align with climate commitments, and standards should incorporate existing principles on corporate climate lobbying.

One important issue for the HLEG to consider in developing its recommendations with regard to the credibility of net zero commitments is whether a company's climate lobbying – direct or indirect – is aligned with its stated climate commitments and goals. The impact of corporate lobbying on both advancing and hindering national action and regulation on climate change is well-documented. The HLEG should incorporate into its recommendations on the credibility of non-state actor commitments a set of core principles on corporate climate lobbying derived from the academic literature and as set out in the Grantham Research Institute's recent publication, *Company lobbying and climate change: good governance for Paris-aligned outcomes*, into its recommendations on the credibility of non-state actor commitments (Sullivan et al., 2022).

Important lessons can and should be learned from the experience of state actors' net zero pledges.

In assessing the credibility of climate pledges by non-state actors, much can be learned from work focused on the credibility of states' climate commitments (Averchenkova, Bassi and Setzer, 2018). Previous work by the Grantham Research Institute provides insight into credibility criteria for state actors, which closely parallels the situation of non-state actors (Averchenkova and Bassi, 2016). This work supplements existing frameworks for assessing non-state actor commitments, such as the Race to Zero 'Starting Line' criteria, by integrating an assessment of past performance and practice into assessments of credibility. For example, where an entity has previously under-performed against climate or other environmental targets such as 2020 emissions reduction targets, this should be taken into account when scrutinizing the credibility of new net zero targets. While entities with poor track records on ESG issues can and should be encouraged to improve, heightened scrutiny may be required for these entities.

Transparency: clear plans and targets and high-integrity monitoring, reporting and verification must be coupled with processes for dispute resolution

The HLEG has been commissioned to develop recommendations on credibility criteria for measuring and reporting of net zero pledges by non-state actors and processes for the international community to verify and account for progress towards meeting commitments. Given this focus, we note that monitoring, reporting, and verification (MRV) are crucial for the global governance of net zero commitments. Our comments do not focus on recommendations for specific reporting processes or indicators, but rather on issues relating to the integrity of eventual MRV standards and on the resolution of disputes.

Actors must be transparent about how measures correspond to targets, even where there is uncertainty about future developments.

Non-state actors' net zero commitments must be accompanied by plans that include quantified indicators and measures. These plans should provide clarity on how the organisation deals with shortcomings in meeting targets and with uncertainties in assessing risks and strategic planning. Plans for delivering pledged emissions cuts must detail sufficiently robust policies and practices for ensuring the actor is capable of, and sincere about, upholding its stated pledges. A recent judgment from the UK High Court has applied this standard to the UK government, finding that the government failed to provide sufficient information about how its proposed policies would deliver promised emissions cuts in its Net Zero Strategy. The court ordered the government to prepare a report explaining how its policies would contribute to emissions reductions, although the judgment accepts that a degree of flexibility may be required where there is significant uncertainty about the impact of future plans (Gayle, 2022). This approach can be applied to non-state actors, whose plans must show concretely how their internal policies and systems facilitate their commitments, as well as which actions and external decisions will deliver emissions reductions to meet their targets.

Verification must be independent, well-resourced, and aligned with existing efforts.

We note the need to ensure that verification efforts are independent and well-resourced to prevent the perception of simply 'greenwashing the greenwashing', i.e. novel verification and transparency rules must improve on the work of weaker existing initiatives to enhance credibility. The HLEG should assess the model for provision of verification services in key areas of the net zero value chain, including scrutiny of science-based targets and of the integrity of carbon credits used to compensate for residual emissions. Issues relating to market structure or capacity constraints may affect the delivery of such services, the quality of scrutiny, and consequently the credibility of commitments. As such, the HLEG should identify bottlenecks and barriers to widely accessible and credible verification.

The HLEG's recommendations should also aim for harmonisation with and enhancement of existing norms for MRV and responsible business conduct to avoid duplicating efforts and placing

competing or conflicting demands on non-state actors. The HLEG should aim for greater convergence of regimes governing non-state actors without undermining existing efforts in these areas or compromising the stringency of net zero regulations. Legal scholars have, for example, documented global governance institutions' increasingly harmonised approaches to corporate environmental and human rights MRV, including in relation to commitments to achieving the Sustainable Development Goals (George, 2018). While the HLEG's recommendations for net zero commitments should be specific to the issue, they should also complement such initiatives.

Governance of net zero commitments must include opportunities to ensure the resolution of disputes.

We also encourage the HLEG to aim its recommendations at ensuring the oversight of net zero commitments by existing bodies with responsibility for overseeing compliance with responsible business standards, whether at the national level or within multilateral frameworks. Examples of relevant bodies include National Contact Points for the OECD Guidelines for Multinational Enterprises, established by governments adhering to guidelines in order to promote responsible business conduct and contribute to resolving issues arising from deviations. Governments have also established additional or separate bodies with similar, complementary, or related functions, such as the Canadian Ombudsperson for Responsible Enterprise, which investigates extraterritorial human rights abuses and offers mediation, review and recommendations. Ultimately, courts must also play a role in ensuring compliance with existing standards, but when fully resourced, dispute resolution bodies can potentially offer faster and easier access channels by which concerns can be raised.

Transparency on net zero must be part of a broader approach to transparency and integrity.

The HLEG's recommendations should conceive of transparency in a broader sense of integrity in internal governance systems. Transparency concerns not only greenhouse gas emissions, but also financial disclosure. Non-state actors must have transparent revenue streams to combat bribery and corruption in line with state regulations and multi-stakeholder governance initiatives such as the Extractive Industries Transparency Initiative. Combating corruption is key to addressing the climate crisis, not least because of corruption risks in climate-vulnerable countries that receive multilateral finance for adaptation and mitigation and the risk of corruption in carbon markets (INTERPOL, 2013). The HLEG should account for the importance of financial transparency in the credibility of companies' net zero commitments. The HLEG should also consider that credible net zero commitments by non-state actors, particularly those made by transnational corporations, should entail that those actors refrain from tax avoidance, which risks depriving states of revenue to finance net zero transitions.

Entities should make it easy to check the justification of claims about net-zero commitments in marketing and advertising materials.

There is growing concern about 'greenwashing' (Netto et al., 2020) through which companies and other actors make claims about their net-zero efforts which either exaggerate their significance or which obscure actions that are inconsistent with their commitments. Such claims can mislead the public, policymakers and investors, and undermine trust and confidence. Companies should take extra care not to mislead, including by making it easier for claims about net-zero efforts to be verified. Regulators of media, advertising and marketing should exercise vigilance about 'greenwashing'.

Pathway to regulation: regulatory efforts must build on the work of standard-setters and voluntary initiatives; implementation capacity is crucial

The HLEG's recommendations on regulation should account for variety in the regulatory capacity of states.

HLEG's recommendations should play a vitally important role in establishing mandatory net zero transition pathways based on rigorous climate science. To achieve this goal at scale and as quickly as possible, a number of challenges must be navigated. The first is a recognition that strong regulation is more effective when there is meaningful state capacity to implement and enforce those regulations. Any recommendations must therefore be sensitive to the sustainable development challenges faced by countries, particularly those in the Global South, which will often provide a greater obstacle to appropriate action than a lack of political will or regulatory intent.

Explicit guidance on the application of existing frameworks to net zero commitments can help ensure legal certainty.

A further challenge is the disruptive role played by strategic climate litigation. These are cases where the claimants' motives go beyond the concerns of the individual litigant and aim at advancing climate policies, creating public awareness, or changing the behaviour of government or industry actors (Setzer and Higham, 2022). While the risk that litigation will be used as a gap filler in the absence of regulation remains high, it will assist in catalysing action and driving non-state and state actors towards regulation. However, in the absence of clear legislation and guidance, litigation may also introduce a lack of certainty and clarity on how standards regarding responsible business conduct apply in the climate context, particularly in the face of competing interpretations across different jurisdictions. The Grantham Research Institute made such recommendation in a previous submission to the OECD's 'Stocktaking Exercise' regarding the Guidelines for Multinational Enterprises, (Setzer, Higham and Mohan, 2021). The HLEG has a unique opportunity to ensure that by working closely with other institutions from its inception, its recommendations catalyse processes to provide clarity on how existing standards apply to net zero commitments, promoting convergence and bringing the full weight of the existing mechanisms for ensuring accountability for compliance with such standards – whether domestic courts or quasi-judicial bodies such as OECD National Contact Points – to bear.

Coordination and harmonisation of voluntary initiatives and standard-setting bodies is a crucial step towards effective regulation.

Regulation is unlikely to be consistent in strength and ambition within and across the intergovernmental, national and subnational levels. Regulatory outcomes will vary and depend on factors such as the political system and the degree of regulatory capture in any given jurisdiction. This has the potential to create a patchwork of regulations, which in turn carry the risk of locking in insufficiently robust rules that prove difficult to change. While some degree of heterogeneity is unavoidable, it can be mitigated by situating regulatory action in the context of other governance efforts, such as voluntary initiatives, standard-setting, and UN-led coordination efforts such as HLEG and the Race to Zero. Voluntary initiatives have an important ongoing role to play in driving ambition, pushing the boundaries of best practices and combining expertise from multiple sectors. HLEG and the Race to Zero must iteratively harmonise and refine voluntary initiatives to manage greenwashing and build buy-in from larger groups of stakeholders. Standard-setting institutions then play an important role in translating voluntary initiatives into rules that are applicable at a global level, which in turn influences litigation and regulation. If properly orchestrated, these interlinked governance activities will ultimately improve the quality and content of regulation at all levels.

Efforts should focus on accelerating the process of standards evolving from hard to soft law, drawing on examples such as the TCFD recommendations.

The Taskforce on Climate-related Financial Disclosures (TCFD) provides a useful case study to illustrate how standards can be integrated into soft law. Disclosure of climate risks began as a voluntary initiative before being adopted and refined through the Financial Stability Board. The TCFD recommendations quickly became an industry benchmark and was invoked in litigation, such as in the claim against an Australian pension fund in *McVeigh v REST*. Given its wide adoption, the TCFD's recommendations are now being incorporated as a mandatory requirement in national regulations including in the UK (Department for Business, Energy and Industrial Strategy [BEIS] et al., 2021). The HLEG should seek to support these discrete governance efforts, focusing in particular on its role in coordinating and evaluating voluntary initiatives to mitigate greenwashing and improve best practice. In particular, future efforts should focus on accelerating the process of evolution that has occurred in the TCFD example to ensure the swifter uptake of mandatory approaches in the broader context of net zero (Hale, 2021).

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