



Issue Brief

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Next Steps for the Paris Agreement: When and how will the Agreement enter into force?

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Summary

- The Paris Agreement requires a double trigger of 55 countries ratifying, representing 55% of global emissions, in order to come into force.
- The Paris Agreement could legally enter into force before 2020.
- Early entry into force will likely not affect the ability of non-Parties to the Paris Agreement to participate in discussions.
- Work on the new institutions of the Paris Agreement may be difficult to complete if there is early entry into force. However, this work could be continued through procedural solutions.

Last December, 196 countries met in Paris and adopted the historic Paris Agreement on climate change. This treaty is different from previous climate agreements—and from the Kyoto Protocol in particular—in that it includes defined mitigation obligations for all countries, both developed and developing. Under the Paris Agreement, each country will put forward a nationally determined contribution (NDC) detailing their domestic efforts, beginning in 2020, to combat climate change.

Though the Paris Agreement has been adopted, adoption is only the first of several steps needed for the Agreement to take effect. Parties must now sign and ratify the Agreement in order for the Agreement to enter into force.¹

While much of the attention surrounding the Paris Agreement has focused on the post-2020 period, the Agreement could enter into force much sooner. When the Agreement enters into force, it becomes binding for those Parties that have ratified, accepted, approved, or acceded to the Agreement.² The NDCs for each Party would still begin in 2020; however, once the Agreement

enters into force, those countries that have ratified, accepted, approved, or acceded to the Agreement may take decisions on essential rules and mechanisms under the Agreement, such as the rules for accounting for greenhouse gas emissions and the procedures of the new transparency and compliance mechanisms.

This brief examines the legal and political factors affecting the entry into force of the Paris Agreement. In addition, it assesses the potential implications of entry into force prior to 2020.

Mechanics of Entry Into Force

How does the Paris Agreement enter into force?

Article 21 of the Paris Agreement states that the Agreement enters into force,

“...on the thirtieth day after the date on which at least 55 Parties to the Convention accounting in total for at least an estimated 55 percent of the total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval, or accession.”³

This entry into force provision is a “double trigger” because it requires both a number of Parties and a percentage of global emissions. Notably, the percentage of emissions for each Party will be based on “the most up-to-date amount communicated...by the Parties,” which has been compiled in a table by the UNFCCC secretariat.⁴

During negotiation of the Paris Agreement, many Parties expected the Agreement would not enter into force until 2020. Indeed, until the final days of COP21, the draft text contained a provision for the Agreement to enter into force “not before 1 January 2020.”⁵ This provision remained in the penultimate text proposed by the French Presidency on 10 December 2015.⁶ Yet, on 12 December 2015, the text adopted as the Paris Agreement no longer contained such a provision. As no formal negotiations took place between the penultimate text and the text adopted, it is unclear why this provision was removed.

Legally, could the Paris Agreement enter into force before 2020?

Under a plain reading of the Paris Agreement, the Agreement will enter into force thirty days after the double trigger is met. It is entirely possible that this will happen prior to 2020.

Notably, there are two key documents pertaining to the implementation of the Paris Agreement—the Paris Agreement itself and the Conference of the Parties (COP) decision adopting the Paris Agreement. The COP decision appears to have assumed the Agreement would not enter into force before 2020. Specifically, a number of provisions in the COP decision imply that the first session of the Conference of the Parties serving as the meeting of the Parties of the Paris Agreement (CMA)—which would take place in conjunction with the first COP following the entry into force of the Paris Agreement—would not take place until some point after 2018 or 2019.⁷ The relevant provisions include the following:

- In paragraph 57, the COP requests the Subsidiary Body for Scientific and Technological Advice (SBSTA) to develop accounting rules for consideration at COP24

(in 2018) “with a view to making a recommendation for consideration and adoption by the [CMA] at its first session.”

- In paragraph 81 of the decision the COP requests that COP25 (in 2019) review progress on the Paris Committee on Capacity-building “with a view to making recommendations to the [CMA] at its first session.”
- In paragraph 91, the COP requests the Ad Hoc Working Group on the Paris Agreement (APA) to develop recommendations on transparency for consideration by COP24 (in 2018) “with a view to forwarding them to the [CMA] for adoption at its first session.”

These provisions reveal an assumption that the provision for entry into force “not before 1 January 2020” remained in the final text. However, these provisions will not affect the Agreement’s entry into force once the double trigger has been met.

Politically, could the Paris Agreement enter into force before 2020?

On 22 April 2016, the Secretary-General of the United Nations, the depositary of the Paris Agreement, will host a leaders summit to mark the opening of the Paris Agreement for signature. This event aims to continue the political momentum from Paris, encouraging Parties to sign the Agreement and then to ratify, approve, or accept it in short order. While domestic requirements differ from country to country, some Parties may be able to sign and to ratify, approve, or accept the Paris Agreement at this summit.

If the double trigger for entry into force is met by 7 October 2016, the Paris Agreement would enter into force on 6 November 2016, and the first session of the CMA would take place in conjunction with COP22 in Morocco at the end of this year. While this is a possibility, it is even more likely that the double trigger will be met before October 2017, making COP23 in November of 2017 the first session of the CMA.

Following the recent United States Supreme Court decision to stay the implementation of the Clean Power

Plan, concerns were raised about the ability of the United States to participate in the Paris Agreement.⁸ The Clean Power Plan, a rule that aims to reduce carbon pollution from power plants, is one of the regulations central to the United States' Intended Nationally Determined Contribution (INDC).⁹ If the Clean Power Plan is ultimately struck down, the United States may not be able to meet its communicated target of reducing emissions by 26%-28% below its 2005 levels in 2025.¹⁰ However, US Climate Envoy Todd Stern has since confirmed that the United States is "sticking to its plan" and will ratify, approve, or accept the Paris Agreement this year.¹¹ If the United States does submit its instrument of ratification, acceptance, or approval this year, it would likely prompt other countries—in particular China, as the United States and China have worked together bilaterally at the highest levels on climate change for several years—to ratify.

Although the ability to ratify the Paris Agreement quickly will depend both on the domestic law and the political will of each Party, one group that may not have the ability to ratify quickly is the European Union.¹² Experts have estimated that it will take the EU approximately two years to ratify the Paris Agreement.¹³ In fact, the EU has yet to ratify the Doha Amendment to the Kyoto Protocol, which was adopted in 2012. In July 2015, the European Commission indicated that the EU and its Member States would simultaneously deposit their instruments of acceptance for the Doha Amendment.¹⁴ However, in October 2015, Poland's newly elected President Andrzej Duda blocked the EU's ratification of the Doha Amendment pending legal and economic analyses.¹⁵

If the EU and its Member States plan to use simultaneous ratification for the Paris Agreement, even with Poland's full cooperation it could take the EU and its Member States much longer than other countries to become Parties to the Agreement.

Implications of Early Entry Into Force

How could early entry into force affect participation of Parties?

Once the Agreement enters into force, Parties that have not yet ratified the Paris Agreement may participate in sessions of the CMA as observers but will not be able to take decisions under the Agreement.¹⁶ This right is reserved for Parties that have ratified the Agreement. The same would apply to SBSTA and SBI when these bodies serve as subsidiary bodies to the Paris Agreement.

It is not yet clear what the status of these observer Parties under the Agreement would mean in practice.¹⁷ However, we can look to the status of observer Parties under the Kyoto Protocol for clues, as the Kyoto Protocol contains the same provisions for participation as the Paris Agreement.¹⁸ For the United States, which did not ratify the Kyoto Protocol, observer status allowed US negotiators to attend negotiations under the Kyoto Protocol. They were able to participate in discussions throughout the negotiations, but were not allowed to participate in decision-making in the final plenary meetings at which decisions were adopted.

Nonetheless, Parties have not taken a formal decision on the participation of observer Parties, either under the Kyoto Protocol or the Paris Agreement. While there is a general presumption of inclusiveness in international environmental law,¹⁹ the ambiguity surrounding this issue may concern Parties that will not be able to quickly ratify the Agreement. Parties could seek formal confirmation that all Parties will be able to fully participate in the work of the CMA in its first session.

If the Agreement enters into force before 2018, can mandated work be completed by the first session?

In both the Paris Agreement and the accompanying COP decision, a significant amount of work—more than twenty items—is assigned to the subsidiary bodies and the newly formed APA to prepare for the entry into force of the Agreement. Much of this work is to be considered by and adopted at the first session of the CMA. In addition to the three potential timeline discrepancies in

the COP decision (mentioned above), the sheer amount of work could be challenging.

Although the deadlines contained in the COP decision could be extended by subsequent COP decisions, the timelines within the Paris Agreement itself would be much more difficult to change.²⁰ For example, Article 7, paragraph 3 references modalities for recognition of adaptation efforts to be adopted by the CMA at its first session. And Article 13, paragraph 13, states the CMA “shall, at its first session...adopt common modalities, procedures and guidelines, as appropriate, for the transparency of action and support.” Finally, in Article 15, paragraph 3, the text states that the compliance committee “shall operate under the modalities and procedures adopted by the [CMA] at its first session.”

If the Agreement were to enter into force before 2018, it is unlikely that this work—including the completion of modalities and procedures for both the new transparency and compliance regimes—would be ready for adoption at the first session of the CMA. This would not be the first instance of Parties missing mandated deadlines—for example, the Rules of Procedure were not adopted at the first COP as mandated.²¹ However, procedural solutions may allow Parties sufficient time to complete this important work.²²

Conclusion

The entry into force of the Paris Agreement will likely be a central focus of discussions in the coming months.²³ Because the implications of early entry into force may not have been fully contemplated during the Paris meeting, it is now important that all Parties are aware of the requirements for entry into force and the potential impacts of early entry into force. A full understanding of these impacts may provide Parties with additional impetus to quickly ratify the Agreement in order to ensure their country’s own full participation in the first session of the CMA.

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¹ Signature qualifies a Party to ratify, accept, or approve the Agreement and creates an obligation for Parties “to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.” United Nations Treaty Collection, *Glossary of terms relating to Treaty actions*,

https://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml. . Following signature, Parties may proceed to ratification, acceptance, or approval. In ratifying the Agreement, a country indicates its consent to be bound by the treaty. *Id.*

² While acceptance and approval convey the same consent to be bound by the treaty and have the same legal effect as ratification, the terminology may differ due to the country’s domestic law and processes for the specific treaty. Accession again has the same legal effect as ratification but is a one step process for a Party that has not signed the treaty. United Nations Treaty Collection, *Glossary of terms relating to Treaty actions*,

https://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml. . For the Paris Agreement, a Party may accede to the Agreement once the signing period for the Agreement is over (April 22, 2017). United Nations Framework Convention on Climate Change [hereinafter UNFCCC], *Paris Agreement*, FCCC/CP/2015/10/Add.1, Art. 20 (Jan. 29, 2016).

³ UNFCCC, *Paris Agreement*, FCCC/CP/2015/10/Add.1, Art. 21 (Jan. 29, 2016).

⁴ UNFCCC, *Information provided in accordance with paragraph 105 of the decision related to entry into force (Article 21) of the Paris Agreement*, FCCC/CP/2015/10, Annex 1 (Jan. 29, 2016). The amounts reflected in the table do not necessarily reflect a country’s current level of emissions. In fact, for some countries, this data is more than a decade old. For example, the data for India is from 2000 and puts India’s emissions at just 4.1% of global emissions.

⁵ UNFCCC, *Draft agreement and draft decision on workstreams 1 and 2 of the Ad Hoc Working Group on the Durban Platform for Enhanced Action* (Oct. 23, 2015), <http://unfccc.int/files/bodies/application/pdf/ws1and2@2330.pdf>.

⁶ UNFCCC, *Draft Paris Outcome, Proposal by the President* (Dec. 10, 2016), <http://unfccc.int/resource/docs/2015/cop21/eng/da02.pdf>.

⁷ UNFCCC, *Adoption of the Paris Agreement*, FCCC/CP/2015/10/Add.1, Decision 1/CP.21 (Jan. 29, 2016).

⁸ Coral Davenport, *Supreme Court’s Blow to Emissions Efforts May Imperil Paris Climate Accord*, N.Y. TIMES, Feb. 20, 2016.

⁹ United States of America, *U.S. Cover Note, INDC and Accompanying Information* (submitted Mar. 31, 2015), <http://www4.unfccc.int/submissions/INDC/Published%20Documents/United%20States%20of%20America/1/U.S.%20Cover%20Note%20NDC%20and%20Accompanying%20Information.pdf>.

¹⁰ *Id.*

¹¹ Ed King, *Todd Stern: US will sign and support Paris climate pact*, Climate Home, Feb. 16, 2016,

<http://www.climatechangenews.com/2016/02/16/todd-stern-us-will-sign-and-support-paris-climate-change-pact/>.

¹² “As a regional economic integration organization, the European Union itself can be, and is, a Party to the [UNFCCC]. However, it does not have a separate vote from its members.” UNFCCC, *Party Groupings*,

http://unfccc.int/parties_and_observers/parties/negotiating_groups/items/2714.php.

¹³ Megan Darby, *EU faces two-year wrangle to ratify Paris climate deal*, Climate Home, Feb. 8, 2016,

<http://www.climatechangenews.com/2016/02/08/eu-faces-two-year-wrangle-to-ratify-paris-climate-deal/>.

¹⁴ European Commission, *Council adopts ratification of second phase of Kyoto Protocol* (July 14, 2015);

http://ec.europa.eu/clima/news/articles/news_2015071401_en.htm.

¹⁵ Sara Stefanini, *Poland's Duda bucks EU on climate*, Politico, Oct. 29, 2015, <http://www.politico.eu/article/poland-kyoto-protocol-doha-amendment-law-justice-duda/>.

¹⁶ UNFCCC, *Paris Agreement*, FCCC/CP/2015/10/Add.1, Art. 16, para. 2 (Jan. 29, 2016).

¹⁷ Observer Parties as referred to in Article 16 paragraph 2 of the Paris Agreement should be distinguished from observers as referred to in section V of the Draft Rules of Procedure. UNFCCC, *Organizational Matters, Adoption of the Rules of Procedure*, FCCC/CP/1996/2 (May 22, 1996).

¹⁸ UNFCCC, *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, FCCC/CP/1997/7/Add.1, Art. 13 & Art.15 (1998).

¹⁹ ROBBIE SABEL, *PROCEDURE AT INTERNATIONAL CONFERENCES* 51 (2nd ed. 2006).

²⁰ The text of the Paris Agreement could be changed by amendment as allowed by Article 22 of the Agreement. However, this could not happen before the first session of the CMA. UNFCCC, *Paris Agreement*, FCCC/CP/2015/10/Add.1, Art. 22 (Jan. 29, 2016).

²¹ UNFCCC, *Organizational Matters, Adoption of the Rules of Procedure*, FCCC/CP/1996/2 (May 22, 1996).

²² For example, specific agenda items could be held in abeyance until they are ready for adoption. Alternatively, the first session of the CMA could remain open, so that CMA1 continues for two or three years until the necessary work is completed.

²³ "Preparing for the entry into force of the Paris Agreement and for the convening of the first session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement" is one of nine agenda item listed on the provisional agenda of the first session of the APA to be held in May 2016. UNFCCC, *Ad Hoc Working Group for the Paris Agreement, First Session, Provisional Agenda*, http://unfccc.int/files/bodies/apa/application/pdf/apa_1_provisional_agenda_-_advanced_version.pdf.