

Entry into force of the Paris Agreement: The legal process

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# Entry into force of the Paris Agreement

The legal process

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The Paris Agreement on climate change is an international legal instrument by which states have established rights and obligations to address the causes and impacts of climate change. According to Article 21, the agreement will enter into force on the 30th day after the date on which at least 55 parties to the United Nations Framework Convention on Climate Change have deposited their instruments of ratification, acceptance, approval or accession with the Secretary-General of the United Nations, who will act as the depositary of the agreement. These parties must account in total for at least an estimated 55 per cent of total global greenhouse gas emissions. There are a number of key steps that need to be followed to bring the agreement into force.

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## Introduction

The Paris Agreement on climate change<sup>1</sup> is an international legal instrument by which states have established rights and obligations to address the causes and impacts of climate change. According to Article 21, the agreement will enter into force on the 30th day after the date on which at least 55 parties to the United Nations Framework Convention on Climate Change have deposited their instruments of ratification, acceptance, approval or accession with the Secretary-General of the United Nations, who will act as the depositary of the agreement.<sup>2</sup> These parties must account in total for at least an estimated 55 per cent of total global greenhouse gas emissions. There are a number of key steps that need to be followed to bring the agreement into force.

## Key steps for the Paris Agreement's entry into force

### 1. The authentic text of the Paris Agreement is transmitted to the UN Treaty Section.

The Executive Secretary of the United Nations Framework Convention on Climate Change (UNFCCC) will send the Paris Agreement text in all six UN languages to the UN Secretary General, as depositary to the Paris Agreement.<sup>3</sup> The UN Treaty Section assists the Secretary General to perform his function of depositary for multilateral treaties.

### 2. Certified true copies are distributed to all parties to the convention.

The depositary prepares the original copies of the agreement, distributing them to all the UNFCCC parties before it is opened for signature.

### 3. The Paris Agreement is open for signature.

The agreement will be open for signature over a period of 12 months, from 22 April 2016 to 21 April 2017 (in accordance with Article 20, paragraph 1). The Conference of Parties (COP) has invited the UN Secretary-General to convene a high-level signature ceremony for the Paris Agreement on 22 April 2016 at United Nations Headquarters in New York, with all parties invited to sign it at this ceremony or at their earliest opportunity.<sup>4</sup>

### 4. Parties to the convention deposit their instruments of ratification, acceptance, approval or accession and become parties to the Paris Agreement.

Signing the agreement does not in itself enable a country to become a party to the Paris Agreement. In accordance with Article 20, paragraph 1, of the Paris Agreement, parties to the convention must send their instruments of ratification, acceptance, approval or accession to the Paris Agreement to the depositary via the UN Treaty Section. By depositing these instruments, states express their consent to be bound by the agreement; and having completed this process a party to the convention will become a party to the Paris Agreement.

### 5. Agreement enters into force.

The agreement enters into force on the 30th day after the date on which at least 55 parties to the convention – accounting in total for at least an estimated 55 per cent of total global greenhouse gas emissions<sup>5</sup> – have deposited their instruments of ratification, acceptance, approval or accession with the depositary. This is stated in Article 21, paragraph 1, of the agreement.

## Legal terminology explained

### Signature

In accordance with treaty law,<sup>6</sup> the signature of an international agreement qualifies the signatory state to proceed to ratification, acceptance or approval. The signature does not establish the state's consent to be bound, but it creates an obligation to refrain, in good faith, from acts that would defeat the object of the agreement. It also indicates the signatory state's intention and willingness to take steps to continue in the process. Signing the Paris Agreement between 22<sup>nd</sup> April 2016 and 21<sup>st</sup> April 2017 does not therefore mean that the signatory state becomes a 'party' to the Paris Agreement.

Most parties will sign the agreement "subject to ratification, acceptance and approval," making their signature conditional on obtaining the required domestic approval for joining the agreement.

By signing, parties express their willingness to continue in the process.

Heads of state, heads of government and ministers of foreign affairs normally sign multilateral treaties on behalf of states. However, their representatives may sign the agreement if written authorisation is given by those authorities.

### Ratification, acceptance or approval

According to the Vienna Convention on the Law of Treaties, ratification, acceptance or approval is the act whereby a state indicates its consent to be bound by a multilateral treaty.<sup>7</sup> It means that a country has completed all necessary domestic processes and can now join the agreement. Under the ratification process, the state normally takes all the required measures for transferring the treaty to its domestic jurisdictional system first. See “domestic processes for ratification” below for more information.

There is no time limit for ratification, acceptance or approval. Depositing these instruments can be done on the same day as signing the agreement, or soon after, or the deposit can be submitted separately much later.

### Accession

According to the Vienna Convention on the Law of Treaties, ‘accession’ is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states.<sup>8</sup> Accession has the same legal effect as ratification, acceptance or approval.

States can join the agreement through accession after the one-year signing period. This means that depositing an instrument of accession to the Paris Agreement after 22 April 2017 will have the same legal effect as if that country had signed and deposited an instrument of ratification, acceptance or approval during the signing period.

## Domestic processes for ratification

The domestic processes for ratification varies, based on relevant domestic processes.

This process normally involves measures for transposing the treaty to a state’s domestic jurisdictional system, in accordance with what is required by each state’s constitution or other relevant processes. In some countries, the treaty has to be approved by parliament, such as in Sri Lanka; in others such as Canada, a simple formal notification to parliament suffices, since the process is controlled by the executive. The process in the United States may require approval by senate, congress, or by the president alone via a ‘presidential executive agreement.’<sup>9</sup>

Domestic processes for ratifying international treaties may be cumbersome and slow. In Brazil, although the Doha Amendment of the Kyoto Protocol was adopted by the UNFCCC parties in Qatar on 8 December 2012, it was only put forward by the executive for the approval of Brazilian Congress on 29 December 2015. Under Brazilian ratification procedures, as with any piece of domestic legislation, the treaty must be approved by both houses in congress (the Senate and the House of Representatives), followed by the president, who then sends forward the instrument of ratification to the depositary. When a country fulfills its necessary domestic processes, it may deposit an instrument of ratification, acceptance or approval with the depositary.

Fiji and Palau have already completed their domestic processes. Fiji submitted a motion for its parliament (which is unicameral, having a single legislative chamber) to approve the ratification of the Paris Agreement on 14 February 2016. Parliament unanimously agreed.<sup>10</sup>

Both countries will then be able to ratify the Paris Agreement on the day they sign it, which may be 22 April 2016.

Following the correct process for ratification is a matter for each state, based on its constitution and established law and practices.

## Regional economic integration organisations

Paragraphs 2 and 3 of Article 20 of the Paris Agreement contain specific rules for regional economic integration organisations joining it, such as the European Union. If one or more member states of these organisations is also a party to the Paris Agreement, the organisation and its member states must decide on their respective responsibilities for performing their obligations under it, so that they will not be entitled to exercise rights under the Agreement concurrently. The organisation must therefore declare the extent of their competence with respect to the matters governed by the agreement in their instruments of ratification, acceptance, approval or accession.

## Communicating first nationally determined contributions

The COP invited parties to communicate their first nationally determined contribution (NDC) no later than when they submit their instrument of ratification, acceptance, approval or accession. According to Decision 1/CP.21, paragraph 22, if a country has already submitted its intended nationally determined contribution (INDC) before joining the agreement,<sup>11</sup> then that INDC will be considered the country's first NDC, unless it indicates otherwise. In this context, a party has the opportunity to enhance its INDCs by communicating a more ambitious NDC, if it desires to do so. However, this is not a requirement of the decision.

## The Ad-Hoc Working Group on the Paris Agreement

The COP has established a new working group to prepare for the entry into force of the Paris Agreement – the Ad-Hoc Working Group on the Paris Agreement (APA). It will have concluded its work in the first session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA).

The APA will hold its first session in May 2016, in conjunction with the inter-sessional meeting of the convention subsidiary bodies in Bonn. From then on it will always hold its session in conjunction with the convention subsidiary bodies' sessions.

Its task is to prepare draft decisions to be recommended through the COP to the CMA for consideration and adoption at its first session. The APA is mandated specifically for the following tasks, according to Decision 1/CP.21:

- To develop further guidance on features of the NDCs
- To develop further guidance for the information to be provided by parties, in order to facilitate clarity, transparency and understanding of NDCs
- To develop guidance for accounting for parties' NDCs, by ensuring that: 1) accounting for anthropogenic emissions and removals is in accordance with methodologies and common metrics assessed by the IPCC; 2) there is methodological consistency, including on baselines, between communicating and implementing NDCs; 3) every effort is made to include all categories of anthropogenic emissions or removals in the NDCs, and, once a source, sink or activity is included, continue to include it; 4) an explanation is provided of why any categories of anthropogenic emissions or removals are excluded.
- To develop recommendations for modalities, procedures and guidelines for a transparency framework, and to define the year of their first and subsequent review and update, as appropriate, at regular intervals. This will be for the consideration of COP 24, with a view to forwarding them to the CMA, taking into account the aspects provided in paragraphs 92-95 of Decision 1/CP.21. This work is to be concluded no later than 2018.
- To develop modalities and identify the sources of input for the global stocktake referred to in Article 14 of the agreement
- To develop the modalities and procedures for the effective operation of the compliance committee referred to in Article 15, paragraph 2, of the agreement.

## Could the Paris Agreement enter into force before 2020? Notes

As mentioned earlier, the Paris Agreement will enter into force on the 30th day after the date on which at least 55 Parties to the Convention, accounting in total for at least an estimated 55 per cent of total global greenhouse gas emissions, have deposited their instruments of ratification, acceptance, approval or accession with the depositary.

Unlike the Durban Platform decision, which calls for the outcome of the ADP “to come into effect and be implemented from 2020”, the Paris Agreement does not include a deadline for entry into force. Analysis suggest that the 55 percent threshold can be achieved if at least one of the top four emitting parties (China, the United States, the EU, or Russia) ratify, together with enough parties to take the total to the required 55, accounting for at least 55 per cent of global emissions.<sup>12</sup>

Theoretically, this means that the trigger of the entry into force could be met before 2020. Conversely, if the trigger is not met by 2020, the agreement’s implementation will not start in that year.

There are possible implications of an early entry into force, particularly for the readiness of the institutions and mechanisms established in the Paris Agreement. The provisions of the agreement state that the first CMA will be held after its entry into force, and will be requested to adopt a number of rules and modalities necessary to implement the agreement. These include rules and modalities that should be developed through the APA and other UNFCCC bodies, such as: future NDCs, a sustainable development mechanism, mobilising support, adequacy of adaptation support and transparency, a global stocktake and a compliance committee.

The main question is whether these will be ready for an early implementation of the Paris Agreement. There are also implications for the current INDCs’ timeline, as they are proposed to be implemented from 2020 and around the pre-2020 workplan.

However, resolving these matters is not impossible. The first meeting of the parties to the Paris Agreement will be held after its entry into force. This will be an important time to adopt many of the more detailed rules and procedures necessary to make the agreement effective.

- 1 The text of the Paris Agreement is contained in the annex to Decision 1/CP.21. This can be found at <http://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf>.
- 2 Article 26 of the Paris Agreement.
- 3 UN (2016) The Paris Agreement: next steps. <http://tinyurl.com/zbvuj8o...105> OOptions for U.S.ated by Pamke papers, references should actually be endnotes rather than in their own section. These two
- 4 See Section I, paragraphs 3 and 4 of Decision 1/CP.21, at <http://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>.
- 5 For the sole purpose of determining the entry into force of the Paris Agreement, the Secretariat has made the information available on the most up-to-date total and percentage of greenhouse gas emissions communicated by parties to the convention, in their national communications, greenhouse gas inventory reports, biennial reports or biennial update reports. This information is on the UNFCCC website at <http://unfccc.int/resource/docs/2015/cop21/eng/10.pdf> - page=30.
- 6 Articles 10 and 18, Vienna Convention on the Law of Treaties 1969.
- 7 Articles 2(1) (b), 14(1) and 16, Vienna Convention on the Law of Treaties 1969.
- 8 Articles 2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969.
- 9 Bodansky, D (2015) Legal options for US acceptance of a new climate change agreement. Centre for Climate and Energy Solutions. [www.c2es.org/docUploads/legal-options-us-acceptance-new-climate-change-agreement.pdf](http://www.c2es.org/docUploads/legal-options-us-acceptance-new-climate-change-agreement.pdf).
- 10 Swami, N (14 February 2016) Fiji agrees to Paris Agreement. *Fiji Times Online*. [www.fijitimes.com/story.aspx?id=341538](http://www.fijitimes.com/story.aspx?id=341538).
- 11 See submitted INDCs at [www4.unfccc.int/submissions/indc/Submission Pages/submissions.aspx](http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx).
- 12 Northrup, E and Ross, K (21 January 2016) After COP21: what needs to happen for the Paris Agreement to take effect? [www.wri.org/blog/2016/01/after-cop21-what-needs-happen-paris-agreement-take-effect](http://www.wri.org/blog/2016/01/after-cop21-what-needs-happen-paris-agreement-take-effect).



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