

The Paris Agreement adopted

What now for Clima East Partner Countries?

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December 2015

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When the President of the COP, Laurent Fabius gave the agreement to a rapturous applause of the delegates to the COP on Saturday, 12 December, the majority of commentators speaking to the media were of the view that this was the moment when humanity solved the problems of climate change. They agreed that the Paris Agreement was a landmark after which all parties to the Agreement will set out in harmony to deliver jointly the strengthened long term goal, enshrined in the new agreement.

In fact, the Agreement and its proponents will face the reality check of further negotiations that are intended to put flesh on the bones of the future climate regime, and much can still go awry. The "flesh on the bones" will determine new obligations of parties joining the Agreement, which will increase pressure on domestic policies and the administrations responsible for implementing these policies. Many countries will need support and capacity building to address the new challenges. Clima East partner countries are among those that will require at least some help in implementing the outcomes of Paris and their follow-up in the years to come.

In order to better understand what the stakes are, it makes sense to look at the agreement itself. In Durban, the freshly set up ADP was mandated "to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties".

However, is the Paris Agreement adopted on Saturday, 12th December 2015 really global?

Looking at the entry into force provisions of the agreement, as stipulated in its article 21, we can see that this agreement "shall enter 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 per cent of the total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval or accession". Similar provision applied to the Kyoto Protocol, of which paragraph 1 of Article 25 stipulates that "This Protocol shall enter into force on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in Annex I which accounted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in Annex I, have deposited their instruments of ratification, acceptance, approval or accession."

The key difference between the Agreement and the Kyoto Protocol is that the latter was based on the assumption that the Protocol became valid only a sufficient number of Annex I countries responsible for the reductions joined, while the Paris Agreement does not distinguish between those with INDCs planning emission reductions and those parties which (at least for now) are not planning to reduce emissions in the submitted INDCs, so given that sufficient number of countries joins the agreement, it will become valid.

Therefore, the agreement will become valid for some of the willing parties even if either China or the United States decide not to "deposit their instrument of ratification, acceptance, approval or accession" after all. In order to ensure that both these countries are in the Agreement for it to enter into force, it would be necessary to include 70 per cent or, better still, 80 per cent of the global emissions. The Paris Agreement's real achievement is that with respect to the joining threshold, it does not discriminate between developed and developing countries. With regard to the US and China the question remains whether one will want to join the Agreement without the other. The Agreement is therefore not quite as global as it has been suggested by the commentators as it will kick in even in the event that some important parties decide not to join. Since there is no incentive for poor, low-income countries to abstain - on the contrary, one may expect them to join, if only to become eligible

for climate funding under the Paris Agreement, it may be envisaged that perhaps some polluting countries with “more pain, little gain” in terms of their eligibility for Means of Implementation (MOI) may decide not to become part of it. Some developed countries supported 80% of global emissions as a kick-in threshold. Some developing countries were for a single threshold set up rather low, ensuring that key developed countries with obligations under the Convention/Kyoto Protocol joined. Ecstatic journalists speak of 194 nations making voluntary commitments to cut emissions, which is far from accurate, as not all countries submitted INDCs, of which only some countries, chiefly the EU Member States, will make their NDCs internally legally binding. Furthermore, it is still unclear how many countries will join the Agreement, and whether their association with the Paris Agreement will be legally binding also for them.

Because another issue is that of how legal-binding the Paris Agreement is. With the Kyoto Protocol, this issue was clear. The Kyoto Protocol has been legally binding for parties that took obligations under it, with the commitments listed in an annex to the Protocol. The Paris Agreement, in order to preserve its inclusiveness, does not impose an international compliance regime on Nationally Determined Contributions. This construct was needed to provide an option for the United States to join this multilateral framework at the decision of the US President. But for this reason some observers fear that the compliance with the planned mitigation efforts may not be stringent enough even for the current lot of INDCs on the pathway to below 3 degrees warming until end of this century.

The Agreement is not global also because not all sources and sinks will be covered, at least initially. In their INDCs, developed countries “should continue taking the lead by undertaking economy-wide absolute emission reduction targets”. This phrase, included in para.4 of Article 4 of the Agreement was softened from “shall” to “should” at adoption (one of a few “technical errors” in the adopted text announced at the closing plenary by the Secretariat) However, further down in that very paragraph, developing countries are only “encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.” Moreover, actions of developing countries will continue to be conditional on support, as before under the Convention. This provision should encourage Clima East partner countries belonging to the category of developing countries. Their mitigation actions should receive support, with enhanced support given to those with higher ambition. But for now this means that many developing countries will choose to implement measures limiting emissions from some sectors only, which means that the coverage of mitigation efforts will not be universal.

Furthermore, the EU tried, and failed, to include into the text of the Decision accompanying the Agreement (the Decision), a reference to ICAO, IMO and the Montreal Protocol, and a reference to the need for those international organisations to tackle emissions from international aviation, maritime transport and the HFCs - the sectors which are excluded from the UNFCCC consideration but are increasingly responsible for the growing share of global GHG emissions. Thus a big part of global emissions remains outside of UNFCCC influence, further eroding claims that the Paris Agreement could offer a universal solution to the challenge of putting stop to climate change.

What happened to firewall?

Another misunderstanding is to assume that the Agreement fully dispensed with a firewall between different categories of countries. Again, not only countries are still categorised as developed country parties and developing country parties but there also remains a clear divide between obligations and rights of those categorised as either developed and developing, while there is no clear understanding as to which countries are deemed to be developed and which are developing, as there is no objective

reference point to establish that. In the final negotiating text of the Agreement, parties steered clear of deciding on this status in definitions. Furthermore, the UN Framework Climate Convention still applies to the Paris Agreement signatories. Therefore, it is understood that non-Annex I parties belong in the category of developing country parties, while Annex I country parties are considered to be developed. However, is Ukraine more developed than, for example, Singapore or South Korea, or Chile and Mexico? The impossibility to define clearly these two categories in order to categorise all the parties has led the COP to deliberately leave these categories undefined, whereas they are nevertheless mentioned everywhere in the Agreement. It is believed that, over time, developing countries will progressively assume the responsibilities assigned under the Agreement to developed country parties, but will they do this in time to prevent dangerous climate change from occurring? Meanwhile, countries which as Non-Annex I country parties were eligible for support from Annex II parties under the Convention will continue receiving support under the Paris Agreement, while their actions will continue to be conditional on this support.

The proposal to include, in the context of the provision of finance, a reference to “countries in a position to do so”, which would have solved the problem, has met with a strong resistance of some wealthy developing countries in the ADP negotiations. This issue was partly addressed by the fact that developed country parties are obliged to (shall) “provide financial resources to assist developing country parties with respect to both mitigation and adaptation *in continuation of their existing obligations under the Convention* (this lets Ukraine and Belarus off the hook for obligatory provision of finance to countries wealthier than Ukraine or Belarus) while “other parties are encouraged to provide or continue to provide such support voluntarily” (Article 9, paras 1 and 2 of the Paris Agreement) Meanwhile, the category of Economies in Transition where two of the Clima East countries belong under the Convention is not mentioned in the Paris Agreement. However, these countries will not be obliged to provide means of implementation to developing countries under the new Agreement. All these concessions were necessary to bring parties to the table but having so many concessions in the text of the Agreement and the Decision also means that the conditions of countries' participation in the Paris Agreement reflect their status under the Convention.

Nationally Determined Contributions

Since Nationally Determined Contributions are – by their nature – nationally determined, the key issue has been to establish a framework for the assessment of these contributions based on considerations of equity and assessing fairness and ambition of INDCs communicated by parties.

The decision accompanying the agreement does not reflect discussions among parties on what to include in the updates of the synthesis report on the aggregate effect of INDCs by the UNFCCC Secretariat. Paragraph 19 of the Decision merely requests the Secretariat to update the synthesis report on INDCs which was compiled in November 2015 in order to include all the INDCs that were submitted by parties since then and the INDCs that may be submitted by 4 April 2016, in order to make available the new report by 2 May 2016. Thus the update of the report *will not* contain information on the fairness and ambition of the INDCs communicated by parties, in line with objections of those parties which were against such an assessment by the Secretariat. The first (current) report on INDCs prepared by the Secretariat stated that the aggregate estimated emission levels in 2025 and 2030 resulting from these INDCs lead to emissions of 55 gigatonnes in 2030, whereas to keep the LTG on the level of below 2°C (not to mention still more difficult to achieve 1.5°C) would require that only 40 gigatonnes were emitted.

The provisions for preparing, communicating and maintaining (*NB*, the expression “implementing” was not used) the nationally determined contributions are included in Articles 3 and 4 of the Paris Agreement.

Article 3 of the Agreement states that “all Parties are to undertake and communicate ambitious efforts as defined in articles 4, 7, 9, 10, 11 and 13 (of the agreement) with a view to achieving the purpose of this Agreement as set out in Article 2 (the objective of the agreement, including long term goal, provision of finance consistent with a pathway towards low GHG emissions and climate resilient development, and adaptation to climate change). Article 4 also states that each party’s successive NDC will *represent a progression beyond that party’s current NDC*, and reflect its higher ambition in the light of different national circumstances. Developed parties should take the lead, and support shall be provided to developing parties for the implementation of the provisions of Article 4 of the agreement (preparation of INDCs, *maintenance of INDCs*). While *developed parties should undertake economy-wide absolute emission reduction targets* (Annex I parties from the Clima East partner group belong to that category), developing countries should continue enhancing their mitigation efforts (the remaining CE PCs among these), in time aspiring to economy wide reduction or limitation targets, in the light of different national circumstances. It is, however, for parties to decide *what* constitutes higher ambition and *which national circumstances* to take into consideration. Although parties did not agree to INDCs being assessed formally and by the Secretariat, or to a peer review of individual INDCs, they agreed to a global stocktake enabling the Conference of the Parties serving as a meeting of the Parties to the Paris Agreement to assess collective progress towards achieving the purpose of the Paris Agreement and towards jointly achieving its long term goal. First global stocktake is planned for 2023 and it will be repeated every five years thereafter. The stocktake will consider not only mitigation but also adaptation and the provision of MOI and support, in the light of equity and of the best available science.

No backsliding provision for consecutive INDCs is an important one, as it ensures progress from parties that accede to the Agreement. The cycle of INDCs was decided to last 5 years. So every five years, Parties to the Agreement will be submitting new, *progressive INDCs*. INDCs submitted to the UNFCCC will be recorded in the publicly available registry, maintained by the UNFCCC Secretariat.

Transparency and capacity building

Clarity, transparency and understanding were the key words associated with the preparation and submission of the INDCs. Transparency is one of elements of the Paris Agreement, where there is no distinction between developed and developing countries. The *Ad Hoc Working Group on the Paris Agreement* (replacing ADP) was requested to develop further guidance for the information to be provided by parties on their NDCs, facilitating their understanding, clarity and transparency. The guidance should be adopted at the first session of the *Conference of Parties serving as the meeting of Parties to the Paris Agreement* at its first session in Marrakesh next year.

All countries will be reporting on their emissions and track progress on achieving their NDCs. Paragraph 31 of the Decision requests that the Ad Hoc Working Group on the Paris Agreement develop guidance for accounting for parties’ nationally determined contributions, to be adopted in Marrakesh. This guidance will become obligatory with respect to second and following NDCs but parties may decide to apply it also to their first NDC. Clima East partner countries will be directly affected by the guidelines and should actively participate in negotiating the guidance under development, even though common methodologies and metrics assessed by the IPCC will be adopted as the framework for accounting, so that parties will not design these elements themselves. Importantly, the Decision established a *Capacity-building Initiative for Transparency* in order to build

institutional and technical capacity of developing countries. Its task will be to identify capacity gaps and needs and find opportunities to strengthen capacity for climate action and to promote international cooperation.

The Initiative for Transparency, at least in theory, will be open to help those Clima East partner countries which are in the category of developing countries and they may seek from it (some, to be later defined) support to set up their MRV systems through training and related assistance. In practice, much depends on the scale of resources allocated to the Initiative for Transparency by GEF (as requested by the COP) and on the future demand for its support from all developing countries. It is worth of note that in line with Article 13 of the Agreement, developing countries will be provided with flexibility in the implementation of the provisions on reporting, including its scope, frequency and level of detail, and in the scope of review, which should be optional. This provision is taking account of the different capacities and capabilities of developing countries. However, as a rule, all countries will be required to track progress of their NDCs and to report on their emissions under the Agreement, and the information provided by them will be subject to expert reviews and facilitative multilateral consideration of progress. Parties will not only report on mitigation but also on adaptation and adaptation planning, including, as appropriate, their national adaptation plans, in order to share information and knowledge.

Parties were also invited to communicate to the Secretariat by 2020, their long term low GHG emission development strategies which will be published on the UNFCCC website. The long term development strategies will anchor countries' NDCs and determine their emission pathways, providing context for national adaptation and mitigation policies and measures.

Long Term Goal

There is a progression on a Long Term Goal in the Paris Agreement and its decision, despite parties being unable to agree on the outcome of the 2013-2015 Review of the long term global goal of below 2°C above pre-industrial levels until end of this century (2015 Review), which was carried out jointly by the Subsidiary Body for Implementation (SBI) and the Subsidiary Body for Scientific and Technological Advice (SBSTA) through a Structured Expert Dialogue and a Joint Contact Group. During the 2015 Review, the Alliance of Small Island States (AOSIS) and the Least Developed Countries (LDCs) supported by African countries insisted that the 1.5°C goal should be recognised as supported by scientific research. This was not recognised by several other parties. The SBI and SBSTA were not able to reach consensus and the issue had to be moved to the COP. However, under the new agreement, parties agreed to a compromise text, defining LTG as “holding the increase in the global average temperature well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 degree Celsius, recognizing that this would significantly reduce the risks and impacts of climate change”. The hook in the text for 1.5°C is a victory for Small Island Developing States (SIDs) and LDCs in the context of their agenda under loss and damage. The text of the Agreement does not provide for compensation but, in the light of current aggregate INDCs steering towards below 3 degrees temperature rise, increasing the ambition of the LTG could prove to be one more example of wishful thinking, unless this offers better negotiation position for further loss and damage talks. Paragraph 21 of the Decision “invites the Intergovernmental Panel on Climate Change to provide a special report in 2018 on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways”. This adds an additional obligation to the IPCC work while preparing AR6, but the Decision also confirms that the 2015 Review could not decide whether to support the 1.5°C against current 2°C goal based on science reported in the IPCC AR5. SBSTA 43 agenda item 8(b) and SBI 43 agenda item 13 on 2015 Review ended with no

conclusions, not to mention a draft decision, such were differences among parties on the results of the 2015 Review. The provision in the Paris Agreement decision on the special report will result in continuation of the 1.5°C discussion in the pre-2020 period. Change in the Long Term Goal agreed in Paris was subtle. The goal remains still linked to below 2°C, and only efforts are to be made to limit the growth to below 1.5°C, but it will have impact on discussion about the ambition needed to achieve such LTG and the gap between aggregate commitments and pledges of parties in pre-2020 period, and aggregate emission pathways consistent with such LTG. On the other hand, paragraph one of Article 4 of the Agreement concedes that peaking of emissions for developing countries will take longer than for developed countries, but still the goal is to achieve a balance between anthropogenic emissions by sources and removals by sinks in second half of the century. This seems to narrow the options for parties to achieve their LTG, especially if its ambition is increased.

Markets

The Agreement, contrary to what some experts claimed immediately after it was published, is not an unqualified big success for carbon markets, which are covered in Article 6 of the Agreement. *Cooperative Approaches* are established for parties to use on a voluntary basis and enabling the use of *internationally transferred mitigation outcomes*. This suggests that Measuring, Reporting and Verification (MRV) issues will be decided bilaterally, and some outcomes will be recognised with limitations, most probably only in bilateral deals among countries. Countries engaging in cooperative approaches shall promote sustainable development, promote environmental integrity and transparency, avoid double counting. In addition, a mechanism which is not called market mechanism but is described as a mechanism to contribute to the mitigation of greenhouse gas emissions and to support sustainable development has been set up, ensuring no double counting. The provision envisages setting up a supervisory body, similar perhaps to Clean Development Mechanism (CDM) Executive Board and the Joint Implementation Supervisory Committee (JISC). Rules, modalities and procedures will be adopted at the first session of the Conference of the Parties Serving as Meeting of the Parties to Paris Agreement. So, it is next year in Marrakesh that the new mechanism will be shaped out, and, unless it becomes a market mechanism with international, UNFCCC based rules, it will not repeat the success of the CDM.

Finance

Finance will be provided by developed countries to developing countries to support mitigation and adaptation. Financial flows have to be consistent with a pathway towards low Greenhouse Gas (GHG) emissions and climate-resilient development. It is clearly stated in the Agreement and in the accompanying Decision that developed countries will continue to provide and mobilise finance to support both, mitigation and adaptation in developing countries. Developed countries reaffirmed their resolve to provide urgent and adequate finance (and other means of implementation) to developing countries to enhance the level of pre-2020 ambition and were urged to scale up the level of financial support with a concrete roadmap to achieve the goal of jointly providing USD 100 billion annually by 2020 for both mitigation and adaptation (para. 115 of the decision). On top of that, developed countries intend to continue this existing collective mobilisation goal (of USD 100 billion annually) through 2025 (para. 54 of the Decision). From 2026 this amount is *intended to increase from the floor of USD 100 billion per year*. The new collective quantified goal should be set by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement prior to 2025 but it was not decided whether *only developed countries will be asked to contribute*, although the paragraph in question confirms that the *beneficiaries of this support will be only developing countries*.

This is a provision that will be important for both, Clima East partner countries which are now Annex I countries, and for the Clima East partner countries that are in the category of non-Annex 1 countries. For the countries currently in Annex I but not listed in Annex II to the directive, this may mean that future financial obligations may also apply to them from 2026 onwards. For now, Article 9 of the Paris Agreement on finance states in para.1 that developed countries shall provide financial resources to assist developing country Parties with respect to both, mitigation and adaptation *in continuation of their existing obligations under the Convention*. This means that Economies in Transition, and other Annex I parties which are not listed in Annex II, *are not obliged to provide finance to developing countries*, and as a result, Ukraine and Belarus are exempt from this obligation and will continue to be so immediately after the Agreement kicks in after 2020. Both, Ukraine and Belarus, as well as the Russian Federation have negotiated voluntary character of such support on their part until 2020 in the Doha decision closing the Long-term Cooperative Action (LCA) workstream but the wording of the Agreement offers them a voluntary status with regard to the provision of finance for developing countries *also after 2020*. Para.2 of Article 9 of the Agreement states that other parties are (merely) encouraged to provide or continue to provide financial support to developing countries on a voluntary basis. At present several developing countries are already giving climate finance to other developing countries in the spirit of South-South cooperation and it is expected that these countries will defend their voluntary status in the provision of finance in negotiations on scaled up support to developing countries from 2026 onwards.

Scaled up finance for adaptation, and a balance in provision of financial support to both, mitigation and adaptation confirm the shift towards adaptation and adaptation finance under the new agreement. Support for adaptation will also be increased in pre-2020 period. Donor countries, which belong to developed countries category, shall ensure that biennial reporting requirements on projected financial support and support given to developing countries are fulfilled. This information will be taken into account in the global stocktake assessing collective progress towards fulfilling the objective of the Agreement.

Adaptation

In the Paris Agreement, adaptation was given equal weight to mitigation. This constitutes a marked shift of thinking which countries were undergoing in the past few years, according progressively increased importance to adaptation under the Convention. Article 7 of the Paris Agreement established the *global goal on adaptation* of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the long term goal of the Agreement. Adaptation is recognised as a key component of response to climate change. Given that adaptation challenges are local, *adaptation measures with mitigation benefits* are important contributions to joint mitigation efforts. The parties thereby recognised that it was easier to mobilise countries and non-state actors to adaptation efforts, and that from adaptation the stakeholders will inevitably move to mitigation. Existing frameworks, such as the Cancun Adaptation Framework and Adaptation Committee would provide support in strengthening cooperation on enhancing action on adaptation. Each party shall engage in adaptation planning processes and in the implementation of actions on adaptation which may be communicated periodically in an adaptation communication. Since finance from developed to developing countries will be provided to support adaptation, effective communication and reporting would increase developing countries' chances (including some of to obtain such financial support. Establishing global goal on adaptation signals that the role of adaptation may be weighted instead of mitigation for some developing countries, with unquestionable reason to

do so for LDCs and SIDS. However, this signals also the increased pressure on developed countries under loss and damage.

Other issues of importance for Clima East partner countries. Article 3.7 ter

In Paris, apart from the Paris Agreement and its Decision, Parties to the Convention adopted other decisions, 22 under the COP and 12 under the CMP, among others, on enhancing technology development and transfer through the Technology Mechanism; on the process to assess progress to formulate and implement national adaptation plans; on adopting the terms of reference for the third comprehensive review of the implementation of the capacity-building framework; on provision of methodological guidance for reducing emissions from deforestation and forest degradation in developing countries, and the role of conservation, sustainable management of forests, and enhancement of forest carbon stocks (REDD+); on guidance to the CDM and Joint Implementation (JI); and on methodological issues under the Kyoto Protocol including clarification of the Section G, Article 3.7 ter of the Doha Amendment. The latter decision sets up an interpretation of Article 3.7 ter important for countries that joined the Kyoto Protocol in the second commitment period, thus being of importance for Belarus (and Kazakhstan) as it is clarifying the text of the Doha Amendment to the Kyoto Protocol (Art 3.7 ter) with regard to the information to be used to determine the “average annual emissions for the first three years of the preceding commitment period”. Article 3.7 ter of the Doha Amendment states: “Any positive difference between the assigned amount of the second commitment period for a Party included in the Annex I and average annual emissions for the first three years of the preceding commitment period multiplied by eight shall be transferred to the cancellation account of that Party.” and was introduced by Parties to the Kyoto Protocol to prevent a build-up of surplus AAs of the kind that happened in CP1.

Given that Belarus and Kazakhstan joined the Kyoto Protocol from the second commitment period, there was a need to agree what this information would contain in their particular case. Decision clarifies that Article 3, paragraph 7 ter, of the Amendment to the Kyoto Protocol in annex I to decision 1/CMP.8 is applicable, for the second commitment period, to those parties that did not have a quantified emission limitation or reduction commitment during the first commitment period of the Kyoto Protocol and are now among parties with a quantified emission limitation or reduction commitment inscribed in the third column of Annex B to the Kyoto Protocol contained in annex I to decision 1/CMP.8 (parties with commitments in the CP2). SBSTA in the format of Friends of the Chair later approved by the COP agreed finally that for “average annual emissions for the first three years of the preceding commitment period” these countries will use the average of their annual emissions for the years 2008, 2009 and 2010, and that they shall clarify, in their reports to facilitate the calculation of the assigned amount submitted pursuant to decision 2/CMP.8, whether they have used, in the calculation of the average annual emissions for the first three years of the preceding commitment period:

- a. The gases and sources listed in Annex A to the Kyoto Protocol; or
- b. The same greenhouse gases, sectors and source categories as those used to calculate the assigned amount for the second commitment period.

Both countries report in their national inventories report removals in the LULUCF. For Kazakhstan, this was - 4 MtCO₂eq (NIR 2015) and for Belarus - 28Mt CO₂eq (NIR 2014).