

# Entry into force of the Paris Agreement: legal requirements and implications

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## Information Note

Prepared by the UNFCCC Legal Affairs Programme

### Entry into force of the Paris Agreement: legal requirements

1. Article 24, paragraph 1, of the Vienna Convention on the Law of Treaties states that “a treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree”. The entry into force of an international agreement or treaty makes it legally binding and operational for the States that have expressed their consent to be bound by it in accordance with the provisions of the agreement. For the majority of multilateral agreements, such consent to be bound is expressed through the deposit of instruments of ratification, acceptance, approval or accession (hereinafter referred to as “ratification”). The States that have ratified the agreement undertake to fulfil their obligations thereunder and are entitled to exercise any rights conferred by the agreement.

2. It is now established practice for international agreements to specify the procedures, conditions and timing relating to their entry into force. Thus, Article 21, paragraph 1, of the Paris Agreement states 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.” Accordingly, only a Party to the United Nations Framework Convention on Climate Change (hereinafter referred to as “the Convention”) may deposit an instrument of ratification, acceptance, approval or accession to the Paris Agreement with the Depositary, the Secretary-General of the United Nations, thereby expressing its consent to be bound by the Agreement.

3. The Paris Agreement enters into force, and becomes legally binding for those Parties to the Convention that have ratified it, on the thirtieth day after the two conditions specified in Article 21, paragraph 1, have been fulfilled:<sup>1</sup>

- a. At least 55 Parties to the Convention have deposited their instruments of ratification, acceptance, approval or accession with the Depositary; and
- b. These Parties account in total for at least 55 per cent of the total global greenhouse gas emissions.

4. The first condition requires at least 55 Parties to the Convention to deposit their instruments of ratification with the Depositary. Two steps are required for a Party to the Convention to express its consent to be bound by the Agreement: first, completion at the national level of the requisite constitutional and/or legislative procedures for the approval of its ratification (in the case of a regional

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<sup>1</sup> References to Articles in this document are to Articles of the Paris Agreement, unless otherwise stated.

economic integration organization, completion of the requisite procedures in accordance with its constituent instrument); and second, the deposit of its instrument of ratification with the Depositary.

5. The second condition requires that the Parties to the Convention that have deposited their instruments of ratification account in total for at least 55 per cent of the total global greenhouse gas emissions. Information on the total global greenhouse gas emissions as well as individual Parties' percentages of global greenhouse gas emissions for the purpose of the entry into force of the Agreement is available on the UNFCCC website at <http://unfccc.int/resource/docs/2015/cop21/eng/10.pdf#page=30>.

6. Once these two conditions have been fulfilled, the Secretary-General, in his capacity as Depositary, will formally notify Parties to the Convention, the permanent missions to the United Nations, international organizations and the secretariat that the conditions for the entry into force of the Paris Agreement as specified in its Article 21, paragraph 1, have been met and the date of the entry into force of the Agreement.

7. For any Party to the Convention that ratifies the Paris Agreement after its entry into force, the Agreement will enter into force for that Party on the thirtieth day after the date of deposit of its instrument of ratification (see Article 21, paragraph 3). Further, Parties to the Convention may provisionally apply the Agreement pending its entry into force and inform the Depositary accordingly (see decision 1/CP.21, paragraph 5).

8. Upon its entry into force, the Paris Agreement becomes legally effective and operational. Consequently:

- a. The institutional structures and arrangements of the Agreement will become operational;
- b. The secretariat, under the guidance of the Bureau of the Conference of the Parties (COP), will need to make arrangements for convening the first session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) in conjunction with the first session of the COP scheduled after the date of entry into force of the Agreement;
- c. Parties to the Agreement will exercise governance, oversight, leadership and decision-making over the Agreement;
- d. Specific legal, procedural and substantive rights and obligations will become effective for Parties to the Agreement, in particular substantive obligations relating to, inter alia, nationally determined contributions, support and transparency, in accordance with the requirements and time frames specified in the Agreement;
- e. Implementation of the Agreement may commence at the international, regional and national levels.

9. Parties to the Paris Agreement, relevant international organizations and the secretariat therefore need to be ready to implement the Agreement as soon as it enters into force.

## **Early entry into force of the Paris Agreement: legal and procedural implications**

10. While it is not possible to predict when the two conditions for the entry into force of the Paris Agreement will be met, it is conceivable that the Agreement may enter into force before 2020. In the event that at least 55 Parties to the Convention that account in total for at least 55 per cent of total global greenhouse gas emissions have deposited their instruments of ratification at the latest by 6 October 2017, the Agreement would enter into force on 5 November 2017. If, on the other hand, such instruments are deposited at the latest by 5 October 2018, the Agreement would enter into force on 4 November 2018.

11. The early entry into force of the Paris Agreement would have a catalytic effect, spurring strong and decisive action by Parties and stakeholders. The early entry into force of the Agreement would also serve as a strong incentive for all Parties to the Convention to ratify the Agreement as soon as possible to ensure universal participation in its implementation.

12. Upon the entry into force of the Paris Agreement, Parties to the Agreement will enjoy certain rights and privileges and will be subject to specific obligations that Parties to the Convention that are not Parties to the Agreement, including those that are signatories, would not have. Parties to the Agreement are responsible for governance, oversight, leadership and decision-making over the Agreement.

13. There are a number of legal, procedural and administrative implications of an early entry into force of the Paris Agreement. These relate to participation in the work of and decision-making by the CMA, the finalization of the work on the operational details of the Agreement, and the arrangements for convening CMA 1.

### ***a. The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, the governing and sole decision-making organ of the Paris Agreement, becomes operational***

14. In accordance with Article 16, paragraphs 1 and 2, upon the entry into force of the Paris Agreement and the opening of CMA 1, the CMA becomes the sole body with the authority to take decisions on matters concerning the Paris Agreement. As the governing body, the authority of the CMA extends to all substantive, procedural, administrative and operational matters. No other entity or body may discharge any mandate or undertake any activity concerning the Agreement without the explicit consent of the CMA, save as may be specified in the Agreement itself.

15. During the interim period between the entry into force of the Paris Agreement and CMA 1, the COP and the subsidiary and constituted bodies will continue their preparatory work on the operational details of the Agreement for adoption at CMA 1, as discussed below. The secretariat, under the guidance of the Bureau of the COP, will make the necessary arrangements for convening CMA 1. Once CMA 1 opens and becomes operational, authority, oversight and direction on all matters relating to the Agreement will shift automatically to the CMA.

16. The early entry into force of the Paris Agreement may mean that only a small number of Parties to the Convention could participate in CMA 1 as Parties to the Agreement because a significant number might not have completed their ratification procedures. This would result in

important decisions of the CMA relating to the operationalization and implementation of the Agreement being taken by a limited number of Parties to the Agreement.

***b. Participation of Parties and observers to the Paris Agreement in the sessions of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement***

17. Article 16, paragraph 2, provides that: “Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Agreement. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement”. Thus, it is only Parties to the Paris Agreement that exercise the rights to full participation in the proceedings of and decision-making by the CMA on all matters concerning the Agreement.

18. Parties to the Convention that are not Parties to the Paris Agreement may participate as observers in the proceedings of the CMA and make interventions. They cannot, however, participate in decision-making by the CMA. The conditions relating to the participation of Parties to the Convention that are not Parties to the Agreement applies not only to the meetings of the CMA, but also to the meetings of other bodies, including the meetings of the Subsidiary Body for Scientific and Technological Advice (SBSTA) and the Subsidiary Body for Implementation (SBI), in accordance with Article 18, paragraph 2.

19. It is recalled that the issue of the participation of Parties to the Convention that are not Parties to Kyoto Protocol in the work of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) was extensively discussed at SBI 24. The SBI *recommended* an ‘inclusive approach’ regarding the participation of Parties to the Convention that were not Parties to the Kyoto Protocol in contact groups and informal consultations convened to address Kyoto Protocol agenda items. In subsequent practice this meant that such Parties to the Convention could make interventions and submit textual proposals on draft texts under consideration. A similar approach could be envisaged in the context of the Paris Agreement and the CMA.

20. Should CMA 1 be convened with a minimal number of Parties to the Paris Agreement, this would result in important decisions concerning the operationalization and implementation of the Agreement being taken by only a small number of Parties. In order to avoid this situation, an option would be to convene CMA 1 in accordance with Article 16, paragraph 6, and then suspend it, with a view to its resumption at the next ordinary session of the COP. This would allow many more Parties to the Convention to ratify the Agreement thereby enabling them to participate in decision-making at the resumed session. The on-going work under the APA and the subsidiary and constituted bodies would continue under the authority and guidance of the CMA and these bodies would report to the CMA on progress in their work (see paragraphs 26 and 27 below).

***c. Representatives of Parties to the Paris Agreement to preside over processes under the Agreement***

21. Once the Paris Agreement enters into force, only representatives of Parties to the Agreement may preside over bodies undertaking work on issues concerning the Agreement (see Article 16, paragraph 3, and Article 18, paragraph 3, concerning the bureaux of the COP, the SBSTA and the SBI). This ensures that governance, oversight, leadership and decision-making are exercised by only representatives of Parties to the Agreement.

22. It follows that if the host country of the session of the COP that CMA 1 is to be held in conjunction with is not a Party to the Paris Agreement, the President of the COP would not be in a position to preside over CMA 1. The President of CMA 1 would have to be elected by and from among the representatives of Parties to the Agreement. Similarly, additional members of the bureaux of the COP and the subsidiary bodies would have to be elected to replace those bureaux members whose countries are not Parties to the Agreement at that time.

***d. Concluding and transmitting preparatory work on the operational details of the Paris Agreement to the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement***

23. The Paris Agreement mandates CMA 1 to take a number of decisions on the operational details of the Agreement. Decision 1/CP.21 identifies the preparatory work relating to the Agreement to be undertaken by the COP, the Ad Hoc Working Group on the Paris Agreement (APA) and other subsidiary bodies and constituted bodies for adoption at CMA 1.<sup>2</sup> Decision 1/CP. 21, paragraph 10, enjoins the APA to complete its work by CMA 1.

24. All preparations for the operationalization of the Paris Agreement being undertaken by the APA and other subsidiary and constituted bodies under the authority of the COP will need to be concluded and transmitted by the COP to CMA 1 for its consideration and decision, including further actions to be undertaken under its auspices. While work on some issues may have been completed by CMA 1, it is possible that work on other elements may not be completed in time for an early CMA 1, as some of the mandated activities are based on the assumption of a 2020 entry into force of the Agreement. In its consideration of next steps, CMA 1 may need to assess and, where necessary, extend the timeline for the completion of work on those outstanding elements. Information on some of the preparatory work that could be affected is contained in the annex.

25. The fact that the COP, the APA and the subsidiary and constituted bodies may not be able to complete preparatory work on some or all the operational elements of the Paris Agreement mandated for adoption at CMA 1 due to an early entry into force of the Agreement does not relieve the CMA of its obligation to conclude such work and to adopt the rules, modalities, procedures and guidelines envisioned in the Agreement. The mandate of the CMA does not lapse simply because CMA 1 could not adopt the modalities, guidelines, etc. in accordance with the provisions of the Agreement. The CMA may therefore continue work and adopt those modalities, guidelines, etc. at subsequent sessions. Alternatively, as proposed above, and depending on the status of the preparatory work, CMA 1 could be suspended to allow for the conclusion of such work by the APA and the subsidiary and constituted bodies, and resumed at a later date.

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<sup>2</sup> The list of tasks relating to the Paris Agreement arising from Decision 1/CP.21 is available at <<http://unfccc.int/2860.php>>.

*e. Arrangements for the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement to conclude work on elements of the operational details of the Paris Agreement*

26. There are a number of options for institutional arrangements to continue work on the outstanding elements of the operational details of the Paris Agreement at the disposal of the CMA in the event of an early CMA 1, including:

- a. The SBSTA and the SBI (in accordance with Article 18);
- b. The APA, subject to decisions to be taken by the COP and the CMA (in accordance with Article 19);
- c. Constituted bodies (in accordance with Article 19);
- d. A new ad hoc subsidiary body established by the CMA (in accordance with Article 16, paragraph 4(a)).

27. These options are not mutually exclusive. It should be noted that in order for the APA to continue its work on the operational details of the Paris Agreement beyond CMA 1, the CMA would need to (a) request the COP to continue the APA, and (b) mandate the APA to undertake such work under its authority and guidance. In addition, the COP would need to adopt a decision taking note of the CMA request and continuing the APA. In general, Convention bodies mandated by the CMA to continue work on outstanding elements of the operational details of the Agreement would function under the authority and guidance of, and report to, the CMA in accordance with Article 19. Where necessary, additional bureaux members of such bodies may need to be elected from amongst the representatives of the Parties to the Agreement.

*f. Convening the first session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement in conjunction with the sessions of the Conference of the Parties*

28. The Paris Agreement provides in Article 16, paragraph 6, that CMA 1 shall be convened in conjunction with the first session of the COP scheduled after the date of the entry into force of the Agreement. The possible scenarios for convening CMA 1 in 2017 or 2018 are as follows:

- a. If the Paris Agreement enters into force on or before 5 November 2017, CMA 1 would have to be convened in conjunction with COP 23 and CMP 13, scheduled to be held from 6 to 17 November 2017;
- b. If the Paris Agreement enters into force on or before 4 November 2018, CMA 1 would have to be convened in conjunction with COP 24 and CMP 14, scheduled to be held from 5 to 16 November 2018.

29. The secretariat would have to make arrangements for convening the sessions of six intergovernmental bodies under the Convention, the Kyoto Protocol and the Paris Agreement during the same sessional period (namely the COP, the CMP, the CMA, the APA, the SBSTA and the SBI). Those arrangements would need to take into account time management, operational and efficiency considerations. Options for staggering the sessions could be explored, including opening CMA 1 later in the second week of the conference or upon the closure of the COP and the CMP. This could

provide sufficient time for the COP and the subsidiary bodies to conclude and transmit the outcomes of their work on the operational details of the Paris Agreement to CMA 1 for consideration and adoption.

30. It should be noted that the draft rules of procedure of the COP (see document FCCC/CP/1996/2) specify certain procedural timelines that the secretariat must adhere to when making arrangements for sessions of the COP, which apply *mutatis mutandis* to the CMP, the CMA and the subsidiary bodies:

- a. Rule 5 provides that “the secretariat shall notify all Parties of the dates and venue of a session at least two months before the session is held”;
- b. Rule 11 requires that “for each ordinary session, the provisional agenda, together with supporting documents, shall be distributed in the official languages by the secretariat to the Parties at least six weeks before the opening of the session”.

31. In view of the clear mandate contained in Article 16, paragraph 6, the secretariat, under the guidance of the Bureau of the COP and in consultation and coordination with the host country (if the sessions are to be held away from the seat of the secretariat), would need to ensure that all the procedural, logistical and administrative arrangements are in place for convening CMA 1 after the entry into force of the Paris Agreement, even if the procedural requirements of the draft rules of procedure cannot be strictly adhered to. In effect, the provisions of the Paris Agreement override the procedural requirements of the draft rules of procedure.

Dan Bondi Ogolla  
Coordinator & Principal Legal Adviser

Bonn, Germany, 7 April 2016

## Annex

### **Some elements of the preparatory work on the operational details of the Paris Agreement that may be affected by an early entry into force of the Agreement**

- The development of further guidance for the information to be provided by Parties in order to facilitate clarity, transparency and understanding of nationally determined contributions for consideration and adoption at CMA 1 (see paragraph 28 of decision 1/CP.21)
- The development of rules, modalities and procedures for the mechanism established by Article 6, paragraph 4, of the Agreement, for consideration and adoption at CMA 1 (see paragraph 38 of decision 1/CP.21)
- The review, at COP 25 (2019), of the progress, need for extension, the effectiveness and enhancement of the Paris Committee on Capacity-building, and recommendations to CMA 1 on enhancing institutional arrangements for capacity-building consistent with Article 11, paragraph 5, of the Agreement (see paragraph 81 of decision 1/CP.21)
- The development of modalities, procedures and guidelines in accordance with Article 13, paragraph 13, of the Agreement (transparency of action and support), and to define the year of their first and subsequent review and update, as appropriate, at regular intervals, for consideration at COP 24 (2018), with a view to forwarding for consideration and adoption at CMA 1 (see paragraph 91 of decision 1/CP.21)
- The development of modalities for the global stocktake referred to in Article 14 of the Agreement, with a view to the COP making a recommendation to CMA 1 for consideration and adoption (see paragraph 101 of decision 1/CP.21)
- The development of modalities and procedures for the effective operation of the committee referred to in Article 15, paragraph 2, of the Agreement, with a view to the Ad Hoc Working Group on the Paris Agreement completing its work on such modalities and procedures for consideration and adoption at CMA 1 (see paragraph 103 of decision 1/CP.21)