

Lawyer Insights

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National Parliaments Should Approve the Paris Agreement Before it is a Done Deal

by Lucas Bergkamp

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The European Commission is taking steps to have the Paris climate agreement ratified and signed at EU level, without involving the parliaments of the Member States. Although this may be formally acceptable, it is a bad idea, writes Lucas Bergkamp, Partner at the Brussels-based law firm Hunton & Williams: it will aggravate the EU's 'democratic deficit', weaken popular support for climate action and will leave intact key weaknesses in the Agreement that should be addressed before it is approved.



On 22 April, there will be a formal signing ceremony of the Paris Agreement on Climate Change at the United Nations in New York. The agreement will enter into force when at least 55 countries representing at least 55% of global emissions have 'ratified,' i.e. formally approved, it.

On 2 March 2016, the European Commission released a policy paper¹ on the implementation of the Paris Agreement, presenting the Commission's views on the implications for the European Union of the Paris deal, and laying out next steps in the process of implementing it. In presenting the strategy, Commissioner for Climate Action Cañete said: "We have the deal. Now we need to make it real. For the EU, this means completing the 2030 climate and energy legislation without delay, signing and ratifying the Agreement as soon as possible, and continuing our leadership in the global transition to a low-carbon future."² (emphasis supplied) This means that the Commission wants to get Paris Agreement approved before national parliaments have expressed their opinions.

Reflecting a strong belief in the predictive power of climate models, the Paris Agreement deals with climate policy-making until the end of this century. As such, it probably is the most "visionary" policy ever adopted. Upon closer examination, however, the EU's rush to rubberstamp the deal not only requires enormous investments that may turn out to be inefficient, but also aggravates the EU's democratic deficit, adding to the widespread frustration about Brussels' unaccountable bureaucracy.

With tensions in the EU already high over the refugee crisis, the upcoming 'Brexit' referendum, and the eurocrisis, the EU would do well to avoid this gamble, and involve the national parliaments now in the approval process.

Pressing issue

The Commission notes that for the period up to 2030 the Paris Agreement will have no implications for EU policy-making. The current contours of EU climate policy have been adopted by the European Council

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in October 2014. As the Paris Agreement “vindicates the EU’s approach,” as the policy paper puts it, the Commission will not reassess its medium-term climate policy, as has been suggested by some interest groups. For the Commission, Paris is just a matter of completing the 2030 climate and energy legislation. The first review of the EU’s “ambition” will take place in 2023 and the findings would be applicable only to the period after 2030, 14 years from now.

On this basis, one would expect that the Paris Agreement’s implementation is not a pressing issue for the EU, since it is relevant only to policy making after 2030. Nevertheless, the Commission treats the implementation of the Paris Agreement as an urgent issue, which, in the words of the Climate Commissioner quoted above, would require “signing and ratifying the Agreement as soon as possible.”³ It tries to sell this deal by invoking the benefits implementation of the Paris Agreement will bring. According to the Commission, it will be “an opportunity for economic transformation, jobs, and growth.”⁴ But the Commission disregards both the uncertainties and the costs associated with the proposed approach.

According to the Commission, by leading in the fight against climate change, the EU can maintain its “first mover advantage” in renewable energy and energy efficiency, and continue its leadership in the global transition to a low-carbon future. The closely related Energy Union strategy would create an environment that enables investors and businesses to seize the new opportunities and to generate new jobs and growth.

Climate dogmatism

In accordance with its routine to justify expensive policies,⁵ the Commission refers to the substantial benefits associated with innovation and the favourable effects on the EU industry’s competitiveness, as European low carbon and energy efficiency technologies conquer the world. There is little evidence, however, for the substantial benefits to which the Commission refers. Green government policies may create some new jobs, but they also kill jobs,⁶ and the idea of government-mandated innovation reflects wishful thinking at best. Clearly, the EU’s ambitious climate policies tend to place European industry at a competitive disadvantage, which the expanding ‘carbon leakage’ program is intended to reduce.⁷

While the Commission’s economic case for continued EU climate leadership is weak, its proposals have two substantial disadvantages. According to the Commission, the EU’s commitment to a clean energy transition is “irreversible and non-negotiable.”⁸

This rather absolute statement may be consistent with climate dogmatism, but it is not smart policy and Paris’ references to “best available science” allow for policy adaptations. Current climate science is still highly uncertain; a recent study found that “[t]here is this mismatch between what the climate models are producing and what the observations are showing.”⁹ Our understanding of the complex climate system will continue to evolve and may well suggest changes to climate policies we now deem necessary. Rather than committing to Paris’ inflexible, dogmatic climate policy-making fixated on mitigation to achieve a defined long-term temperature target, national parliaments may well want to emphasize that Paris’ goals and policies be adjusted as scientific knowledge improves and the relative costs and benefits of alternative policy options become clear.

Burden-sharing

Another weakness of the Paris Agreement that the Commission’s proposal does not address, is the lack of any burden-sharing rules. No methodology has been agreed on the basis of which decisions can be made about the level of emission reduction to be achieved by each country. This omission is likely to create serious competitive disadvantages for the most ambitious countries. National parliaments need to consider this problem, and may have ideas on how to solve it.

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The Commission's proposal to by-pass national democratic procedures at this juncture is therefore problematic. Its paper suggests that early ratification and entry into force of the Paris Agreement will create the "legal certainty that the Agreement begins operating quickly." On this ground, the Paris Agreement would have to be signed and ratified as soon as possible.

The Commission's policy paper is accompanied by a proposal for a decision by the EU Council Of Ministers that would authorise the Commission to sign the Paris Agreement on behalf of the European Union.¹⁰ While the EU has employed this procedure in the past, given the sacrifices required by the Paris Agreement, its long-term nature, and its weaknesses, the broadest possible popular support would seem to be required for its implementation to be feasible.

In favour or against

Under the current proposal, the national parliaments of the member states have only limited opportunities to debate the Paris Agreement and its implications, including its economic consequences. They can vote in favour or against ratification only at a point in time at which their opinions have become moot. As the EU is already perceived by many as an unelected and unaccountable bureaucracy that tends to ignore the majority of the population, this proposed strategy is risky. It also is unnecessary, given the lack of urgency.

The EU should therefore revise its approach to implementation of the Paris Agreement. Instead of imposing an irreversible and non-negotiable strategy administered centrally by the Brussels bureaucracy, it should allow national parliaments to opine on the key issues raised by the Paris Agreement such as science-based policy flexibility and burden-sharing. Such democratic decision-making in implementation is necessary for the Paris deal to succeed.

Notes

¹ Communication from the European Commission, The Road from Paris: assessing the implications of the Paris Agreement and accompanying the proposal for a Council decision on the signing, on behalf of the European Union, of the Paris agreement adopted under the United Nations Framework Convention on Climate Change, <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-110-EN-F1-1.PDF>

² Climate Action: Europe readies next steps to implement the Paris Agreement, http://ec.europa.eu/clima/news/articles/news_2016030201_en.htm

³ Climate Action: Europe readies next steps to implement the Paris Agreement, http://ec.europa.eu/clima/news/articles/news_2016030201_en.htm

⁴ Communication from the European Commission, The Road from Paris: assessing the implications of the Paris Agreement and accompanying the proposal for a Council decision on the signing, on behalf of the European Union, of the Paris agreement adopted under the United Nations Framework Convention on Climate Change, <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-110-EN-F1-1.PDF>, p. 4.

⁵ The European Union often invokes the favourable effects on innovation to justify restrictive regulations. For instance, to justify the EU REACH Regulation on chemicals, the EU referred to the benefits of innovation. Recital (1) of the REACH Regulation provides as follows: "This Regulation should ensure a high level of protection of human health and the environment (...), while enhancing competitiveness and innovation."

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⁶ Climate policies are intended to kill jobs in the fossil fuel industry, and other industries that rely on fossil fuels and cannot switch to other sources of energy. Calzada examined green energy mandates in Spain and found that 2.2 jobs were lost for every green job that was created in that country. Moreover, green jobs created by government actions disappear as soon as government support is terminated. Institute for Energy Research, <http://instituteforenergyresearch.org/topics/policy/green-jobs/>

⁷ Carbon leakage, http://ec.europa.eu/clima/policies/ets/cap/leakage/index_en.htm

⁸ Communication from the European Commission, The Road from Paris: assessing the implications of the Paris Agreement and accompanying the proposal for a Council decision on the signing, on behalf of the European Union, of the Paris agreement adopted under the United Nations Framework Convention on Climate Change, <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-110-EN-F1-...,> p. 5.

⁹ Jeff Tollefson, Global warming 'hiatus' debate flares up again: Researchers now argue that slowdown in warming was real, *Nature*, 24 February 2016, doi:10.1038/nature.2016.19414, <http://www.nature.com/news/global-warming-hiatus-debate-flares-up-again-1.19414>.

¹⁰ Proposal for a COUNCIL DECISION on the signing, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change, Brussels, 2.3.2016, COM(2016) 62 final, 2016/0036 (NLE).

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