

Implementing and Elaborating the Paris Agreement: Legal Dimensions

Daniel Bodansky
Arizona State University
Sandra Day O'Connor College of Law
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Taking the PA Forward

- What?
 - What implementation/elaboration is provided for?
- By whom?
 - APA
 - Subsidiary bodies
 - Secretariat
 - CMA
- When?
 - CMA-1
 - Specific date
 - Unspecified



Taking the Paris Agreement forward: Tasks arising from decision 1/CP.21

The Conference of the Parties (COP), by its decision 1/CP.21 (‘Adoption of the Paris Agreement’), decided on activities and tasks to be undertaken by various bodies, which are indicated in the table below (see also the list of abbreviations at the end).

In addition to the specific tasks listed below, the COP requested the Ad Hoc Working Group on the Paris Agreement (AHWG) to prepare for the entry into force of the Agreement and for the convening of the first session of the Conference of the Parties meeting on the basis of the Paris Agreement (CMA-1) prepare draft decisions to be recommended through the COP to the CMA, for consideration and adoption at its first session (CMA-1) held in November 2016 in conjunction with the session of the Commission subsidiary bodies, report regularly to the COP on the progress of its work, and to complete its work by CMA-1.¹

The COP further decided to oversee the implementation of the work programme resulting from the relevant requests contained in decision 1/CP.21.²

The secretariat has prepared the table below, which presents an overview of the tasks to be undertaken indicating the respective implementation and the timeline as indicated in decision 1/CP.21.³

Note: Paragraph numbers are those of decision 1/CP.21 as published in FCCC/CP/2016/L.1, a list of the abbreviations used in the table is included at the end.

Task	Body	Frequency	Timeline
ii. Operational measures to operationalize arrangements			
(a) Conduct the second preparatory meeting of the Ad Hoc Working Group on the Paris Agreement (AHWG) in conjunction with the COP-21, and to inform the preparation of CMA-1	COP		2016
iii. Arrangements to prepare for the discussion			
Adaptation			
(a) Working Group on the Work of the Commission subsidiary bodies (WG-1)	AdH		CMA-1 ⁴
(b) Working Group on the Work of the Commission subsidiary bodies (WG-2)	AdH		CMA-1
(c) Working Group on the Work of the Commission subsidiary bodies (WG-3)	AdH		CMA-1
(d) Working Group on the Work of the Commission subsidiary bodies (WG-4)	AdH		CMA-1
(e) Working Group on the Work of the Commission subsidiary bodies (WG-5)	AdH		CMA-1
(f) Working Group on the Work of the Commission subsidiary bodies (WG-6)	AdH		CMA-1
(g) Working Group on the Work of the Commission subsidiary bodies (WG-7)	AdH		CMA-1
(h) Working Group on the Work of the Commission subsidiary bodies (WG-8)	AdH		CMA-1
(i) Working Group on the Work of the Commission subsidiary bodies (WG-9)	AdH		CMA-1
(j) Working Group on the Work of the Commission subsidiary bodies (WG-10)	AdH		CMA-1
(k) Working Group on the Work of the Commission subsidiary bodies (WG-11)	AdH		CMA-1
(l) Working Group on the Work of the Commission subsidiary bodies (WG-12)	AdH		CMA-1
(m) Working Group on the Work of the Commission subsidiary bodies (WG-13)	AdH		CMA-1
(n) Working Group on the Work of the Commission subsidiary bodies (WG-14)	AdH		CMA-1
(o) Working Group on the Work of the Commission subsidiary bodies (WG-15)	AdH		CMA-1
(p) Working Group on the Work of the Commission subsidiary bodies (WG-16)	AdH		CMA-1
(q) Working Group on the Work of the Commission subsidiary bodies (WG-17)	AdH		CMA-1
(r) Working Group on the Work of the Commission subsidiary bodies (WG-18)	AdH		CMA-1
(s) Working Group on the Work of the Commission subsidiary bodies (WG-19)	AdH		CMA-1
(t) Working Group on the Work of the Commission subsidiary bodies (WG-20)	AdH		CMA-1
(u) Working Group on the Work of the Commission subsidiary bodies (WG-21)	AdH		CMA-1
(v) Working Group on the Work of the Commission subsidiary bodies (WG-22)	AdH		CMA-1
(w) Working Group on the Work of the Commission subsidiary bodies (WG-23)	AdH		CMA-1
(x) Working Group on the Work of the Commission subsidiary bodies (WG-24)	AdH		CMA-1
(y) Working Group on the Work of the Commission subsidiary bodies (WG-25)	AdH		CMA-1
(z) Working Group on the Work of the Commission subsidiary bodies (WG-26)	AdH		CMA-1

¹ FCCC/CP/2016/L.1.
² Decision 1/CP.21, para. 11. CMA-1 shall be convened by the secretariat in conjunction with the first session of the COP that is established after the date of entry into force of the Paris Agreement, see Article 14 of the Paris Agreement.
³ Decision 1/CP.21, para. 11.
⁴ In addition, decision 1/CP.21 also contains non-binding recommendations.
 - By Parties of their choice on the membership of the Paris Commission on Capacity Building (PCB) (see para. 17).
 - By Parties and observer organizations of information on the opportunities referred to in paragraph 14(d) (see annexes annex, annexes for strengthening resilience, reducing vulnerability and increasing the understanding and implementation of adaptation action) by 1 February 2016 (para. 14d).
⁵ Under Annex II(a), Article 14 of the Paris Agreement, CMA-1 shall consider measures that derive from the WGs.

Rules to Be Elaborated

NDCs	<ul style="list-style-type: none"> • Up-front information: possible CMA decision (art. 4.8) • Features: guidance by CMA (para. 26) • Communication of NDCs: possible CMA decision (art. 4.9) • Common time frames: CMA shall consider (art. 4.10) • Adjustments: guidance by CMA (art. 4.11) • Accounting: guidance by CMA(-1) (art. 4.13, para. 31)
Market mechanisms	<ul style="list-style-type: none"> • Avoidance of double-counting: guidance by CMA (art. 6.2) • Ensure share of proceeds for adaptation (art. 6.6) • SDM: rules, procedures and modalities by CMA (art. 6.7)
Adaptation	<ul style="list-style-type: none"> • Recognition of efforts of DCs: modalities by CMA-1 (art. 7.3)
Financial support	<ul style="list-style-type: none"> • Accounting: modalities, procedures and guidelines adopted by CMA-1 (art. 9.7)
Capacity building	<ul style="list-style-type: none"> • Institutional arrangements: decision by CMA-1 (art. 11.5)
Transparency	<ul style="list-style-type: none"> • Emissions inventories methodologies (art. 13.7(a)) • Modalities, procedures and guidelines adopted by CMA-1 (art. 13.13)
Global stocktake	<ul style="list-style-type: none"> • Sources of input identified and modalities adopted by CMA-1 (paras. 100, 102)
Impl./compliance	<ul style="list-style-type: none"> • Modalities and procedures adopted at CMA-1 (art. 15.3)

Key Variables/Issues

- To whom do rules apply?
 - Parties
 - FCCC/PA institutions
- Must CMA act?
 - Required
 - Optional
- Default if CMA fails to adopt rules?
 - Anything goes
 - Nothing goes
- “Bindingness” of rules
 - Legal status: legally binding or not?
 - Precision: How much discretion is left to the parties?

Typology of Future Rules

	Rules Apply to Parties	Internal Institutional Arrangements
Required: PA requires CMA to adopt	<ul style="list-style-type: none"> Accounting of action and support (art. 9.7, 13.13) 	<ul style="list-style-type: none"> Rules, modalities and procedures for SDM (art. 6.7) Institutional arrangements on capacity building (art. 11.5) Modalities and procedures for Implementation and Compliance Committee (art. 15.3)
Optional: PA authorizes CMA to adopt rules	<ul style="list-style-type: none"> Periodicity of NDCs, common time frames (art. 4.9 and 4.10) 	<ul style="list-style-type: none"> Guidance to WIM (art. 8.2)

Institutional Rules

- Examples: Rules for SDM, Implementation and Compliance Committee, institutional arrangements for capacity building
- Issues:
 - Is CMA action a necessary condition?
 - SDM: Yes
 - WIM: No
 - What is CMA's legal authority over institution?
 - Institutions created by Paris Agreement
 - Institutions with another legal basis

Rules Governing the Parties

- Examples:
 - Rules relating to NDCs: communication (UFI), timing, features, accounting, adjustment
- Issues
 - Is CMA required to adopt rules? And what happens if CMA doesn't adopt rules? What is default?
 - How binding are rules?

Bindingness of Rules

	Precise > Little Discretion	Imprecise > Greater Discretion
Legally-Binding		
Non-Binding		

- Unspecified (CMA “decision”)
- Rules
- Guidance/guidelines
- Modalities
- Procedures

- In accordance with
- Consistent with