The Paris Agreement: The Impact on the United States and the EU

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This client alert describes the impact on the United States and the EU of the Paris Agreement ("Agreement"),[1] which was the outcome of the 21st session of the Conference of the Parties ("COP 21") under the United Nations Framework Convention on Climate Change ("UNFCC"). The Agreement represents an affirmation by nearly 200 countries that significant action is needed to address climate change, and embodies a commitment to keep the average rise in temperatures for this century to below 2 degrees Celsius. The Agreement, however, says relatively little about how this goal is to be reached. Each signatory will have to develop its own implementation plan known as a "Nationally Determined Contribution" or "NDC".[2] In the US and the EU, the Paris Agreement will be implemented mostly by relying on regulatory initiatives that were underway before the recent meeting in Paris.

In the United States

The Agreement provides that "[e]ach Party shall communicate an NDC every five years."[3] Before COP21, the United States had already submitted its NDC.[4]

The United States' NDC aims to achieve, by 2025, an economy-wide target of reducing greenhouse gas emissions by 26–28% below its 2005 level, and to make best efforts to reduce its emissions by 28%.[5] The United States' target covers all greenhouse gases that were a part of the 2014 Inventory of United States Greenhouse Gas Emissions and Sinks.[6]

The United States already has in place domestic laws and regulations to implement its NDC, such as the Clean Air Act ("CAA"),[7] the Energy Policy Act[8] and the Energy Independence and Security Act.[9] Because the Agreement provides that, at any time, a party may "adjust its existing nationally determined contribution with a view to enhancing its level of ambition,"[10] further effort to give effect to the goals of the Agreement may result in additional regulation of the power sector and the oil and gas industry, in addition to the recently promulgated Clean Power Plan.[11]

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1 UNFCCC, *Adoption of the Paris Agreement*, FCCC/CP/2015/L.9/Rev.1, *available at* http://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf (Dec. 12, 2015).

2 FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015) at Art. 4, cl. 9.

3 FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015) at Art. 4, cl. 9.

4 In March, 2015, The United States submitted its Intended Nationally Determined Contribution ("INDC"). *See* INDC, *INDCs as communicated by Parties, U.S. Cover Note, INDC and Accompanying Information* (Mar. 31, 2015), *available at* http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx

5 *Id*.

6 *Id*. Carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), perfluorocarbons (PFCs), hydrofluorocarbons (HFCs), sulfur hexafluoride (SF_6) and nitrogen trifluoride (NF_3)

7 42 U.S.C. § 7401 et seq.

8 42 U.S.C. §13201 et seq.

9 42 U.S.C. § 17001 et seq.

10 FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015) at Art. 4, cl. 11.

11 The Clean Power Plan was authorized under Section 111 of the CAA.

Recently, the EPA finalized rules, pursuant to the Clean Power Plan, to limit emissions from existing, new, modified and reconstructed sources.[12] For existing sources, the rule — effective December 22, 2015 — establishes a CO_2 emissions performance rate for two subcategories of fossil fuel-fired electric generating units: 1) electric steam generating units; and 2) stationary combustion turbines.[13] When fully implemented, the guidelines are expected to achieve significant reductions in CO_2 emissions by 2030.[14] For new, modified and reconstructed stationary sources, the regulation limits CO_2 emissions from fossil fuel-fired electric utility steam generating units, such as utility boilers and integrated gasification combined cycle units, as well as from stationary combustion turbines.[15]

The EPA is currently working on New Source Performance Standards ("NSPS"), which will set methane and VOC requirements for additional new and modified sources in the oil and gas industry.[16] These emission sources include those that are currently unregulated under the current NSPS, such as hydraulically fractured oil well completions, pneumatic pumps and fugitive emissions from well sites and compressor stations.[17] Entities likely to be affected by the regulation are the following:[18] Crude Petroleum and Natural Gas Extraction (211111); Natural Gas Liquid Extraction (211112); Natural Gas Distribution (221210); Pipeline Distribution of Crude Oil (486110); and Pipeline Transportation of Natural Gas (486210). The comment period has closed for this proposed rule, and the EPA anticipates finalizing the rule in June 2016.[19]

Currently, the Clean Power Plan rule regulating existing sources is being challenged by several states, industries, and labor organizations that filed petitions for review in October 2015.[20] In December 2015, other states and organizations filed a motion for leave to participate as *amici curiae* in support of the EPA.[21]

In the European Union

The EU's proposed implementation of the Agreement is through a single set of NDCs for the entire EU. Member States will not submit individual plans. EU Member States already committed to achieving a 40% emissions reduction, compared to 1990 levels, by 2030. When trying to understand what the Agreement will mean for businesses in the EU, one should look, in particular, at the EU's existing Energy Strategy as well as the State of the Energy Union, which was released last month:

- The EU will continue its existing initiative of using market forces to cut emissions: the EU Emissions Trading Scheme ("ETS") will be reformed to ensure it is more responsive to changes in market conditions. (Recently, periods of low economic growth led to a glut of permits on the Emissions market, resulting in a very low price for permits.) Revenue from the auctions of emissions permits will also provide funding for ten of the poorest EU Member States to modernize their energy systems.

- The EU is planning to introduce a new Renewable Energy Directive in 2016, with the aim of achieving the binding EU-level target of at least 27% renewable energy by 2030. The EU will set a binding target for Member States to achieve, but each Member State will remain free to determine its own energy mix and which technologies to support.

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12 *See Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 80 Fed. Reg. 64661 (Oct. 23, 2015) (codified at 40 C.F.R. 60), and *Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units*, 80 Fed. Reg. 64509 (Oct. 23, 2015) (codified at 40 C.F.R. 60, 70, 71, 98).

13 80 Fed. Reg. 64661, 64662.

14 *Id*. at 64663.

15 80 Fed. Reg. 64509, 64512.

16 *See Oil and Natural Gas Sector: Emission Standards for New and Modified Sources*, 80 Fed. Reg. 56593 (Sept. 18, 2015) (to be codified at 40 C.F.R. 60).

17 *Id*. at 56594.

18 *Id.* at 56597.

19 *See Oil and Natural Gas Sector: Reconsideration of Remaining Provisions of New Source Performance Standards*, Unified Agenda of Federal Regulatory and Deregulatory Actions (current as of Fall 2014), *available at* http://federalregister.gov/r/2060-AS30.

20 Consolidated case *State of West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Oct. 23, 2015).

21 *State of West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Oct. 23, 2015), Entry No. 1589943.

- The EU's goal of increasing the share of renewables in the energy mix will go hand in hand with efforts to better connect national energy markets as well as encourage further investments in nuclear energy. Renewable energy (e.g., wind and sun) tends to be intermittent and requires appropriate backup in the form of other non-polluting sources of energy as well as better interconnections between nationally partitioned energy markets.
- Energy efficiency will also be a priority for the EU. A stronger Energy Labelling Directive was introduced earlier this year and significant funds are being given to projects that improve buildings' energy efficiency. Appliance manufacturers should expect labelling requirements to become more stringent when it comes to indicating energy consumption. Energy companies may be subject to more regulations designed to make it easier for customers to choose between companies, and to switch companies to obtain better deals.
- The EU wants to move away from financing projects through grants. Instead, the EU wants to rely more on loans or equity, preferably in conjunction with private investors. Grants made by the EU now aim to "leverage" equivalent amounts from the private sector.

Although some criticized the lack of detail on how signatories will reach the Agreement targets, implementation is well under way from an EU perspective as it will take place mainly through existing initiatives. Whether the EU gets Member States to cooperate sufficiently in carrying out these plans is another matter and significant differences will remain among Member States.

In 2016

The next meeting of the parties, COP 22, is expected to take place in November 2016. In the meantime, Climate Action 2016 — announced at COP 21 as a high-level gathering of state and local governments, academia, business and civic leaders — will convene in May 2016 to promote ongoing climate action implementation in cities, the energy sector, the transportation sector, and the finance sector, among others. The COP 21 Agreement is a significant first step but there is a lot more to do for the parties to succeed in achieving the goals and targets set out in their NDCs. If the parties make interim progress on their objectives before they reconvene, it bodes well for continued progress in climate change and tackling other environmental challenges that will be the subject of future conferences.

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