



# COP26 - NATIONALLY DETERMINED CONTRIBUTIONS

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Legal Briefings

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As the 2021 United Nations Climate Change Conference (**COP26** or the **Conference**) draws near, the spotlight on international efforts to tackle climate change intensifies. COP26 is an important Conference for many reasons, one of which is that it will be the first Conference at which new and/or updated Nationally Determined Contributions (**NDC**) will be discussed.

## **WHAT ARE NDCS, WHY ARE THEY IMPORTANT AND HOW ARE THEY ENFORCED?**

NDCs are central to achieving the Paris Agreement's objective of limiting global warming to well below 2°C compared to pre-industrial levels, and to pursue a situation where the rise remains below 1.5°C. While the Parties to the Paris Agreement agreed the overarching objectives, they made provision in the form of NDCs, for individual governments to outline their targets and contributions, and related plans, policies and measures to tackle climate-related matters and achieve the aims of the Paris Agreement. These climate pledges embody the efforts made by each country to reduce emissions and are expected to show a progressive reduction, known as the 'ratchet mechanism'.

All 191 Parties to the Paris Agreement have submitted their first NDCs. The deadline for submitting second NDCs was 2020, with an extended deadline until 26 July 2021. Currently, only 118 nations recognised by the UN had submitted or updated their NDCs (see our [post](#) on the UK, US and EU NDCs).<sup>1</sup>

The NDC regime is governed by Article 4 of the Paris Agreement. They are legally binding procedurally, but not substantively.<sup>2</sup>

## **What does that mean?**

Parties must “*prepare, communicate and maintain*” an NDC and communicate it in a way that promotes “*clarity, transparency and understanding*”. Parties must submit and maintain an NDC every five years and implement “*domestic mitigation measures*” in service of their NDC goals. They must also comply with Article 4 procedural rules, such as ensuring “*clarity, transparency and understanding*” when communicating NDCs. Parties must also *promote “environmental integrity, transparency, accuracy, completeness, comparability and consistency”*, and avoid “*double counting*” when reporting NDC progress. There is an expectation that the updated NDCs will be a progression of the last, reflecting the highest possible ambition considering each country’s unique circumstances; this is not a legally binding obligation.

The NDCs themselves, however, are not legally binding or enforceable; there is no obligation to achieve NDC targets.

The NDC's transparency and information sharing processes and requirements are legally binding, but the enforcement processes is non-punitive and non-adversarial, relying instead on reputational costs and peer pressure to enforce compliance. The Paris Agreement makes provision for tracking progress through the enhanced transparency framework (**ETF**) under Article 13, and a facilitation committee set up under Article 15. We consider the ETF and its importance at COP26 below.

## **WHY ARE THE NDCS IMPORTANT TO COP26?**

### **Under-ambitious?**

The NDCs, as noted above, are integral to achieving the aims of the Paris Agreement. It has been noted, however, that countries will need to be more ambitious with their emissions targets as we approach the 2025 and 2030 deadlines that have been set by most countries in their initial NDCs.

The NDC Synthesis [Report](#) published in February 2021 presented an overview of the NDCs of 48 nations. The COP26 President, Alok Sharma, noted in his [official statement](#) that “*countries' 2030 emissions targets...are nowhere near enough to keep global warming below 2C, let alone the 1.5C needed to avoid the most disastrous effects of climate change.*” He called on nations to submit ambitious 2030 emission reduction targets as an urgent priority in the run up to COP26 in November. This statement came four months before the deadline for submission of new or updated NDCs in July 2021.

The UN Framework Convention on Climate Change is expected to publish a final report in advance on COP26. We look forward to seeing what this report says, as this will inform the discussions that will take place in Glasgow later this year. One suggestion to encourage ambitious targets is to “*broker an agreement that drives ambitions for governments*”<sup>3</sup> as part of the Paris Rulebook that is expected to be agreed at the Conference.

The UK and EU submitted higher targets, at 68% and 55% by 2030, respectively. There has, however, been criticism that the UK, while setting ambitious targets, is not taking actions that would help the country meet the target.<sup>4</sup> Similarly, Members of the European Parliament and climate action groups suggest that the EU's target does not align with the Paris Agreement's broader goals.<sup>5</sup> The Conference is likely to be a wakeup call for these nations as we approach the 2030 deadlines. As compared to the EU and UK, the US has set an ambitious target of 50-52% reduction by 2030 compared to 2005 levels, as opposed to 1990 levels. This is an overall reduction of 15% of global emissions, as opposed to the UK's 2% reduction of global emissions.<sup>6</sup> This is the first climate commitment by the US since the Trump Administration pulled the US out of the Paris Agreement. While these nations have published their NDCs, two of the world's largest polluters, India and China, have failed to submit new or updated NDCs.

## Timeframes

At COP24 in Katowice, countries came to an agreement that NDCs from 2031 should cover the same time period, but did not determine the length of the period. It remains unclear whether the NDC timeframe should be five years, concurrent with the five-year ambition cycle, ten years, or the 'five plus five' approach where countries submit NDCs with five year timeframes, as well as an adjustable indication of the goals for ten years' time. The length of the timeframe is key as it can influence the level of ambition and pace for NDCs. Many countries support a five year timeframe, while countries such as Japan and Russia are in favour of ten year timeframes, arguing that the longer time period is better suited to their national planning. During the UNFCCC Climate Dialogues 2020, countries indicated a desire to resolve the negotiations by COP26.

The World Resources Institute [published](#) a paper discussing the timeframe options available, and the comparative advantages and risks of adopting a shorter-term, rather than longer-term timeframe. The paper suggests that parties should publish NDCs with a five year timeframe, while also allowing them to indicate a 10 year timeframe if they desire to do so. This approach will allow for synchronized timeframes, while also combining the shorter and longer timeframe options that the Parties disagree about.

At the UN Climate Change subsidiary bodies sessions that took place between May-June 2021, the co-facilitators prepared an informal [note](#) that covers the discussions between the parties at the session regarding common timeframes, and highlights the points for further discussion that are likely to be considered at COP26. The options this note sets out are expected to run from the publication of the 2025 NDCs. They suggest, as noted above -

- i. Five year option - Parties will communicate by 2025, their new NDCs with a timeframe up to 2035;
- ii. Ten year option - Parties will communicate by 2025, their new NDCs with a timeframe up to 2040, while also inviting Parties to communicate or update by 2030 their NDCs with a

time frame up to 2040, and provide an indicative target for 2035; and

- iii. Five + five years option – Parties will communicate by 2025, their new NDCs with a timeframe up to 2035 and 2040, while also inviting them to communicate by 2030 new NDCs for a period up to 2040.

The note includes draft wording of the decision that the Parties at COP26 may take.

Given the climate emergency we are facing, nations will need a clear indication of what timelines they are looking at, and what will be achievable in those timeframes. Resolving this question should be of high priority at COP25 because this will determine what upgrades nations make to their NDCs in 2025, thinking towards the period after 2030.

## Transparency

As discussed above, the ETF specifies reporting requirements and procedures for review. Effective implementation of the ETF is necessary to establish a universal system that encourages all countries to enforce their commitments. Many of the modalities, procedures and guidelines (MPGs) were established at COP24. However, some technical details still need to be addressed at COP26 before the ETF can become fully operational including:<sup>7</sup>

- common reporting tables for electronic reporting of information in the national inventory reports of anthropogenic emissions by sources and removals by sinks of green house gases;
- common tabular formats for electronic reporting of information necessary to track progress, and information on financial, technology development and transfer and capacity-building support;
- an outline of the biennial transparency report for use by all countries; and
- a training programme for the technical expert review procedure.

Other issues that will need to be considered as regards ETF were discussed at the fourth monthly multilateral consultation focusing on issues related to transparency and common time frames for nationally determined contributions.<sup>8</sup> The points considered included

- the need for capacity-building to assist developing nations transition to the ETF system,

through training and software development; and

- flexibility in reporting, as while the MPGs clearly provide for flexibility, the manner in which this will be operationalised is unclear. Should nations be allowed flexibility in the scope, frequency and level of detail they provide in respect of their progress?

Given the fast-approaching deadlines of 2025 and 2030 that many nations have set for achieving certain emission reduction targets, agreement on the various aspects of the ETF regime are now becoming increasingly important. Parties need clarity on their reporting requirements and how they will be tracked. Once agreed, it will take some time to develop and implement the various systems and software.<sup>9</sup>

### **WHY THIS MAY BE RELEVANT TO YOUR BUSINESS**

As discussed above, there is increasing pressure on governments to set more ambitious targets and accelerate the rate of decarbonisation. In light of this, governments are not just likely to increase the level of regulation, but also the pace at which such regulation is brought into force. Examples of recent decisions by governments and regulatory bodies include the UK's recent introduction of mandatory climate related reporting in line with the Task Force on Climate-Related Financial Disclosures' (TCFD) recommendations, and new Sustainability Disclosure Requirements (see our [post](#) on UK disclosure rules; and our [UK regional page](#)). In the EU there has been a range of new regulation and policies – see our Fit for 55 series [here](#).

This increase in regulation will have a direct and indirect impact on the manner in which businesses function, as your business may need to re-evaluate their processes to ensure they are promoting a greener future, and is also likely to have to report on the steps that have been taken, and their impact on the environment. Governments will track the progress of businesses within their nations in order to report on the nation's progress towards achieving its NDC.

[More on COP26](#)

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1. <https://climateactiontracker.org/climate-target-update-tracker/>; <https://www4.unfccc.int/sites/NDCStaging/Pages/All.aspx>
  2. <https://www4.unfccc.int/sites/NDCStaging/Pages/All.aspx>
  3. <https://www.transparency-partnership.net/system/files/document/Pocket%20Guide%20to%20NDCs.pdf>
  4. <https://ukcop26.org/cop26-goals/collaboration/>

5. <https://www.globalcitizen.org/en/content/what-is-cop26/>
6. <https://www.theguardian.com/environment/2021/apr/21/new-eu-target-to-cut-carbon-emissions-by-at-least-55-disappoints-experts>
7. <https://www.theguardian.com/environment/2021/apr/23/which-country-has-made-the-biggest-climate-commitment>
8. [https://unfccc.int/sites/default/files/resource/ETF%20Technical%20Handbook%20First%20Edition%20June\\_2020.pdf](https://unfccc.int/sites/default/files/resource/ETF%20Technical%20Handbook%20First%20Edition%20June_2020.pdf)
9. [https://unfccc.int/sites/default/files/resource/Co-chairs%20Summary\\_CTF.pdf](https://unfccc.int/sites/default/files/resource/Co-chairs%20Summary_CTF.pdf)
10. <https://www.c2es.org/2021/06/transparency-of-action-issues-for-cop-26/>

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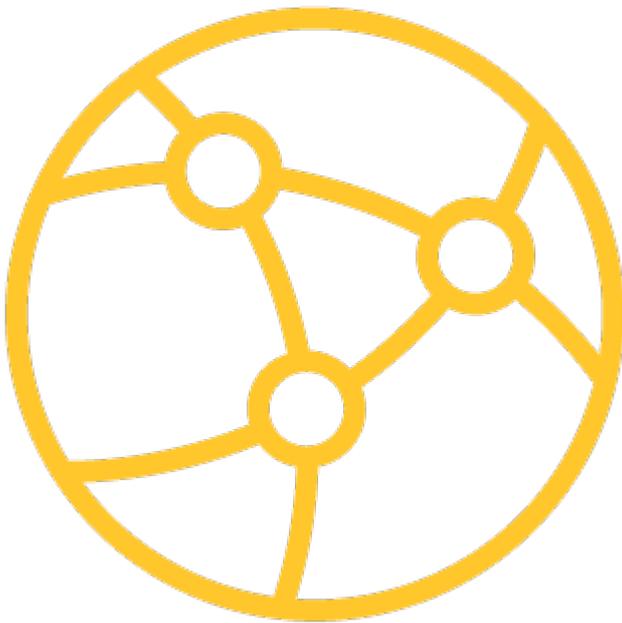
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If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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