

Analytical note No. 1 on the state of negotiations towards COP21 for the attention of the Rhône-Alpes region.

- **Introduction**

This analytical note was produced within the framework of the technical assistance (AMO) mission requested by the Rhône-Alpes region to help identify the challenges and opportunities of the international negotiations towards the construction of the global climate regime in the framework of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP), adopted by the Contracting Parties of the UNFCCC.

Its content aims to inform the Rhône-Alpes region as to the current state of negotiations before the next session of the ADP to be held in Bonn from 31 August to 4 September 2015, in particular taking into account the discussions that took place during the last ADP session (June 2015), especially regarding the formal recognition and support of initiatives implemented or proposed by non-state actors, notably sub-national entities.

Firstly, in order to understand both the purpose and the process of the negotiations, the origins of the text that will be used as the focus for the discussions during the next session of the ADP in Bonn should be recalled.

- **A reminder of the origins of the “negotiating text”**

One of the difficulties encountered in the construction of the global climate regime for “post-2012” was, for a long time, the lack of an official negotiating text that could serve as a basis for joint discussion. Differences relating to the legal basis of what was to be the Copenhagen Accord undoubtedly prevented the countries from agreeing on the construction of this common base.

In Copenhagen, the leak of a draft text prepared by the Danish Presidency of COP15 in the English press (The Guardian), on the second day of the Conference, had the opposite effect, with developing countries criticizing the lack of transparency and the imbalance of the text in favour of developed countries. The then Co-Chairs of the negotiating group (AWG-LCA) thus had no choice but to try to construct a text on the spot that included the stronger demands of the developing countries in a formal context, but were unsuccessful. This text, which was very long and too detailed, could not be used as the basis for discussions between Heads of States and Governments, who agreed on a more political text that was very short and proposed another approach. The text was finally rejected in the plenary session of the COP by some countries that criticized this type of procedure; between “world leaders” with little regard for “small” States.

The Durban Roadmap showed that the negotiators had learnt lessons from Copenhagen, by limiting the number of options for its legal basis, designating a single negotiating forum, and recalling that the process was led by the Parties – all Parties – since the agreement to be reached in Paris during COP21 should be applicable to all.

Over the course of almost two years, but especially in 2014, countries were able to express, through submissions, their expectations for COP21 with relation to the form and content of the Paris agreement, as well as on how to bridge the gap in terms of ambition, before its entry into force in 2020.

In Lima, during their 20th Conference, the Parties to the UNFCCC agreed to gather all their demands, without them having been negotiated in depth, in an annex to the Decision 1/CP.20 entitled “Elements for a draft negotiating text”, specifying, however, that this would not prejudice the legal basis of the Paris agreement.

[Courtesy translation of the original document in French]

This approach responds, in part, to a request from the European Union, who wanted to preserve the "protocol" of the UNFCCC for the establishment of the Paris agreement, in obeying the rule known as the "six months", outlined in Article 17 of the UNFCCC, which requires the text to be communicated by the Secretariat at least six months prior to the Conference during which its adoption is foreseen; namely the COP21 in Paris in December 2015.

Just after the COP in Lima, countries were able to complete this long list of "elements" during the session of the ADP held in Geneva in February 2015. Thus reassured that this list covered the broadest possible spectrum of their demands for Paris, the countries, through their focal points, agreed to make it the official negotiating text, which the Secretariat confirmed in a letter dated 19 March 2015.

During the session of the ADP in June 2015 in Bonn, countries negotiated the Geneva text for the first time; a long and complex text, structured around eleven sections that include much of the Bali Action Plan, resembling a long and disconnected list of options, with no options taking precedence over others.

Before the Bonn session, the Co-Chairs of the ADP had announced that the work of the negotiations would begin with a "mechanical rationalization" of the Geneva text to merge redundant or similar options in order to reduce its size.

In Bonn in June, this slow and tedious work was only able to reduce the text by a few pages, without in-depth negotiations, but it gave the countries the opportunity to clarify certain issues and identify a shared method to work on the text, grouping related issues and identifying cross-cutting themes, including the issues of equity and differentiation, in each section.

Frustrated by the slow pace of the discussions, countries asked the Co-Chairs to produce a consolidated text (to be a simple "tool") by 24 July, for which they would be solely responsible. Yet the "Geneva text", the official negotiating text, would remain alongside the text prepared by the Co-Chairs, being the only one communicated under Article 17 of the UNFCCC and the legal basis for the text adopted in Paris.

- **Presentation of the ADP Co-Chairs' text: "Tool of 24 July"**

The ADP Co-Chairs publicly released their "tool" on 24 July 2015. This document, developed solely by the Co-Chairs, reveals for the first time what they judge could be points of agreement, or on the contrary, opposition.

This document is divided into three parts:

- Part I titled "Draft Agreement" gathers all provisions that by their nature should be included in the Paris Agreement (joint and long-term commitments, provisions to enable the sustainability of the agreement and general provisions for the instrument to enter into force).
- Part II titled "Draft Decision" targets the provisions relating to implementation and the pre-2020 phase (Workstream 2).
- Part III titled "Provisions whose placement requires further clarity among Parties in relation to the draft agreement (Part I) or draft decision (Part II)".

These three parts reflect the content of the Geneva text while taking into account the consolidation carried out in Bonn last June. The Co-Chairs described the prevailing logic behind their organizational work, as well as the expected objectives and the work methodology for the September ADP session, in a scenario note dated 24 July.

- **Comments on the content of the “tool”**

a) On the format:

The organization of the points for negotiation between Parts I and II respectively could lead to in-depth discussion, as it proposes a division between what would enter into the Agreement and what is necessary for its implementation. However, this enables a clearer and more ordered presentation that is easier to understand and, a fortiori, to negotiate.

Part III will undoubtedly be the most controversial in terms of the approach adopted, regardless of its content. Even though the Co-Chairs have taken care to specify that there would be no prejudice as to whether the provisions included in Part III would be placed in Part I and/or II, some countries might see it as a “dumping ground” for the issues for which compromises are not possible, and request to have those issues in which they have a particular interest re-included in parts I and II.

Yet the added value of this approach is that it pushes countries to establish priorities among the issues they wish to see conveyed in the Agreement or the Decisions, and reverses the burden of proof due to the fact that these priority issues must be reflected in the documents. Each country/group of countries must therefore not only reject the priorities of the others, but rather ensure their own priorities are taken into account.

The risk, especially during the September ADP session, is that the discussions will be focused on Part III, if the countries fear that they will lose their proposals. To avoid this, the Co-Chairs, who anticipated this risk, indicated in their scenario note that they would request countries/groups to put forward some amendments that they would compromise on, and to indicate specifically where the points in Part III should be placed in Part I or II, with clear options to enable discussions during the ministerial meeting, taking place in parallel to the ADP October session.

b) On the content:

As a general matter, it is regrettable that the Draft Agreement remains very generalized, and does not include clear principles to ensure the transparency of efforts or carry out an evaluation of the level of ambition. A mechanism to raise the level of ambition over the course of the different stages of the commitments should also be developed. Further, the different options put forward by the big groups of countries are reflected, along with the possible variations according to the legal force sought (shall/should/may) and the degree of differentiation between developing and developed countries (each party/developed vs. developing countries/countries not included in Annex X). Finally, it is worth noting that the long-term collective aim (characterizing the 2°C objective) is found in Part III, which proves the extremely cautious approach of the Co-Chairs towards this subject – in particular following the objections of China during the June ADP session.

- **Treatment of non-state actors**

More specifically, in terms of the way in which non-state actors, including sub-national entities, are treated, it must be noted that the Co-Chairs did not wish to give priority, or even specific attention, to the acknowledgement of their role or actions:

- In Part I (Draft Agreement), non-state actors are not mentioned – only sub-national entities are targeted, but as stakeholders to be encouraged to

support their countries' efforts on adaptation (page 11, §9) or to be taken into account in terms of the need for capacity building.

- In Part II (Draft Decisions), non-state actors are invited to cancel, voluntarily, their CDM emissions credits (page 29, §9.4), and countries must promote the involvement of sub-national entities in the implementation of national contributions (page 30, §14, m). It is only in the draft decision on Workstream 2 (WS2 to bridge the gaps in ambition before 2020) that non-state actors are clearly targeted, with States called to provide them with regular opportunities to contribute and engage in an effective manner (page 43, §74, b).
- Finally it is in Part III that the greatest number of references to non-state actors and sub-national entities can be found. Several paragraphs require special attention: Pp32 page 50, §5 page 52, and §51 page 63, and in particular:
 - §5 in "general objectives", which covers both their role and action on mitigation and resilience: "[All actors, including civil society, the private sector, financial institutions, cities and other sub-national authorities, local communities and indigenous peoples are encouraged to scale up their actions and provide further opportunities for Parties to reduce emissions and/or to decrease vulnerability and build resilience to the adverse effects of climate change, without prejudice to the provisions of the Convention."
 - §51 on the recognition of actions: "Efforts of sub-national and local governments, sub-regional entities and the private sector [shall][should][other] be recognized."
 - The proposal for the recital of the preamble (Pp32 page 50), which reads as follows, should also be highlighted: "[Recognizing that [cooperative] action by and among sub-national authorities, intergovernmental organizations, civil society, indigenous peoples, local communities, the private sector, financial institutions and Parties can [catalyse and significantly enhance][strengthen] [the impact of policy] implementation by Parties in terms of reducing emissions, reducing vulnerability and building resilience to the adverse effects of climate change]".

However, apart from these three proposals, the others largely focus on the role and needs of non-state actors within the framework of WS2 (pre-2020). In this regard, the submissions provided by the groups of Parties relating to the Draft Decision for WS2 (§74, b) on 8 June should be highlighted. It should be noted that the Co-Chairs are referring to the G77 submission that reads as follows:

"b. Provide meaningful and regular opportunities for the effective engagement of experts from Parties, relevant international organizations, civil society, indigenous peoples, women, youth, academic institutions, the private sector, and sub-national authorities nominated by their respective countries;"

It should also be noted that submissions from the European Union, the Umbrella Group, AOSIS and the Environment Integrity Group (EIG) were more ambitious, calling to promote the engagement of non-state actors in the preparation of the post-2020 phase and the process for a new climate regime, in particular the TEP (Technical Examination Process). Finally, footnote number 66 on page 52, which recalls that some Parties are opposed to including provisions targeting non-state actors, should be highlighted.

[Courtesy translation of the original document in French]

- **What could happen at the September ADP session in Bonn?**

Primarily, the countries must agree on the use of the Co-Chairs' "tool" as a negotiating document, without prejudice to the Geneva text, which remains the formal text of the negotiations, as per article 17 of the UNFCCC.

Although in their draft agenda the Co-Chairs of the ADP expressed their wish to negotiate in thematic facilitation groups following a brief plenary on the morning of 31 August, it is likely that the September session will begin with a long discussion about the placement of the points for negotiation in Parts I, II and III, which could affect the organization of the work of the facilitation groups, bearing in mind that the mandate of the co-facilitators has evolved since June, with them being invited to make proposals for compromises and remove the brackets in the text.

Even if the Umbrella Group and AILAC seem favourable to the use of this "tool", a more reluctant reaction is feared from the Like Minded Developing Countries Group (LMDC). This will depend on China, which could, however, be pleased with the lack of critical points relating to the country in Part I, notably with regard to transparency, accountability and the ambition mechanism. According to our sources, it appears that the African Group was the least favourable to this "tool", preferring a case-by-case approach to clean the outcome text of the ADP June session, rather than having to justify each proposal to include the points it supports that are currently in Part III. At the moment, neither the ALBA Group nor influential countries such as Brazil or South Africa have spoken on the subject. The Co-Chairs will conduct informal consultations with all groups before the session to prepare the ground and avoid losing too much time discussing the admissibility of the "tool".

- **How can the formal recognition of non-state actors, including sub-national entities, be supported?**

Firstly, a formal recognition of the role and initiatives of non-state actors pre- and post-2020 must be ensured, which would mean making amendments in the texts relating to both WS1 and WS2. In this regard, it is suggested to reintroduce the proposal for the recital of the preamble, which is now in Part III (Pp2), into Part I.

Secondly, it would be fair to ensure that not only the initiatives (in Part I or II, to be discussed) but also the needs of non-state actors – financial, technological, and in terms of capacity building – are formally recognized, both in terms of adaptation and mitigation, targeting the section on finance in particular (Part II).

Thirdly, it would be appropriate to strengthen the involvement of non-state actors in the different implementation processes of the Paris Agreement, focusing on the sections on transparency and the evaluation mechanisms of the efforts carried out to ensure the implementation of contributions. This may be done, where necessary, through strengthened cooperation that goes beyond commitments already agreed upon, focusing on the section on institutional arrangements and echoing the aforementioned proposed recital of the preamble, which would further justify financial needs. The same request could be made to consolidate the participation of non-state actors in the processes to be envisaged for the implementation of WS2, targeting their involvement in the TEP process as well as in the work programme on long-term financing towards 2020 (see Decision 5/CP.20 adopted in Lima that prolongs this work programme).

Following the instructions of the Rhône-Alpes Region on these recommendations, the proposed amendments will be prepared in order to be supported in parallel to the ADP session in September.

Done in Brussels, by the external associate expert Matthieu Wemaëre, 28 August 2015.