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Summary

1. (U) The role of the European Parliament (EP) in shaping the outcome of the December 2015 COP21 climate summit in Paris is expected to be of higher importance than at previous climate summits, due to a provision introduced by the 2007 Lisbon Treaty requiring the EP to consent to international agreements which the EU has signed. The EP's formal role with regard to the approval of a possible climate agreement will, however, depend on the nature and legal status of that agreement. Should the outcome of Paris take the form of a non-legally binding accord, it may not require EP consent. The EP will send an official delegation of 15 Members to the Paris conference and is urging the European Commission and the Member States to include them in their morning coordination meetings ahead of daily negotiations. The EP's Committee on Environment, Public Health and Food Safety (ENVI) recently began drafting a non-binding resolution laying out its position and expectations for the summit that is scheduled to be voted in committee in late September and in plenary at the end of October. The resolution is expected to lay down certain minimum standards with which a potential climate agreement should comply. It is too early to say whether the EP is likely to include a position stating that the Paris agreement should be legally binding. Should this happen however, the Commission would not be bound by the Parliament's position and could choose to ignore it during the negotiations, but doing so would risk their not obtaining EP consent, if that step becomes required. End summary

The European Parliament's role in the ratification of an international climate agreement

2. (U) The role of the European Parliament (EP) in shaping the outcome of the December 2015 COP21 climate summit in Paris is expected to be of higher importance vis-à-vis at previous climate summits. Its formal role with regard to the approval of a possible agreement will, however, depend on the nature and legal status of a future agreement.

3. (U) The European Parliament's powers with regards to the approval of international agreements have increased significantly with the entry into force of the Lisbon Treaty in December 2009. Article 218 of the

CLASSIFICATION: UNCLASSIFIED

Page 2 of 6

Treaty on the Functioning of the European Union (TFEU, see Annex I) provides that the Council shall obtain the consent of the EP to an international agreement when such agreement covers "fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required" (see Annex I). An eventual international climate agreement reached in Paris that is to be considered binding as a matter of international law, would therefore certainly require EP consent as a precondition for EU ratification. For example, the EP is currently in the process of approving the 2012 Doha amendment to the Kyoto Protocol, which established a second commitment period from January 1, 2013 to December 31, 2020. A final vote is expected to take place in June 2015.

4. (U) It remains unclear, however, whether or to what extent the EP would be involved should the outcome of Paris take the form of a non-legally binding accord or an agreement that is partly binding and partly non-binding.

5. (U) The EP intends to send an official delegation to the Paris conference, as it usually does with international climate negotiations. During conferences, Members of the EP (MEPs) are frequently briefed by European Commission (the official representative body of the European Union) negotiators, but so far have been excluded from attending the daily coordination meetings between Commission and Member State delegations meant to ensure that the EU and its Member States speak with one voice during the negotiations. MEPs have been putting pressure on Commission and Member States to allow EP participation in these meetings at COP21. For Paris, the official EP delegation will be comprised of 15 MEPs. Given the venue for the conference however, many more MEPs can be expected to travel independently to Paris.

The EP position

6. (U) In the run up to major international climate negotiations, the EP's Committee on Environment, Public Health and Food Safety (ENVI), as the parliamentary body responsible for climate policy, usually draws up an EP resolution laying out its position and its expectations regarding the upcoming summit, which is then adopted by the full EP.

7. (U) Work on the EP's draft resolution for COP21 has just begun. The ENVI committee nominated French Socialist Gilles Pargneaux as the 'rapporteur,' and he is currently drawing up a draft resolution (also known as a "report" in EP terminology) that ENVI committee members will discuss for the first time June 16. ENVI Members will have the opportunity to submit amendments to the draft report by June 17, which will in turn be debated by the committee July 15 or 16. A committee vote on the resolution has been scheduled for September 22-23 followed by a plenary vote at the end of October.

8. (U) According to the ENVI staffer responsible for guiding the draft resolution through the parliamentary process and for organizing the EP delegation to Paris, MEPs are expected to vote on a resolution that will lay down certain minimum standards with which a potential climate agreement should comply. "MEPs will not allow the EU to just sign anything," he told ECON/ESTHOFFs, adding, "We cannot afford a second Copenhagen." Comment: The Copenhagen Accord was a non-binding agreement and therefore did not require European Parliament approval. USEU will follow closely and regularly report on developments in the EP in relation to the drafting and the adoption of the resolution.

9. (U) It remains to be seen whether the EP resolution will call for a potential agreement in Paris to be binding in its entirety. As the EP resolution itself will not be binding, the Commission could choose to ignore it during the negotiations. Should the Commission, however, contrary to EP wishes, agree to a treaty that has non-binding elements, it would risk not obtaining EP consent, if that step becomes necessary.

10. (U) Comment: The EP usually provides its approval to international agreements negotiated by the other EU institutions. There have been a number of instances however where the Parliament has rejected important international agreements, such as the U.S.-EU Terrorist Financing and Tracking Program (TFTP) Agreement in February 2010 (which, after renegotiation, was subsequently approved in July 2010), as well as the Anti-Counterfeiting Trade Agreement (ACTA) in July 2012.

CLASSIFICATION: UNCLASSIFIED

Page 3 of 6

11. (U) Annex II provides excerpts from a resolution adopted by the EP ahead of the December 2014 Lima conference (COP 20), which provides some flavor of the EP's likely expectations for Paris, notably that "the EU and its Member States ... play major constructive roles at the COP 20 in Lima in order to create the necessary conditions for a successful global binding climate agreement in Paris in 2015".

12. (U) Also of note, the Commission is expected to present its legislative proposals for the Emissions Trading System (ETS) review before COP21 in Paris to provide a signal to the other parties of the EU's strong commitment to mitigate greenhouse gas emissions at home. The proposals are expected to also further consolidate the rules for emissions from the aviation and maritime transport sectors into the EU ETS. A separate report on this issue will follow. End Comment.

ANNEX I

Art 218 TFEU
(ex Article 300 TEC)

1. Without prejudice to the specific provisions laid down in Article 207, agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.

2. The Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.

3. The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.

4. The Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.

5. The Council, on a proposal by the negotiator, shall adopt a decision authorising the signing of the agreement and, if necessary, its provisional application before entry into force.

6. The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement. Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision concluding the agreement:

(a) after obtaining the consent of the European Parliament in the following cases:

(i) association agreements;

(ii) agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(iii) agreements establishing a specific institutional framework by organising cooperation procedures;

(iv) agreements with important budgetary implications for the Union;

(v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required.

The European Parliament and the Council may, in an urgent situation, agree upon a time-limit for consent.

(b) after consulting the European Parliament in other cases. The European Parliament shall deliver its opinion within a time-limit which the Council may set depending on the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.

7. When concluding an agreement, the Council may, by way of derogation from paragraphs 5, 6 and 9, authorise

CLASSIFICATION: UNCLASSIFIED

Page 4 of 6

the negotiator to approve on the Union's behalf modifications to the agreement where it provides for them to be adopted by a simplified procedure or by a body set up by the agreement. The Council may attach specific conditions to such authorisation.

8. The Council shall act by a qualified majority throughout the procedure.

However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article 212 with the States which are candidates for accession. The Council shall also act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the decision concluding this agreement shall enter into force after it has been approved by the Member States in accordance with their respective constitutional requirements.

9. The Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision suspending application of an agreement and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.

10. The European Parliament shall be immediately and fully informed at all stages of the procedure.

11. A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised.

ANNEX II

Excerpts from the European Parliament's Resolution adopted ahead of the December 2014 Lima conference (COP20)

The European Parliament:

Expects the EU and its Member States to play major constructive roles at the COP 20 in Lima in order to create the necessary conditions for a successful global binding climate agreement in Paris in 2015;"

Recognises the extraordinary scale and seriousness of the threats induced by climate change and expresses profound concern about the continued weakness of the international response to the challenge it poses; is extremely concerned that the world is severely off track with regard to limiting global warming to an increase of below 2 °C and calls on governments to take, without delay, concrete measures against climate change and towards a global agreement in Paris 2015 to deliver this target;

Stresses that the 2015 agreement needs to meet the goal of reducing global emissions to a level compatible with the 2 °C carbon budget, and should aim at phasing out global carbon emissions by 2050;

Expects the EU and its Member States to play major constructive roles at the COP 20 in Lima in order to create the necessary conditions for a successful global binding climate agreement in Paris in 2015; underlines that the governments of the world have a collective responsibility, including towards future generations, to take adequate climate action;

Emphasises that the 2015 Agreement must be ambitious from the outset when adopted in Paris, so as to keep the world on track for the 'below 2 °C' objective, and calls for the EU to work with its international partners to that end;

Is of the view that the Lima Conference should set out the main elements of the 2015 Agreement, building on the

progress accomplished throughout 2014 under the Durban Platform, and reiterates that mitigation, adaptation, climate finance and means of implementation will all be essential parts of the 2015 Agreement;

Calls on the EU to include all parties in its work towards an ambitious and fair 2015 Agreement which is both in line with the latest science and responsive to new scientific findings and changing circumstances, so that it remains fit for purpose and sustainable for many years beyond 2020; stresses, therefore, the need for a mechanism that allows for a regular review of the mitigation commitments, which will enable Parties to adjust their pledges upwards in light of the 'below 2 °C' objective, without the need for the Agreement to be reopened;

Underlines the need for an effective compliance regime applicable to all Parties under the 2015 Agreement; emphasises that the 2015 Agreement must promote transparency and accountability through a common rules-based regime including accounting rules and monitoring, reporting and verification arrangements; highlights that rules should be differentiated on the basis of the type of commitment Parties decide to choose, drawing on the lessons learnt from the Convention and its Kyoto Protocol;

Reiterates the importance of maritime and air transport in terms of GHG emission reductions, and the need for swift progress and ambition in reaching satisfactory and timely outcomes on the part of both the International Maritime Organisation and the International Civil Aviation Organisation, in line with the scale and urgency of the climate challenge;

Believes that an ambitious and legally binding international agreement would help to address the carbon leakage and competitiveness concerns of the relevant sectors, in particular the energy-intensive sector;

Welcomes recent signals from the US and Chinese governments regarding climate action and their willingness to play a more significant role in global efforts to address climate change; regrets the fact that some developed countries continue to increase their emissions per capita;

Invites the Parties to look at the voting and decision mechanisms of the successful Montreal Protocol, its different approach to responsibilities, and its enforcement and sanction mechanisms and financing, as an example which might also be used under the UNFCCC; calls for the EU to step up efforts to regulate a global HFC phase-down under the Montreal Protocol;

Believes that the EU delegation plays a vital role in the climate change negotiations, and therefore finds it unacceptable that Members of the European Parliament have been unable to attend the EU coordination meetings at previous Conferences of the Parties; expects at least the Chair of the European Parliament delegation to be allowed to attend EU coordination meetings in Lima;

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Page 6 of 6

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Page 6 of 6