



THE KYOTO PROTOCOL AND THE EU IN DURBAN

10 QUESTIONS AND ANSWERS ON THE KYOTO PROTOCOL

November 2011

1 WHY DO WE NEED LEGALLY BINDING TREATIES?

A top down process is essential to ensuring that global mitigation efforts match the urgency of reducing global climate risks. To get to the kind of deep emission reductions that are needed, governments need to feel part of a real collective effort and need to be sure that every country is going to implement what they promise. Only a multilateral binding regime can ensure this. Without a doubt the Kyoto Protocol has been critical to the exponential growth in renewable energy investment over the past decade.

The Kyoto Protocol provides a benchmark for a global legally binding instrument for all. Currently the international negotiations are running on two tracks - one for the Kyoto Protocol and one for a new treaty that would include all the world's major emitters, including the USA and China. Refusing to put future emissions reduction targets under the Kyoto Protocol would make the negotiations on expanding the legal regime much more difficult, and would put those countries blocking progress in the driver's seat. Abandoning the capstone of the current international climate regime could seriously limit future ambition and make a voluntary bottom-up pledge and review system the dominant outcome.

2 WHY DO WE NEED THE KYOTO PROTOCOL IN PARTICULAR?

3 WHY IS THE KYOTO PROTOCOL IMPORTANT IN DURBAN?

The first commitment period of the Kyoto Protocol expires at the end of 2012, which is intensifying negotiations on reaching agreement on legal form in Durban. Securing a second commitment period of the Kyoto Protocol, and thus preserving the only legally binding international instrument with emission reduction targets and timetables, has been named as the key outcome of Durban by vulnerable and developing countries, as well as the emerging economies group. It has also been identified as the key question to be resolved in Durban by the incoming COP17 South-African presidency and the UNFCCC executive secretary Christiania Figueres.

WHY IS THE EU CRITICAL FOR SECURING
THE KYOTO PROTOCOL'S FUTURE?

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CAN-Europe is convinced that the European Union is central to shaping the direction of the global climate change regime, especially if it is able to lead from the front and set the agenda - by unilaterally adopting clear, ambitious positions, well in time.

CAN-Europe also believes that it is in the EU's own interest to work tirelessly to preserve the *legal acquis* embodied in the Kyoto Protocol's basic architecture. The Kyoto Protocol was a major success of European climate diplomacy, which took years to negotiate, refine and ratify. Agreeing to a second commitment period requires very little from the EU. The EU's own climate and energy legislation already covers the EU's climate commitments until 2020.

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At present there are increasing expectations by developing countries that the EU should be able to cooperate on a second commitment period. On the other hand, some developed countries (Russia, Canada and Japan) have signaled that they would be unwilling to put forward targets for a second commitment period post-2012. Therefore, without an unambiguous and concrete commitment from the EU, the Kyoto Protocol's future - and that of the multilateral UNFCCC regime - is in danger. The Kyoto Protocol embodies an emotional legacy within the climate negotiations. Saving it is therefore a core priority for developing countries and key elements of the Kyoto Protocol's architecture remain important for progressive developed countries.

The only way the EU can put pressure on the largest emitters is to build an inclusive movement of the majority of the world's countries; the EU cannot do this if it abandons the Kyoto Protocol. Building up a global legal regime is one of the cornerstones of the EU's climate policy. Giving up on the Kyoto Protocol will not help the EU in achieving these objectives and would ensure that the future of any global climate regime is set by countries with little ambition.

In using the Kyoto Protocol as an effective lever, the EU can shift the spotlight back onto the other big emitters.

In Durban, to complement an agreement to a second commitment period of the Kyoto Protocol, governments must also agree a negotiating mandate with a timetable for a global legally binding instrument that includes all countries, that are not currently included in the Kyoto Protocol. The new agreement should be consistent with the latest science, taking into account the equity principles of the UNFCCC and the historical responsibility of developed countries.

This must be done in order to put us on a credible pathway towards global emissions reductions of at least 80% by 2050, as required to be consistent with scientific consensus on avoiding runaway climate change. This instrument should be adopted no later than 2015 and enter into force by the end of the second commitment period of the Kyoto Protocol.

WHAT ABOUT OTHER BIG EMITTERS, SUCH AS THE UNITED STATES AND CHINA, THAT ARE NOT PARTIES TO THE KYOTO PROTOCOL?

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WHAT IF THERE IS NO AGREEMENT TO ADOPT A SECOND COMMITMENT PERIOD OF THE KYOTO PROTOCOL IN DURBAN?

Currently there is no alternative to a Kyoto Protocol regime. The Kyoto Protocol contains the critical architecture needed

to for an effective global climate regime (see box on last page). It contains all the necessary elements for monitoring, compliance, finance, technical cooperation and economic efficiency. There is no magic institutional structure waiting to be discovered that isn't already contained inside – or compatible with – a reformed version of the Kyoto Protocol. If the most dangerous effects of climate change are to be averted, there is no time left to start from scratch again.

Governments need to ensure there is no gap between the first commitment period (ending in December 2012) and the start of the second commitment period. Given that amendments to the Kyoto Protocol need to be ratified by all countries' Parliaments, governments must do everything they can to secure a second commitment period of the Kyoto Protocol in Durban. Waiting until COP18 at the end of 2012 to agree on the continuation of the Kyoto Protocol would result in a legal gap, defaulting to a system called "provisional application." This means that countries would start to implement what has been agreed before ratification has happened; this type of application would not, however, be legally binding.

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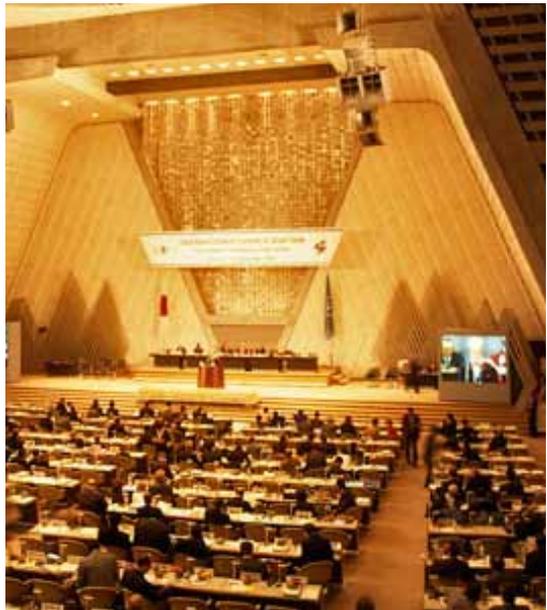
WHAT IS THE EU'S
POSITION ON THE KYOTO
PROTOCOL?

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The EU suffered a diplomatic failure ahead of the Copenhagen COP15 conference by communicating its strong preference for a single track outcome, resulting in many developing countries blaming the EU for killing the Kyoto Protocol. Since then the EU has gradually increased its openness to a second commitment period. The current position of the EU - adopted by EU Environment Ministers on October 10, 2011 and confirmed by the Heads of State at the European Council on October 23rd - states a preference for a single track outcome, while confirming the EU's openness to accepting a second commitment period under the Kyoto Protocol. This, however, would only be done provided that the Kyoto Protocol is improved and that there is a roadmap toward a legally binding framework that includes mitigation commitments from all major economies.

Despite this vague compromise position set forth in the Council conclusions, there is still wide disagreement between the different EU member states, including the European Commission, with regards to the conditions for adoption of the second commitment period. Some member states do not want to move before others move, while others argue that delaying a decision to continue the Kyoto Protocol regime could result in blockage at the negotiations.

The next decisions will be taken when Environment Ministers meet in Durban during COP17.



HOW WOULD THE ADOPTION OF A SECOND COMMITMENT PERIOD OF THE KYOTO PROTOCOL IMPACT THE EU?

Agreeing to a second commitment period under the Kyoto Protocol demands very little from the EU. The targets mandated in the EU's own climate and energy legislation extend until 2020 and currently require more stringent compliance and enforcement than those set forth in the Kyoto Protocol.

The EU's current greenhouse gas reduction target is -20% from 1990 levels by 2020. The EU is assessing whether or not to upgrade its target to -30%, which it might fail to do before adopting a second commitment period of the Kyoto Protocol in Durban. Integrating a simple technical solution, similar to the adjustment procedure in the Montreal Protocol to protect the Ozone layer, would allow the EU and other parties to easily increase their targets without a requirement for a new ratification process.

Abandoning the Kyoto Protocol would also send negative signals to investors and business, potentially dampening ambition towards meeting a -30% or a higher target.

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“Agreeing to a second commitment period under the Kyoto Protocol requires very little from the EU.”

WHAT IS THE DIFFERENCE BETWEEN A POLITICAL AND A LEGALLY BINDING COMMITMENT TO THE KYOTO PROTOCOL?

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Some European Commission officials have brought up the concept of committing only politically, instead of legally, to a second commitment period under the Kyoto Protocol. A political commitment instead of a legally binding commitment would make it difficult to argue for legally binding commitments for others. Furthermore, a non-binding political commitment is largely inadequate to address a problem with such magnitude as climate change. CAN Europe strongly believes that such an approach would not deliver anything additional to the EU and as a concept would be most counterproductive at Durban.

HOW MAY WE ADDRESS THE KYOTO PROTOCOL'S FLAWS, SUCH AS ACCOUNTING LOOPHOLES?

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The environmental integrity of emission reduction targets under any legal instrument - not only the Kyoto Protocol - must be reinforced. The current Kyoto Protocol's loopholes, namely surplus emissions credits, known as 'hot air', creative land-use and forestry accounting rules and offsetting, are political rather than technical problems and equally solvable under any instrument.

Analysis by Ecofys and Climate Analytics found that current loopholes and underlying assumptions will significantly weaken the ambition level of developed countries emission reduction targets to just 2% below 1990 levels¹. The Cancun Agreements set a long term goal to keep warming below 2°C, but recognised that current ambition levels are inadequate, that deep cuts are required and that mitigation efforts must be 'scaled up' with developed countries showing leadership.

The environmental integrity of the Kyoto Protocol rules that govern the land-use and forestry accounting, carbon offsetting and surplus AAUs will eventually remain the responsibility of those countries participating in the Protocol's next phase. In other words, a narrower participation in the Protocol's second commitment period also offers the EU an opportunity to amend the accounting rules beyond what was possible when negotiating the current rules.

SOME IMPORTANT ARCHITECTURAL ELEMENTS OF THE KYOTO PROTOCOL:

Long term viability: the KP provides a framework that can be updated for each commitment period, while maintaining its essential elements.

Top down approach: setting an overall objective- an aggregate goal - for developed countries, allowing appropriate consideration of science and equity (including the Common but Differentiated Responsibilities [CBDR] principle). Comparability of effort between developed countries is established through their respective targets (Article 3.1).

Legally binding, economy wide, absolute emissions reduction targets for developed countries, expressed as a percentage below the 1990 base year (Annex B). System of 5 year commitment periods, with comparability of effort measured against a common 1990 base year (Articles 3.1 and 3.7).

Monitoring, review and international verification system (Articles 5, 7, 8 and associated decisions).

Compliance mechanism, composed of two tracks - facilitative and enforcement (Article 18).

Mandatory review of provisions of the Protocol for subsequent commitment periods (Article 3.9).

Ensuring external actions (e.g., CDM) are supplementary to domestic actions (Article 6.1d).

Required reporting on "demonstrable progress" for developed countries, establishing an important reporting requirement and stocktaking (Article 3.2).

Basket approach to green house gases (GHGs) and the ability to list new gases and classes of gases (Annex A).

Use of Global Warming Potentials (GWP) to allow comparability of the impacts of different gases on global warming (Article 5.3).

Common accounting (scope, methodologies, GWPs etc), common reporting, common sources etc - the things that allow comparability.

¹ Ecofys, Climate Analytics and the Potsdam Institute for Climate Impact Research (PIK) "Climate Action Tracker" Cancun Briefing Paper, 2011 http://www.climateactiontracker.org/briefing_paper_cancun.pdf

About Us

Climate Action Network Europe (CAN-E)

is recognised as Europe's leading network working on climate and energy issues. With 150 members in 27 European countries, CAN-E unites to work to prevent dangerous climate change and promote sustainable energy and environment policy in Europe.

The Climate Action Network (CAN)

is a worldwide network of almost 700 non-governmental organisations (NGOs) working to promote government, private sector and individual action to limit human-induced climate change to ecologically sustainable levels. CAN is based on trust, openness and democracy.

CAN's mission

is to support and empower civil society organisations to influence the design and development of an effective global strategy to reduce greenhouse gas emissions and ensure its implementation at international, national and local level in promoting equity and sustainable development.

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