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Despite Progress, Big Obstacles Still Loom For Paris Deal

By **Keith Goldberg**

Law360, New York (October 7, 2016, 8:28 PM EDT) -- The landmark global climate change deal brokered in Paris cleared an important hurdle this week when it secured enough official support to go into effect, but experts say the biggest hurdle — signatory countries turning their emissions, clean energy and climate adaptation financing goals from mere promises into reality — still lies ahead.

With the European Union on Tuesday ratifying the deal that legally binds both developed and developing countries to keep average global temperature increases well below 2 degrees Celsius above preindustrial levels, the Paris agreement passed the threshold of at least 55 countries representing at least 55 percent of global greenhouse gas emissions required to enter into force, which will occur on Nov. 4.

While getting the deal into effect less than a year after it was brokered — with the support of major carbon emitters China, India, the U.S. and the EU — is no small feat, the easy part is over, experts say.

"The Paris agreement in many ways should be viewed as the end of the beginning of the global climate negotiation process," Crowell & Moring LLP counsel Cameron Prell said. "While it's certainly a monumental step forward in international climate law and policy, the hard work is just beginning."

The hard work starts with countries committing to their nationally determined contributions, or NDCs — national pledges to cut carbon emissions. The NDCs aren't internationally binding, and the International Energy Agency estimates that nations will need to spend trillions of dollars on low-carbon and energy efficiency technologies, as well as other measures, to stay below the 2-degree threshold. What's more, the deal actually envisions increases below 1.5 degrees Celsius above preindustrial levels, which scientists say would help prevent the most severe climate change impacts from occurring.

Making those NDCs binding on a national level is critical, experts say.

"The impact of this deal will entirely depend on how countries respond internally in terms of the regulatory enforcement mechanisms and incentives that are created to push industry toward carbon reduction," said DLA Piper partner George Gigounas, who represented the Republic of Georgia at the Paris climate talks.

The U.S., for one, is banking on the implementation of the Clean Power Plan, which slashes carbon emissions from existing power plants to help meet its NDC. Meanwhile, China is planning a national carbon trading market, while the EU has its emissions trading system along with other carbon reduction policies.

"The political and potential economic pressure that compliant countries can put on noncompliant countries to meet their contributions will be important," Gigounas said. "That's the best you can hope for in global collaboration on policymaking."

While the NDCs aren't binding, nations will be required to report their emission levels and progress made toward their reduction targets using uniform reporting tools to ensure transparency, as well as tighten their emissions reduction targets every five years.

"Carbon accounting and the establishment of a set of standard, agreed-upon reporting requirements are not necessarily the sexy stuff, but nonetheless are vitally important to get done to allow the framework to move forward," Prell said.

But to make the NDCs stick, the tension between developed nations that have historically been the biggest contributors to increased greenhouse gas emissions and developing nations must be eased, experts say. Complicating matters are the fact that China and India are still considered developing countries, despite their rapidly increasing economic and carbon-consumption clout.

"If those countries do not acknowledge the need to develop in as carbon-neutral a manner as realistically possible ... there's going to be some serious damage to the agreement," Gigounas said. "On the other hand, if the developed nations are overly stringent in their expectations of developing countries of any size and [make them] eschew traditional carbon-consumption technologies enjoyed by developed nations, then we're going to come to an impasse as well."

The developed nation-developing nation dichotomy is especially pronounced when it comes to financing the multitrillion-dollar transition to a low-carbon world, experts say. The Paris deal envisions developed countries contributing at least $100 billion annually to help vulnerable countries deal with the impacts of climate change and developing countries develop low-carbon economies, though it also encourages developed nations to share renewable energy and emissions reductions technologies with developing countries at little or no cost.

But like the NDCs, the financing pledges aren't binding, and answering the three-headed question of who pays, how much and how quickly could be a major stumbling block, experts say.

"If the money starts to flow, some of these countries will undertake these emissions reductions," Stroock & Stroock & Lavan LLP special counsel Gail Suchman said. "The poorer countries will wait for the money to flow."

If countries are serious about fulfilling their pledges to help keep global temperature increases below the 2-degree threshold, the enforcement of the Paris deal will clearly signal to the private sector that there's widespread support for a low-carbon economy, as well as signal a massive opportunity for the clean energy industry, experts say.

"The Paris meeting indicated that industry was going to take a leadership role," Suchman said. "The energy companies that have a lot of experience in the renewable energy space, they'll see it as a market opportunity to come to these countries and say, 'You have to demonstrate a reduction, I can partner with you and help you meet your reduction goals.' "

But clean-energy companies, which still aren't quite as cost-efficient and self-sustaining as their fossil fuel counterparts, aren't going to fully dive in until there's a critical mass of regulatory support for their technologies, according to Gigounas.

"The private sector will be watching how countries can encourage their legislatures to develop and implement laws that stimulate and incentivize the continued development of cleantech," Gigounas said.

A pair of other agreements clamping down on global warming pollutants could help ensure the smooth the bumpy road to success faced by the Paris deal. On Monday, nations will meet in Rwanda to try to amend the Montreal Protocol ozone protection agreement to phase out the use of hydrofluorocarbons. Securing the amendment to phase down HFCs could avoid up to 0.5 degrees Celsius of warming by the end of the century, a powerful complement to the targets envisioned by the Paris deal, experts say.

"Countries will count HFC reductions toward their opening Paris commitments and those HFC reductions will enable countries to pledge stronger NDCs in the future," said David Doniger, who directs the Natural Resources Defense Council's climate and clean air program and is in Rwanda for the HFC deal negotiations.

There's also the landmark global agreement announced Thursday by the United Nations' International Civil Aviation Organization to reduce carbon emissions from the aviation sector through a carbon-offset system that envisions capping emissions from international flights at 2020 levels.

"The ICAO market-based measure can be described as taking place in parallel to Paris and country-by-country NDCs, just on its own terms for the time being," Prell said.

--Additional reporting by Juan Carlos Rodriguez and Linda Chiem. Editing by Katherine Rautenberg and Patricia K. Cole.
