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**HEALTH, FOOD CHAIN SAFETY
AND ENVIRONMENT**

**LEGAL ASPECTS OF THE PARIS CLIMATE CHANGE
AGREEMENT
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Options to anchor Nationally Determined Contributions in/under the Paris Agreement

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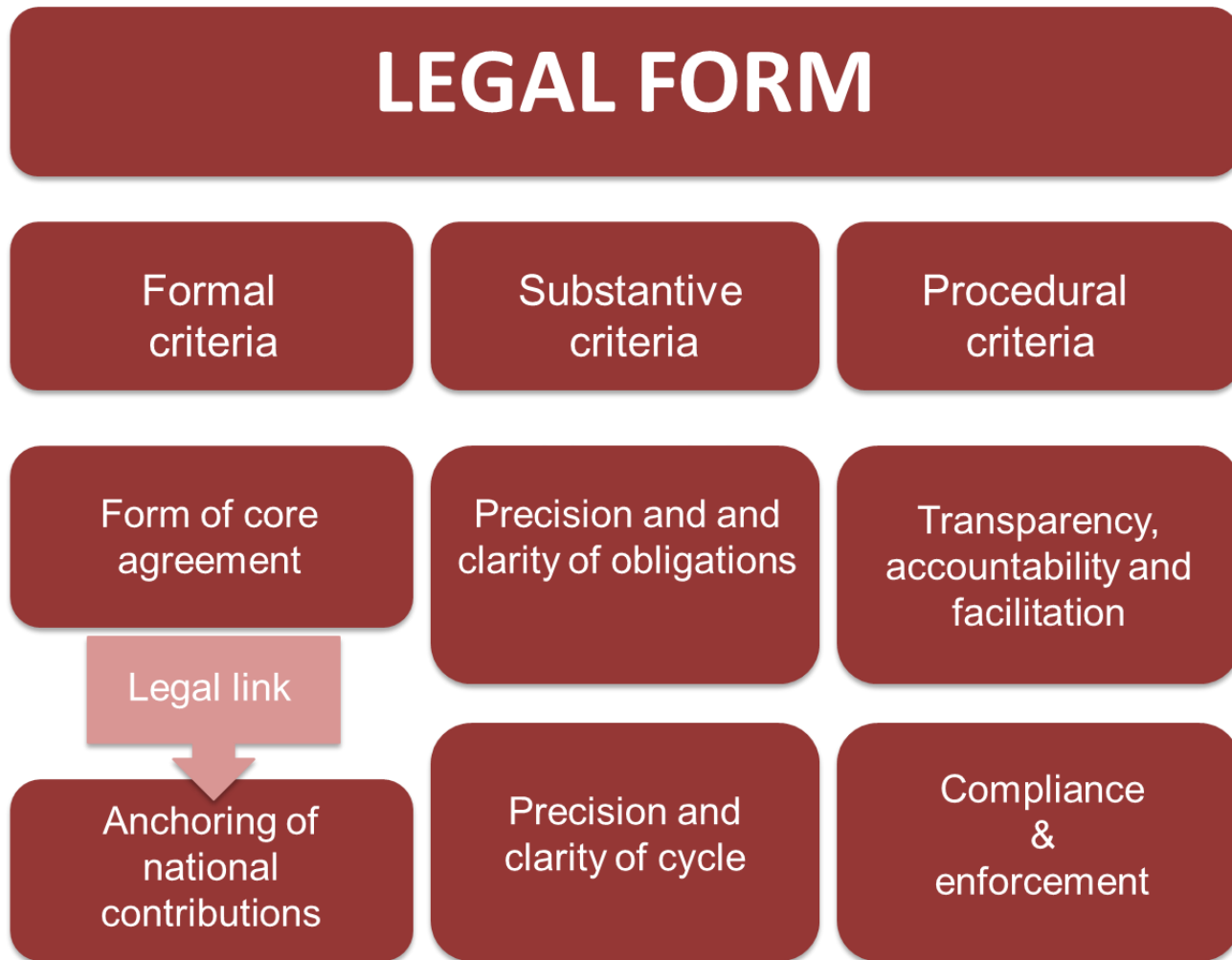


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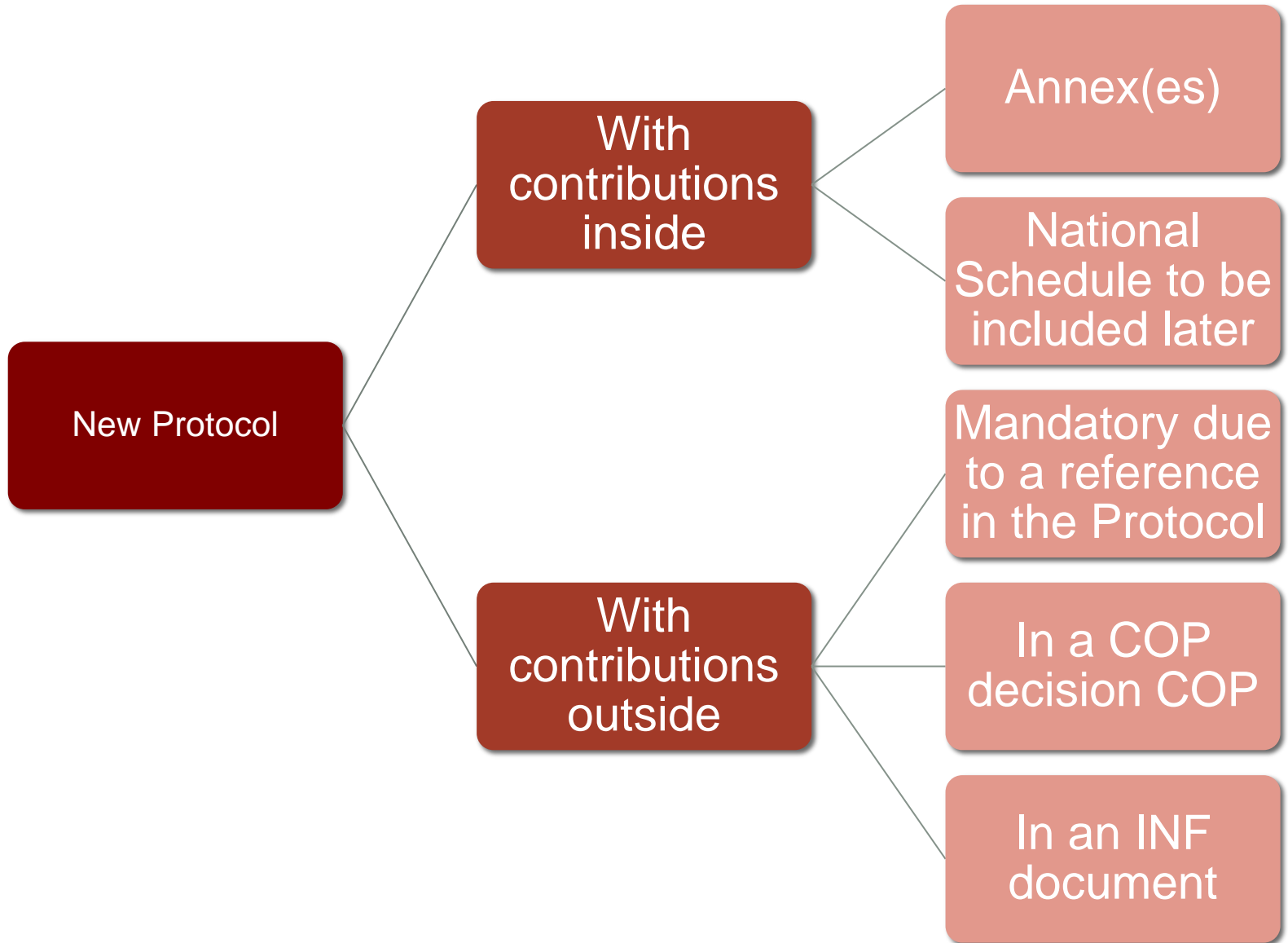
Strong interactions between legal parameters of the Paris Agreement



To be anchored or to be moored?

- Key (political) question in current negotiations: what legal force for NDCs and at what level (international/national)?
 - ✓ International legal security v. national sovereignty
 - ✓ Legal symmetry v. differentiated obligations/commitments
- Answers vary depending on how to envision the NDC concept (one-off until 2030? or for future cycles) and on the legal form of the Paris Agreement :
 - ✓ More options with a Protocol, which are different compared to a series of COP decisions
- From theory to reality: need to take into consideration what is acceptable to Parties and what is achievable in Paris, taking account of interactions between all legal aspects

NDCs in/under a new Protocol



“In” the Paris Agreement (1): Annex(es)

- **Annex(es): different options**

- ✓ One single annex
- ✓ One annex per country (alphabetical order ?)
- ✓ Two annexes distinguishing NDCs from Annex I and non Annex I
- ✓ Several annexes per type of contributions/commitments

- **Consequences:**

- NDCs legally binding at international and national levels, legally enforceable if provided so by the treaty provisions
- First NDCs subject to approval/ratification together with the treaty (but each Party would ratify its NDC only, contrast with KP)
- If subsequent NDCs: may be subject to amendments using a simplified procedure such as the Doha Amendment to the KP
- In Paris, the COP would have to adopt by consensus the Protocol and the annex(es) containing the headlines numbers (+ provisional application rules)

“In” the Paris Agreement (2): attached Schedules

- **The GATS model**

- National Schedules which form an integral part of the Agreement, to be notified after the adoption of the Agreement
- ✓ National schedules could also indicate restrictions, exemptions or even conditions for the implementation of the NDCs.

- **Consequences:**

- National Schedules would be legally binding at international level
- NDCs would better reflect the principles and rules of the Paris Agreement and be automatically integrated into the Agreement, without being subject to other Parties' acceptance, including for their review during subsequent cycle/periods
- National Schedules would be finalized after Paris, leaving space for some assessment and review before 2020
- ❖ **However, need to reflect upon the UNFCCC and Paris Agreement objectives! Climate Change is not Trade...**

“Under” the Paris Agreement: National Schedule

- **Several options envisaged by Parties:**

- ✓ Included in a separate COP decision, and/or
- ✓ Inscribed into a “repository”, “compendium” or “registry”, or
- ✓ Noted in an “INF” document (eventually with 2 parts for Annex I and Non Annex I Parties?)

- **Consequences:**

- NDCs are not legally binding at international level (but may have some legal effect if adopted through a COP decision by consensus)
- NDCs do not need to be ratified/approved at national level
- If the Paris Agreement is an international treaty, its approval/ratification would give some legal effect to NDCs at national level
- Possibility to require Parties to assess and review NDCs in the Paris Agreement (transparency and ambition) but less legal basis for substantive requirements

NDCs “outside” but binding due to a provision of the Protocol

- **Hybrid option: obligation of conduct (top-down) to implement a given result, e.g. NDCs (bottom up) that would be “anchored” outside**
 - Combination of two obligations in order to provide international legal security while respecting national sovereignty
 - Obligation to prepare, submit and to implement domestic “legislation” to make it legally binding nationally and accountable internationally and fit with cycles of contributions.
- **Better to have NDCs moored “in” the Paris Agreement for more political visibility and legal basis to require more transparency at international level:**
 - Need to raise ambition of NDCs over time! Link to global goals!
 - ✓ Ex ante: review of adequacy = ☹️
 - ✓ Ex-post: review of a state's performance in implementing its NDC = 😊

Pros and cons of the various options

Options	Pros	Cons
Annex(es) to the Paris Agreement (Protocol)	Bindingness Certainty Level Playing Field	Not flexible except if NDCs are reviewed through simplified procedures (3/4 majority for blocking)
National Schedule (GATS model) which forms part of the Paris Agreement (Protocol)	Bindingness Certainty Level Playing Field Flexibility for adoption	GATS model works well for trade cooperation, but climate? Conditionality (financial support) may be legally binding
(outside) NDCs to be implemented according to a provision in the Paris Agreement (Protocol)	-Some legal security at international level - Legally binding nationally if conduct targets legislation - Flexibility to adjust NDCs after Paris and onwards	NDCs are not legally binding at international Need for a robust transparency, ambition and compliance rules in the international regime
Registry/Repository maintained by the UNFCCC Secretariat (NAMA model)	Flexibility Minimum of international coordination (notification/format)	NDC not legally binding Need for a robust international transparency, ambition and compliance rules
INF Document (Cancun model)	?	No legal force

Few more legal questions for discussion

- **Are the final numbers of (I)NDCs anchored in/under the Paris Agreement? Or do we want rules before numbers?**
 - ✓ Some rules will be needed in order to know the exact level of ambition of NDCs (i.a. accounting AFOLU and markets)
- **NDCs are likely to be very diverse:** impossible to bring them as presented now in/under the Paris Agreement:
 - ✓ Need to develop some format to submit/notify and, eventually, adjust national commitments before 2020 (ex initial report KP type?)
- **How best to use the 2015-2020 period** to refine existing NDCs and deal with INDC latecomers, e.g. those who do not submit INDCs before Paris?
- **Do REIOs (e.g. EU) still need a bubble provision** for joint fulfilment of its NDC? What implications for EU climate policy?

Thank you !