

The Paris Agreement in Logic of Multi-Regulatory Governance: A Step Forward to a New Concept of Global Progressive Adaptive-Mitigation?

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Agenda

- I. Introduction: the Concept of Adaptation and Adaptive-Mitigation, Hypothesis, Question of Research
- II. *Global Level*: The Paris Agreement – a Convenient Compromise or Success? Legal Form and Architecture – Challenges/Potentials
- III. *Regional Level*: Implications for the EU and National Climate Law: Challenges and Potentials on Adaptive-Mitigation
- IV. Focus on the role of Renewable Energies in COP 21 and in the Paris Agreement
- V. *National Level*: Impact of the Paris Agreement on Italy's commitments on Renewable Energies
- VI. Conclusion

I. Introduction: the Concept of Adaptation

- linked to "effectiveness": "Any legal framework including adaptation marks a level of progression in terms of environmental effectiveness" (Verschuuren, 2013)
- Understood not only as a response to physical impacts with regulatory measures (zoning, environmental, flooding and storm water, sea level rise ect.) but also in terms of laws and regulations of new power generations resources (i.e., renewable energy issues) (Verschuuren, 2013)
- Not more an overlooked issues in the Paris Agreement...but something more (Art.s 7 and 7.4 of the Paris Agreement)

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I. Introduction: the Concept of "Adaptive-Mitigation"

What does it means?

- Adaptation interlinked with mitigation in a "mutual benefit sharing way" (Art.s 7 and 7.4 of the Paris Agreement)
- Pre-Kyoto: always been considered separatly
- Paris: adaptation benefits are "encapsulated" into mitigation measures

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I. Introduction: the Concept of “Adaptive-Mitigation”

An example of “Adaptive-Mitigation”: renewable energies power sector/electricity sector increases GHGs but if uses renewable energies by adopting new technologies can further not only mitigation but also adaptation (i.e: water conservation/resistence to extreme events/low environemntal impact)

How?

- ✓ Strengthening interactions
- ✓ Not treating them separetly
- ✓ Adopt policy instruments that promote mitigation that have adaptation benefis

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I. Introduction: the Concept of “Adaptive-Mitigation”

What can the the law do to ”adaptive-mitigate”?

- ✓ Secure information
- ✓ To adaptive-mitigation strategies/policies must correspond ”adaptive regulation”(effective)
- ✓ Secure the vertical implementation of international environmental law
- ✓ Treat adaptation at the same level than mitigation
- ✓ Fill the contemporaney multiregulatory/sectorial gaps (Kyoto focused on mitigation rather than adaptation/ power sector had focused on mitigation rather than adaptation, adaptation/mitigation not suffieciently linked, lack of info on benefits to ”adaptive-mitigate” and to achieve a shift in societal behaviour)

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I. Hypothesis and Question of Research

Hypothesis:

Whether or not we are in the presence of a new concept of "global progressive adaptive-mitigation" functioning as a tool of detection for effective enforcement

Question of Research:

In a logic of multi-level climate governance, what are the challenges and potentials of the Paris Agreement in terms of effective enforcement and management?

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Nota Bene: on the concept of "Business -As-Usual" (BAU)

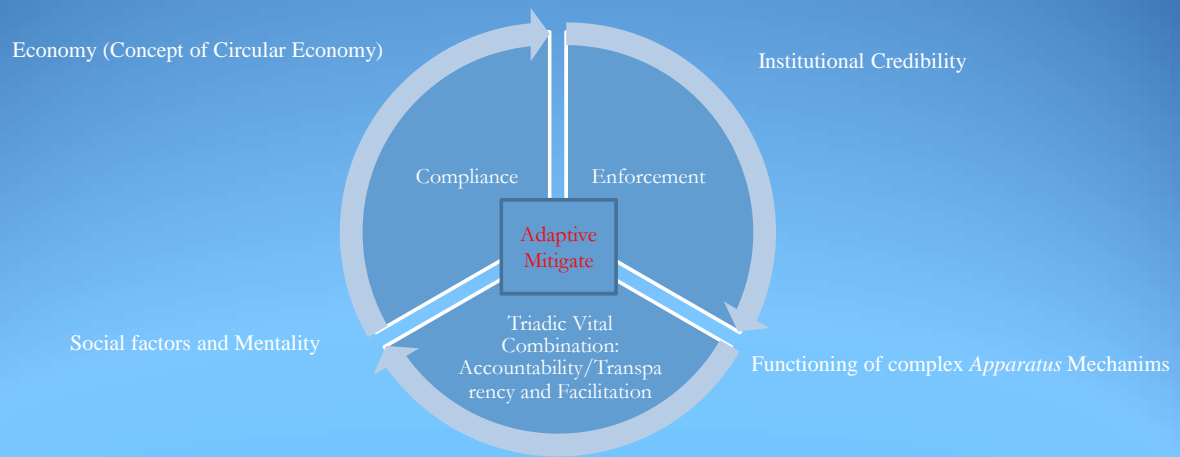
The Organization for Economic Co-operation and Development (OECD) defines the concept of BAU as:

a form of maladaptation to climate change, and in particular, defines maladaptation as "business-as-usual" development which by overlooking climate change impacts, inadvertently increases exposure and/or vulnerability to climate change"

Source: OECD, Integrating Climate Change Adaptation into Development Co-operation: Policy Guidance (Paris: OECD, publishing, 2009) page 53.

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Environmental Law Effectiveness and Management



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II. The Paris Agreement – a Convenient Compromise or Success? Legal Form and Architecture - Challenges and Potentials

Potentials:

- ✓ The NDCs
- ✓ The Principle of progression
- ✓ The Triadic Combination: Accountability, Transparency and Facilitation
- ✓ The Concept of Circular Economy

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II. The Paris Agreement – a Convenient Compromise or Success? Legal Form and Architecture - Challenges and Potentials

The NDCs

- ✓ For the first time, adaptation is encapsulated and integrated into mitigation instruments (the NDCs) in a mutual benefit way
- ✓ NDCs must include not only countries's plans to reduce emissions but also description of their adaptation goals, priorities and actions
- ✓ Paris Agreement suggests a new concept of global "adaptive-mitigation" where effectiveness of environmental law is also a consequence of synergistic linkages and reverberations between adaptation and mitigation

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II. The Paris Agreement – a Convenient Compromise or Success? Legal Form and Architecture - Challenges and Potentials

The NDCs

- ✓ Adaptation goals in the NDCs can take different forms: 1) Outcome; 2) Processes, and 3) Vision statements;
- ✓ Legal nature is uncertain: it will only become clear with the implementation of the Agreement
- ✓ Art. 4.2 can be useful to understand the legal nature (*"Each Party shall prepare, communicate and maintain successive nationally determined contributions that intend to achieve. Parties shall pursue domestic mitigation measures with the aim of achieving the objective of such contribution"*)
- ✓ A duty "to implement" compared to a duty **to achieve** is an obligation of conduct **rather than result**

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II. The Paris Agreement – a Convenient Compromise or Success? Legal Form and Architecture - Challenges and Potentials

The NDCs

- ✓ NDCs' potentials: great flexibility/sovereign autonomy/encouraging collective universal participation.
- ✓ NDCs' challenges: do not provide any assurance or guarantee that countries contributions will add up to what is adequate to address the problem or that countries will do their fair share based on their past pollution and current responsibility

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II. The Paris Agreement – a Convenient Compromise or Success? Legal Form and Architecture Challenges and Potential

The Principle of progression

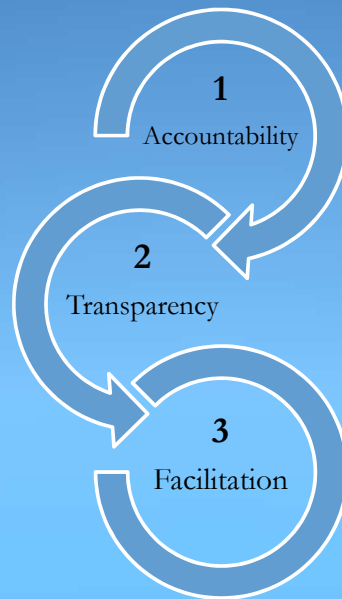
- ✓ Every 5 years, the Parties will "look back and look forward" in line with the "Principle of progression and no back sliding"
- ✓ Contained in Art. 4.3 of the Paris Agreement
- ✓ Enshrined in the Lima Climate Call for Action (UN 2014) requires each country's nationally determined contribution "to present a progression beyond the current undertaking of that Party"
- ✓ Strictly linked to the concept of circular economy: provides that countries that have previously pledged absolute economy wide targets should continue to do so over the time
- ✓ Moves towards a new pattern of progressive global adaptive-mitigation

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The triadic vital combination for effective environmental law implementation in the Paris Agreement

2) Transparency refers to the possibility given to the civil society to make its voice heard on accountability issues and to establish dialogue among relevant actors of the civil society in order to build commitments on climate change and Sustainable Development. Triple meaning:

- 1) transparency of emissions
- 2) transparency of NDCs
- 3) transparency of implementation



1) Accountability to ensure the civil society, including public authorities or agencies is exercising their authority in a way that is responsive to political influences and pressures

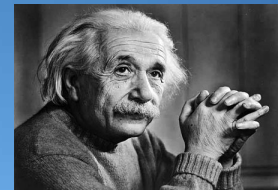
3) Facilitation refers to the effective enablement of the governance dimension of climate action to achieve efficiency of governmental decision-making by facilitating countries in committing to more funding with a certain transparency of budgets to achieve adaptive-mitigation

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II. The Paris Agreement – a Convenient Compromise or Success? Legal Form and Architecture

The Concept of Circular Economy

"We cannot solve important problems which we confront with at the same level of thinking that we found ourselves in the moment that we created those problems" (Albert Einstein)



- New economic pattern: transition towards low-carbon
- achieved both by the international community/national contributions (NDCs)

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II. The Paris Agreement – a Convenient Compromise or Success? Legal Form and Architecture - Challenges and Potentials

The Concept of Circular Economy

- ✓ Connection between concept of circular economy and the Principle of Progression
- ✓ Connection which establish a *de facto* differentiation among countries (some will progress more intensively, other not)
- ✓ BAU deviation targets
- ✓ "Broader interpretation" and "narrower interpretation" of "progression"
- ✓ The Paris Agreement is unclear on how to link progression with circular economy

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II. The Paris Agreement – a Convenient Compromise or Success? Legal Form and Architecture - Challenges and Potentials

Potentials

Mechanism to review progress in achieving climate goals as well as parties contributions
= every 5 years the Parties will submit their NDCs according to which countries will "look back and will look forward" in line with the Principle of progression (Art. 4.3)

Challenge:



It is not certain how the mechanisms will function, probably "expert based" (Art. 15)

Art. 15 is binding but it is not because it is binding that it is "legally enforceable"

The wording used in Art. 15 (... "A mechanism to *facilitate* implementation of and *promote* compliance with the provision of this Agreement is hereby established...")

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II. The Paris Agreement – a Convenient Compromise or Success? Legal Form and Architecture - Challenges and Potentials

Challenges

- Is the Paris Agreement an implementation Agreement and if so, why it has not been called with the term "Protocol"?
- In international law the terms "Protocol" = *inter alia* to refer to treaties adopted to achieve the objective of framework or an "umbrella convention"
- The Paris Agreement contains some references with the UNFCCC (i.e. : Arts. 1 and 2)

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II. The Paris Agreement – a Convenient Compromise or Success? Legal Form and Architecture Challenges and Potential

Challenges

- No linking reference between the Paris Agreement and **Art. 16** and the UNFCCC (Art. 16 is the Art. expressly outlining the application and implementation of the UNFCCC)
- Even if **Art. 2** of the Paris Agreement links with the Convention (regrettably without linking expressly with **Art. 16** of the Convention, Art. 2 only enhances the implementation of the Convention and **not the implementation of the Paris Agreement**)
- the legal argument explaining the reason why the drafters/negotiators choose the term "agreement" rather than "protocol" = it is because choosing the term "protocol" would have made the Paris Agreement a "real implementation agreement" legally speaking.

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II. The Paris Agreement – a Convenient Compromise or Success? Legal Form and Architecture - Challenges and Potentials

Potentials

- ✓ **Art. 14** = strong potential where the world "implementation" appears for the first time in connection with adaptation and mitigation when stating that:
"...Parties shall periodically take stock of the implementation of the Agreement to assess the collective process towards achieving the purpose of this Agreement and its long-term goals"
- ✓ Art. 14 could become legally binding and enforceable if combined with the Principle of progression and the vital triadic combination as **could sort out a totally new concept of global adaptive-mitigation in environmental law more flexible and long-term goal oriented acknowledging a point of no-return on differentiation which was opposite to what characterized Kyoto and the legal architecture of the UNFCCC**

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III. Implications for the EU and National Climate Law: Challenges and Potentials on Adaptive-Mitigation

Potentials

EU's NDCs commits to a binding target of at least a 40% domestic reduction in GHGs by 2030 compared to 1990 (Briefing EU Parliament, January 2016) consistent with the EU Energy Road Map to achieve the transition towards a new energy system (Energy Road Map doc. 15.12.2011 (COM2011), 885final).

This transition toward a new circular economic pattern to be implemented through the EU Emission Trading system in particular the Emission Trading Directive (ETD) including effort sharing for the non-ETS sectors and regulation, support for renewable energy resources and greater energy efficiency

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Implications for the EU and National Climate Law: Challenges and Potentials on Adaptive-Mitigation

Challenges:

- ✓ the EU has to review all its policies and secondary source of law to fit within 1.5 target
- ✓ New implications for the EU and its national climate law in order to enable global adaptive mitigation to be implemented both at vertical and horizontal dimension
- ✓ Once that the EU's NDCs will be put into practice, the EU will have the possibility to ensure that all the EU legislation and policies match the ambitions of the Paris Agreement

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Implications for the EU and National Climate Law: Challenges and Potentials on Adaptive-Mitigation

Potentials

- EU's NDCs = potential tools that represent potential that the EU could communicate at any time including in the context of the 5-years review cycle
- ⇒ the EU's NDCs have a strong potential to enhance vertical implementation and horizontal implementation
- The horizontal implementation of the EU could be improved by providing more exchange of information and cross-sectorial activities and strategies
- Transparency is a crucial factor to ensure effectiveness and look beyond mitigation and decarbonization, to start to accept the concept of adaptive-mitigation as essential to interconnect different sectors in circular economy

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Implications for the EU and National Climate Law: Challenges and Potentials on Adaptive-Mitigation

Challenges:

- it seems the EU's NDCs include more mitigation policies than adaptation key strategies
- EU does not have a well-tested framework which is necessary to acknowledge the link between adaptation and mitigation and to commit with additional elements
- The challenge of the EU will consist of providing additional info internationally on the EU-wide 2030 targets on renewable energies and energy efficiency and the sub-sector mitigation strategy targets connected with adaptation which seems disconnected from the ETS and non ETS sectors
- Several key policies and strategies will need to be revised

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IV. Focus on the Role of Renewable Energies in COP 21 and in the Paris Agreement

- ❑ Renewable Energies = top COP 21 agenda
- ❑ Have the drafters given sufficient attention in the text to promote renewable energy power generations? No = no clear obligatory provisions in the text of the Paris Agreement that oblige states to utilize green energies
- ❑ But an appropriate place would have been = the NDCs



This would have obliged states on how much they are able to adaptive-mitigate by promoting and shifting towards renewable energy and make this renewable energy goals as part a different form of the existing adaptation goals

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V. Impact of the Paris Agreement on Italy's Commitments on Renewable Energies

- ✓ The absence of formally binding mechanisms in the Paris Agreement present a limit for the vitalial triadic combination to facilitate climate actions ⇒
- ✓ This limit implementation and transformation of the civil society into a circular economy / permit the shift in societal behaviour
- ✓ Some countries need to change societal behaviours and laws to fill the gap of lack of **information** and **transparency** in the dialogue of civil society
- ✓ The Italian case is very representative of this challenge
- ✓ Rich range of economic incentives coexists with chronically ill bureaucratic institutional mechanism, confusing laws and social factors of mentality (NIMBY) = loss of credibility for investors, circular economy difficult = obstruction of adaptive-mitigation goals

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V. Impact of the Paris Agreement on Italy's Commitments on Renewable Energies

- ✓ Regulation of renewable energy sector need societal behaviour change to fill the gap of lack of **information** and **transparency** in the dialogue of civil society
- ✓ The problem in Italy is not only the level of incentives (which is very high) but the absence of a long time national energy strategy
- ✓ Confusion in the allocation of competence between regions/state in the field of energy and environment as organized by the Constitution

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V. Impact of the Paris Agreement on Italy's Commitments on Renewable Energies

- ✓ Italy does not have any normative instrument that sets fixed objectives to reduce GHGs emission
- ✓ No clear concrete action plan for adaptation to climate change instead has various documents labelled with generic terms as "elements" or "analysis" or "strategy" of adaptation
- ✓ Chaos in the regulatory framework the current government have modified the system of incentives which causes uncertainty for investors

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V. Impact of the Paris Agreement on Italy's Commitments on Renewable Energies

- ✓ Italy needs to undergo important changes in **societal behaviour, institutional reforms, mentality** to permit a correct implementation of the Paris Agreement
- ✓ The goals of the Paris Agreement represent a formidable opportunity to launch sustainable development in line with **concept of circular economy** and to re-launch a new economy and to guarantee energy security
- ✓ Paris Agreement = impulse to do better for Italy

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VI. Conclusion

1. The Paris Agreement *via* the EU level is hardly enforceable if changes in *societal behaviour, institutional reform* and *mentality* does not come from the bottom-up;
2. The Paris Agreement cannot provide solutions/responses without *interactions* with other *levels of multi-governance*;
3. The *new concept of global, progressive adaptive-mitigation* can function as ring of conjunction between vertical/horizontal implementation and between bottom-up/top-down thereby improving effectiveness in terms of fulfillment of environmental protection = this is *a new environmental pattern* that need to be operationalized and understood by politicians.

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Thank you for your attention!

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