



ENFORCEMENT BRANCH

Eighteenth meeting

7–8 and 10 February 2012
Bonn, Germany

Report on the meeting

1. Opening of the meeting

1. Mr. René Lefeber, vice-chairperson of the enforcement branch, declared the meeting open at 11:00 am. He welcomed Ms. Rueanna Haynes, Mr. Alexander Kodjabashev and Mr. Sebastian Marino, members and alternate members of the branch who were attending their first meeting of the branch.
2. At the request of the chairperson, the secretariat provided information on participation and quorum, as well as key administrative, logistical and housekeeping arrangements. The secretariat confirmed that all members and alternate members had signed their Oath of Service, that the meeting was being webcast live on the Internet, and that an audio recording was being made of the entire meeting.
3. The secretariat further informed the meeting that there was as yet no quorum to take decisions at the meeting, but that quorum was expected to be achieved on the second day of the meeting. At the beginning of the second day of the meeting, the secretariat confirmed that quorum had been achieved by the arrival of Mr. Mirza Salman Babar Beg. The chairperson welcomed Mr. Babar Beg, an alternate member who was attending his first meeting of the branch.

2. Election of the chairperson and vice-chairperson

4. The enforcement branch elected Mr. Lefeber as chairperson and Ms. Rueanna Haynes as vice-chairperson, by acclamation.
5. Ms. Sandea de Wet, who was chairing the consideration of this agenda item, congratulated Mr. Lefeber and Ms. Haynes on their election. She thanked members and alternate members for their active participation and support during her term as chairperson of the branch and expressed her appreciation to the secretariat for their assistance.
6. Mr. Lefeber thanked the branch for their support and confidence in him and in Ms. Haynes and congratulated Ms. Haynes on her election. He also extended the thanks of the



branch to Ms. De Wet, the former chairperson, for tirelessly leading the branch through an extremely busy period.

3. Adoption of the agenda

7. The branch reviewed and agreed to follow the provisional agenda as amended (CC/EB/18/2012/1/Rev.1). Upon achieving quorum on 8 February 2012, the branch adopted the agenda, as revised.

4. Organization of work

8. The branch decided to organize its consideration of the items under its agenda in the following manner:

- (a) First, to consider the question of implementation with respect to Croatia and in this context, to consider the request to reinstate Croatia's eligibility (CC-2009-1-10/Croatia/EB and CC-2009-1-12/Croatia/EB) and elaborate and adopt a decision under section X, paragraph 2, of the "Procedures and mechanisms relating to compliance under the Kyoto Protocol"¹ with respect to Croatia;
- (b) Second, to take stock of the work of the branch since its sixth meeting, when the first stocktaking exercise took place;
- (c) Third, to consider the question of implementation with respect to Ukraine and in this context, to consider the request to reinstate Ukraine's eligibility (CC-2011-2-12/Ukraine/EB) and to consider the elaboration and adoption of a decision under section X, paragraph 2, with respect to Ukraine;
- (d) Fourth, to consider the second progress report on the plan submitted by Romania pursuant to the final decision of the enforcement branch (CC-2011-1-12/Romania/EB);
- (e) Finally, to discuss any other matters.

5. Consideration of question of implementation with respect to Croatia

(a) Consideration of the request to reinstate Croatia's eligibility

9. At the request of the chairperson, the secretariat provided a summary of the proceedings since the adoption by the branch of a decision on the review and assessment of the plan submitted by Croatia under section XV, paragraph 2 (CC-2009-1-11/Croatia/EB).

¹ This and subsequent references to sections, as well as references to the procedures and mechanisms, refer to the annex to decision 27/CMP.1.



(b) Elaboration and adoption of a decision under section X, paragraph 2

10. After the elaboration of a decision held in private in accordance with rule 9, paragraph 2, of the “Rules of procedure of the Compliance Committee of the Kyoto Protocol”² the branch adopted a decision under section X, paragraph 2, reinstating Croatia’s eligibility to participate in the mechanisms under Articles 6, 12 and 17 of the Kyoto Protocol at 9:53:32 Greenwich Mean Time on 8 February 2012 (CC-2009-1-14/Croatia/EB).

6. Consideration of the question of implementation with respect to Ukraine

11. The secretariat informed the branch that, in accordance with rule 13, paragraph 2, Ukraine would provide interpretation from Russian to English and vice versa during the parts of the meeting to be held in public relating to the consideration of the question of implementation with respect to Ukraine. The secretariat noted that one observer had registered for the meeting.

12. At the request of the chairperson, the secretariat provided a summary of the proceedings since the adoption by the branch of a decision on the review and assessment of the plan submitted by Ukraine under section XV, paragraph 2 (CC-2011-2-11/Ukraine/EB).

13. Also at the request of the chairperson, the delegation of Ukraine informed the meeting that, in accordance with section VIII, paragraph 2, and rule 25, paragraph 3, the following designated representatives of Ukraine were present at the meeting:

- (a) Mr. Mykola Zlochevskyi, Minister of Ecology and Natural Resources of Ukraine;
- (b) Mr. Vladyslav Iakubovskyi, Head of the State Environmental Investment Agency of Ukraine;
- (c) Mr. Vadym Pozharskyi, Deputy Director of the State Ecological Policy and International Activity Department and Head of the International Cooperation, Protocol and External Aid Projects Coordination of the Ministry of Ecology and Natural Resources;
- (d) Mr. Mykhailo Koval, Head of the International Cooperation Division of the State Environmental Investment Agency of Ukraine;
- (e) Mr. Mykola Melenevskyi, Ambassador at Large, Ministry of Foreign Affairs;
- (f) Mr. Volodymyr Didukh, First Secretary of the Embassy of Ukraine in Germany;
- (g) Mr. Oleksii Khabatiuk, Chairman of the Supervisory Board Environmental (Green) Investments Fund;

² This and subsequent references to rules, as well as to rules of procedure, refer to those contained in the annex to decision 4/CMP.2 as amended by decision 4/CMP.4.



- (h) Mr. Oleg Povolotsky, Advisor to the Head of the State Environmental Investment of Ukraine;
- (i) Ms. Nataliya Parasyuk, Advisor to the Head of the State Environmental Investment Agency of Ukraine;
- (j) Ms. Maryna Bereznytska, Deputy Director on Research, the Environmental (Green) Investments Fund;
- (k) Ms. Nataliya Kushko, Advisor to the Head of the State Environmental Investment Agency of Ukraine; and
- (l) Mr. Mykola Goncharenko, Interpreter.

(a) Consideration of the request to reinstate Ukraine's eligibility

14. As part of the consideration by the branch of the request to reinstate Ukraine's eligibility, the branch gave Ukraine the opportunity to make a presentation entitled "Compliance of Ukraine under the Kyoto Protocol".

(b) Elaboration and adoption of a decision under section X, paragraph 2

15. After the elaboration of a decision held in private in accordance with rule 9, paragraph 2, the branch decided to defer the adoption of a decision under section X, paragraph 2 (CC-2011-2-14/Ukraine/EB).

7. Consideration of the second progress report on the plan submitted by Romania pursuant to the final decision of the enforcement branch

16. At the request of the chairperson, the secretariat provided a summary of the proceedings since the adoption by the branch of a decision on the review and assessment of the plan submitted by Romania under section XV, paragraph 2 (CC-2011-1-11/Romania/EB).

17. Also at the request of the chairperson, the delegation of Romania informed the meeting that, in accordance with section VIII, paragraph 2 and rule 25, paragraph 3, the following designated representatives of Romania were present at the meeting:

- (a) Mr. Felix Zaharia, Counselor, Directorate for International Law and Treaties, Ministry of Foreign Affairs;
- (b) Mr. Narcis Jeler, National Focal Point for Climate Change;
- (c) Mr. Sorin Deaconu, National Focal Point for GHG Inventory Activities, National Agency for Environment Protection;
- (d) Mr. Doru Leonard Irimie, GHG Expert, United Nations Development Programme - Romania; and



- (e) Mr. Gheorghe Marin, LULUCF Expert, Forest Research and Management Institute, Bucharest.

18. As part of the consideration by the branch of Romania's second progress report (CC-2011-1-12/Romania/EB), the branch gave Romania the opportunity to make a presentation entitled "Further progresses for strengthening National System and improving National Greenhouse Gas Inventory of Romania in consideration of the Final decision of the Enforcement Branch of the Compliance Committee (CC-2011-1-8-Romania-EB)".

19. The branch commended Romania for the transparency of its second progress report, which reflects good progress in implementing the measures to remedy its non-compliance. The branch suggested that Romania may, in future progress reports, wish to indicate, in relation to its description of the team dedicated to the administration of its national system and national greenhouse gas inventory, information that would demonstrate the capacity of and continuity in the team. It may also wish to provide further details on the afforestation/reforestation project under Article 6 of the Kyoto Protocol that is identified in its second progress report. In particular, Romania may wish to explain the significance of the project to its national system and national greenhouse gas inventory.

8. Stocktaking exercise

20. The branch discussed the issues that it had agreed to consider for its stocktaking exercise (see Annex to the report on the seventeenth meeting, CC/EB/17/2011/2) and considered the background note containing the annotations to that list, as prepared by the secretariat in consultation with the chairperson and vice-chairperson (CC/EB/18/2012/2). The outcomes of the stocktaking exercise are contained in the Annex to this report.

9. Other matters

21. The chairperson informed the branch that in accordance with section II, paragraph 7, the bureau of the Compliance Committee had designated Ms. De Wet and Mr. Sebastian Oberthür to assist the facilitative branch in its consideration of the issue of consistency of reviews under Article 8 of the Kyoto Protocol.

22. Mr. Oberthür reported on the discussions of the facilitative branch on consistency of reviews and conveyed the request of the facilitative branch for an indicative list of priority elements to focus on for its further work on this issue. Mr. Oberthür informed the branch that he and Ms. De Wet had expressed the concerns of the enforcement branch in relation to the review of national systems and had identified land use, land-use change and forestry (LULUCF) as a possible starting point for the work of the facilitative branch.

23. After Mr. Oberthür's report, the chairperson provided a summary of the discussions of the bureau on the matter of consistency of reviews under Article 8. The chairperson had confirmed to the bureau that Mr. Oberthür and Ms. De Wet had been given full authority to represent the enforcement branch in the discussions of the facilitative branch on consistency of reviews. The chairperson also informed the branch that while the bureau had welcomed the



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usefulness of a possible workshop on consistency of reviews under Article 8, it had, at the same time, acknowledged the necessity of preparatory analytical work for such a workshop. He also informed the branch that the bureau had come to no firm conclusions on participation in such a workshop, although it had been suggested that it would be useful for members and alternate members of the Compliance Committee and lead reviewers to participate in such a workshop.

24. In response to the request of the facilitative branch for an indicative list of priority elements, the branch suggested that the facilitative branch should give priority to national systems, with a special focus on LULUCF. It requested the chairperson to convey this conclusion to the facilitative branch through the bureau.

25. The branch was informed by the secretariat of the possible dates of meetings of the branch for the rest of the year.

26. The branch thanked the secretariat for the compilation of decisions taken by the branches of the Compliance Committee from 2006 to 2011 and the other reference materials contained in the compilation that had been made available to all members and alternate members of the Committee, which it acknowledged would be useful for its work.

10. Closure of the meeting

27. The meeting was declared closed at 17:55 on 10 February 2012.

11. Attendance

28. The names of members and alternate members present at the meeting are bolded below.

Members (in alphabetical order)	Alternate Members
1. DE WET , Sandea Ms.	AMOUGOU, Joseph Armathé Mr.
2. ESTRADA OYUELA , Raúl Mr.	GONZALEZ NORRIS , José Antonio Mr.
3. FODEKE , Victor Mr.	GOPOLANG , Balisi Justice Mr.
4. HAYNES , Rueanna Ms.	MARINO , Sebastian Mr.
5. KODJABASHEV , Alexander Mr.	SHAMANOV , Oleg Mr.
6. LEFEBER , René J M Mr.	PALLEMAERTS, Marc Mr.
7. LOIBL , Gerhard Mr.	RUDZKO, Iryna Ms.
8. NISHAT , Ainun Mr.	BABAR BEG , Mirza Salman Mr.*
9. OBERTHÜR , Sebastian Mr.	KUOKKANEN, Tuomas Mr.
10. SU , Wei Mr.	ALAM, Mohammad Mr.

* Mr. Babar Beg was absent on 7 February 2012.



Annex

Outcomes of the stocktaking exercise

At its eighteenth meeting, the branch considered issues contained in a list that it had agreed to consider during its stocktaking exercise. Below is a summary of the outcomes, including decisions taken on issues that need to be further considered in the future as part of an ongoing exercise.

1. Decision-making

(a) Structure of decisions

- Headings/sections of decisions and what should be addressed under each heading/section

The branch requested the chairperson and vice-chairperson, with the assistance of the secretariat, to develop draft templates for preliminary findings and final decisions. These templates should provide: (i) headings for each of the sections of the decision, (ii) model paragraphs, and (iii) a narrative under each heading, describing what elements are to be addressed and not to be addressed in that section. The branch agreed that the templates to be developed would be considered at its next meeting.

- Structure of the final decision, in particular the revision of preliminary findings

The branch agreed that the structure of its final decisions is functional. At the same time, it acknowledged that the reasoning contained in its final decisions could be usefully improved by clearly setting out the argument raised in the further written submission, the paragraph in the preliminary finding that it relates to, and the reasons and conclusions of the branch with respect to such argument. The branch agreed to remove this issue from the list.

(b) Content of decisions

- Reasoning of decisions, in particular the clarity of the reasoning for outsiders

The branch recognized that there is room to improve the reasoning of its decisions. The branch expects that an improvement in the structure of its decisions will lead to greater clarity in its decisions and greater transparency. The branch agreed to remove this issue from the list.



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- Specific issues:
 - Formulation of a question of implementation at the time of the preliminary examination

The branch noted the challenges involved in formulating the question of implementation at the stage when it is undertaking its preliminary examination. The branch further noted that the definition of a question of implementation is critical and that, although the definition cannot be amended at a later stage, it may be further refined. Since the definition cannot be amended at a later stage, and given it has not had the benefit of expert advice or information from the Party concerned, it is preferable to have a general formulation of the question of implementation at the time at which the branch adopts its decision on preliminary examination. The branch agreed to remove this issue from its list.

- Finding on non-compliance at the time of finalization of an expert review team report

In revisiting its rationale for including a statement in its preliminary findings in which the branch concludes that there was non-compliance at the time of the finalization of the relevant report of an expert review team (ERT), the branch acknowledged that such a statement was not legally necessary. However, it agreed that the inclusion of such a statement had been appropriate in the cases before it (related to national systems, national registries and assigned amount calculations) in order to clearly indicate that compliance with relevant guidelines was expected well before the stage at which a Party is brought before the branch, and that compliance must be achieved, at the very latest, prior to the publication of the relevant ERT report. The branch agreed to remove this issue from the list.

- Effect of suspension from eligibility to participate in the mechanisms under Article 6 of the Kyoto Protocol

At the next occasion when a Party concerned does not meet the eligibility requirements referred to in paragraph 21 (c), (e) or (f) of the “Guidelines for the implementation of Article 6 of the Kyoto Protocol” (annex to decision 9/CMP.1), the branch agreed that its decision could indicate more clearly that the alternative verification procedure for projects under Article 6 of the Kyoto Protocol is still available to that Party (see paragraph 24 of the annex to decision 9/CMP.1). It further observed that such indication does not necessarily have to be reflected under “findings and consequences”, but could also be addressed under “conclusions and reasons”.

(c) Decision-making process

- Recourse to expert advice

The branch agreed on the need to maintain flexibility when seeking expert advice. However, it noted that there is a presumption to seek expert advice in the case of hearings under section IX, paragraph 2.



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The branch concluded that, in the case of:

- (a) Hearings, where a question of implementation arises from an ERT report, the experts to be invited should normally include: (i) one of the lead reviewers of the ERT, (ii) the sector specialist of the ERT if the question of implementation clearly involves a particular sectoral issue, and (iii) one expert who was not part of the ERT;
- (b) The review and assessment of a plan under section XV, paragraph 2, the experts to be invited should normally include at least one expert who was present at the hearing;
- (c) A request for reinstatement under section X, paragraphs 2 and 4, following the publication of a review report, the experts to be invited should normally include: (i) one of the experts present at the hearing; (ii) one of the lead reviewers of the ERT which prepared the most recent report; (iii) the sector specialist from the most recent review if the question of implementation clearly involves a particular sectoral issue; and (iv) one expert who was not part of any of the ERTs which prepared the relevant reports.

The branch noted that in seeking expert advice there was a finite pool of individuals with sufficient expertise. Taking into account the issues of conflict of interest that may arise, the branch considered that it would be useful to draw on expertise from outside of the roster of experts as well. To that end, it requested the secretariat to maintain a list of experts who are no longer on the roster.

- Types of documents to be provided by the secretariat to the branch during the consideration of a question of implementation

Where a question of implementation arises from an ERT report, the branch agreed that all background documents relating to the review should be made available on QuickPlace. Once the background documents have been posted on QuickPlace, the secretariat will inform members and alternate members that the background documents are available on QuickPlace, indicating where the version of the ‘Saturday paper’³ that includes the exchange between the ERT and Party concerned can be found. Where a member or alternate member has indicated to the secretariat that they are experiencing technical problems in accessing QuickPlace, the secretariat will provide that member or alternate member with a CD containing the background documentation. However, every effort will be made to ensure that every member and alternate member has access to QuickPlace. The branch agreed to remove this issue from the list.

(d) Manner of drafting decisions

- Establishment of drafting committee

The branch agreed to maintain flexibility in its organisation of work and decide on a case by case basis whether to establish drafting committees. The branch agreed to remove this issue from the list.

³ The list of potential problems and further questions from the ERT formulated in the course of the review.



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- Templates for decisions

The branch concluded that it would be useful to develop templates for decision-making, including additional guidance on what elements should be addressed. The branch agreed to remove this issue from the list on the understanding that this is taken up under the broader issue of the structure of decisions (see above under 1(a)).

(e) Mode of adopting decisions

- Use of electronic means of decision-making

The branch agreed that no adjustments or clarifications of its use of electronic means of decision-making is required. The branch agreed to remove this issue from the list.

- Absence of a quorum

In its discussions, the branch considered two scenarios relating to quorum issues, namely, where a quorum issue is raised during the planning of a meeting and where a quorum issue arises in the course of a meeting.

If it is clear at the planning stage that there will be no quorum for a meeting scheduled for a certain date, the branch concluded that the chairperson and vice-chairperson of the branch should exercise their discretion to either: (i) defer the meeting or (ii) continue with the planning of the meeting and collect additional votes by electronic means during the meeting.

Where a lack of quorum only becomes apparent at the commencement of a meeting, the branch noted its preference to wait for members to arrive to enable decision making. However, if there is a strict timeline that requires adoption of a decision prior to the arrival of a member or where it becomes apparent that the member will not arrive, the branch will resort to collecting additional votes by electronic means.

2. Meetings

- Length and frequency of meetings

After considering the current assumptions regarding the time required for each stage of a branch's consideration of a question of implementation, the branch concluded that the current time frames for a hearing, adoption of a final decision, and review and assessment of a plan were appropriate, namely three days for a hearing, two days for the adoption of a final decision and one day for the review and assessment of a plan. However, with respect to the time frame for a request for reinstatement, the branch noted that depending on the question of implementation involved, it may require one to two days, instead of just one day, to consider such request. The branch agreed to remove this issue from the list.



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- Flexibility in scheduling in case of conflict with certain official, religious and UN holidays or other UNFCCC meetings

The branch noted that this issue related to quorum issues considered above. It further noted that the branch was still gaining experience in applying the working arrangements on time frames agreed at the ninth meeting of the plenary and agreed to keep them under review.

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