



**Eligibility requirements under Articles 6, 12 and 17 of the Protocol:
initial eligibility**

Note by the secretariat

I. Introduction

1. During the third meeting of the plenary of the Compliance Committee (CC), under agenda item 7, an issue arose with respect to initial eligibility under Articles 6, 12 and 17, and in particular with respect to Compliance Committee treatment of Expert Review Team (ERT) reports that do not contain Questions of Implementation (QIs). More specifically, the issue is the possible operationalization of provision for eligibility at a date earlier than the 16 months from submission of the initial report (IR) of an Annex I Party. The relevant text is found in each of decisions 3/CMP.1, annex, paragraph 32; 9/CMP.1, annex, paragraph 22; and, 11/CMP.1, annex, paragraph 3 (all have identical language):

‘A Party included in Annex I with a commitment inscribed in Annex B shall be considered... [t]o meet the eligibility requirements... after 16 months have elapsed since the submission of its [initial] report... or, at an earlier date, if the enforcement branch of the Compliance Committee has decided that it is not proceeding with any questions of implementation relating to these requirements indicated in reports of the expert review teams under Article 8 of the Kyoto Protocol, and has transmitted this information to the secretariat.’

2. IRs are required under decision 13/CMP.1, paragraph 2; and paragraph 6 of the annex to the decision. For each IR the ERT must produce a review report (IRR) in accordance with paragraphs 11 and 12 of the annex to decision 22/CMP.1.

3. Other key text can be found in the annex to decision 27/CMP.1, including, sections III, paragraph 2(d); V, paragraph 4; VII, paragraph 5; and, X, paragraph 1; as well as in the Rules of Procedure, contained in the annex to decision 4/CMP.2.

4. It should be noted that initial eligibility is a one-time issue relevant only at the beginning of the commitment period. The secretariat is responsible for establishing a database to compile and account for emissions and assigned amounts (CAD), and to record eligibility to transfer and acquire Kyoto units (decision 13/CMP.1, annex, paragraphs 50, 53). The secretariat is the administrator of the International Transaction Log (ITL), under decision 13/CMP.1, annex, paragraphs 38, 42 (b) and (d). Once a Party is recorded as eligible in the CAD, the ITL could allow a Party to trade earlier than the 16 month automatic eligibility period reflected in the text above, if the secretariat receives notification from the EB that it has decided not to proceed with any QI based on the submission of the IRR for that Party by an ERT.



5. It is already clear that the EB could take such a decision not to proceed based on review of a question of implementation (section VII, paragraph 5, annex to decision 27/CMP.1, as well as section X of the same decision). The issue here is whether and, if so, how the enforcement branch should take a decision not to proceed where the ERT report in question contains no QI.

II. Issues for consideration

6. The issue to be considered is whether the enforcement branch is mandated or even required, prior to the lapse of the 16-month period since the submission of a Party's IR, to take a decision that it is not proceeding with any QIs relating to the eligibility requirements under Articles 6, 12 and 17 of the Kyoto Protocol if no such QI is indicated in the relevant IRR.

7. In its consideration of this issue, the enforcement branch may, *inter alia*, wish to take into account:

- (a) the legal basis for any action that may be taken contained in the procedures and mechanisms relating to compliance under the Kyoto Protocol (contained in the annex to decision 27/CMP.1), and in particular the mandate of the enforcement branch, in combination with the provisions identified in paragraph 1 above;
- (b) the general requirement to strive for a fair and equal treatment of Parties;
- (c) potential implications to the possibility of a Party raising a QI with respect to another Party based on any ERT report (including ERT reports without any QIs);
- (d) the practical implementability of any action within an appropriate timeframe.

III. Possible action by the enforcement branch

8. Two options for action by the EB are outlined briefly below. Alternatives to, variations and combinations of these options are possible. If one of these options was selected, it would have to be turned into actual decision text that could be reflected in the report of the enforcement branch on its second meeting (including appropriate recitals):

Option 1: umbrella decision by the EB

9. Based on language of decisions 3/CMP.1, annex, paragraph 32; 9/CMP.1, annex, paragraph 22; and, 11/CMP.1, annex, paragraph 3, the EB could decide that, absent a submission from a Party under section VI, paragraph 1 of the annex to decision 27/CMP.1, it would not proceed with any questions of implementation relating to the eligibility of any Annex I Party, for which it has received an IRR containing no QI. It could then request the secretariat to ensure that the Compilation and Accounting Database, International Transaction Log and the lists and databases which record the eligibility of Parties to participate in the mechanisms are updated accordingly, and forthwith upon receipt by the CC of such an IRR.



Option 2: case specific decision by the EB

10. Based on language of decisions 3/CMP.1, annex, paragraph 32; 9/CMP.1, annex, paragraph 22; and, 11/CMP.1, annex, paragraph 3 the enforcement branch could deliberate and come to a decision on each case for which it has received an IRR containing no QI. It could then request the secretariat to ensure that the Compilation and Accounting Database, International Transaction Log and the lists and databases which record the eligibility of Parties to participate in the mechanisms are updated accordingly, and forthwith. To deal with such cases, the branch may wish to consider the application of rule 11 on the use of electronic means, as well as whether ERT reports could be addressed in groups, in order to reduce the number of meetings required.

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