



ENFORCEMENT BRANCH

Twenty-first meeting

22–24 October 2012

Bonn, Germany

Provisional agenda and annotations

Provisional agenda

1. Opening of the meeting
2. Adoption of the agenda
3. Organization of work
4. Review and assessment of the plan submitted by Slovakia pursuant to the final decision of the enforcement branch
5. Draft templates for decisions of the enforcement branch
6. Approach to considering decisions whether to apply adjustments to inventories under Article 5, paragraph 2, of the Kyoto Protocol
7. Other matters
8. Closure of the meeting



Annotations to the provisional agenda

1. Opening of the meeting

2. Adoption of the agenda

1. The branch may wish to consider the provisional agenda for adoption.

3. Organization of work

2. The branch may wish to consider the organization of its work for the meeting, including its schedule.

4. Review and assessment of the plan submitted by Slovakia pursuant to the final decision of the enforcement branch

3. On 17 August 2012, the enforcement branch adopted a final decision with respect to Slovakia (document CC-2012-1-9/Slovakia/EB), which confirmed the preliminary finding (document CC-2012-1-7/Slovakia /EB) and stated that the consequences set out in paragraph 30 of the preliminary finding shall take effect forthwith. Paragraph 30 (b) required Slovakia to develop a plan referred to in section XV, paragraph 1, of the "Procedures and mechanisms relating to compliance under the Kyoto Protocol"¹ in accordance with the substantive requirements of section XV, paragraph 2, and rule 25 bis, paragraph 1, of the "Rules of procedure of the Compliance Committee of the Kyoto Protocol".²

4. The branch may wish to consider the plan, which was submitted by Slovakia on 20 September 2012, for review and assessment by the branch pursuant to section XV, paragraph 2, and rule 25 bis.

5. Draft templates for decisions of the enforcement branch

5. At its eighteenth meeting, the branch requested the chairperson and vice-chairperson, with the assistance of the secretariat, to develop draft templates for preliminary findings and final decisions and agreed that the templates to be developed would be considered at its next meeting.³ At its twentieth meeting, the branch discussed the draft template for preliminary findings and requested the chairperson, with the assistance of the secretariat, to revise the template and present it for consideration by the branch at its next meeting.⁴ A revised template

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.

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.

³ See the annex to the report on the eighteenth meeting of the enforcement branch, CC/EB/18/2012/3, p. 7 (1 (b), structure of decisions, headings/sections of decisions and what should be addressed under each heading/section).

⁴ See the report on the twentieth meeting of the enforcement branch, CC/EB/20/2012/2, paragraph 30.



for preliminary findings and a template for final decisions will be presented to the branch at its twenty-first meeting.

6. Approach to considering decisions whether to apply adjustments to inventories under Article 5, paragraph 2, of the Kyoto Protocol

6. As requested by the branch at the same meeting,⁵ the secretariat will make a technical presentation on the procedure for the calculation of adjustments to inventories at the branch's twenty-first meeting. The branch may thereafter wish to continue discussing its approach to considering disagreements whether to apply adjustments to inventories under Article 5, paragraph 2, of the Kyoto Protocol.

7. Other matters

7. At its twentieth meeting, the chairperson of the enforcement branch requested an updated version of the list of issues that the branch had considered during its last stocktaking exercise (annex to the report on the eighteenth meeting of the enforcement branch, CC/EB/18/2012/2) to be added to agendas of future meetings of the branch and be considered as a standing sub-item under the agenda item on other matters or as a separate agenda item for future meetings when the branch considered it appropriate.⁶ The branch may wish to consider the updated list, which is contained in the Annex to these annotations.

8. Closure of the meeting

⁵ See the report on the twentieth meeting of the enforcement branch, CC/EB/20/2012/2, paragraph 33.

⁶ See the report on the twentieth meeting of the enforcement branch, CC/EB/20/2012/2, paragraph 34.



Annex

Annotated list of stocktaking issues for the enforcement branch

I. Introduction

1. At its eighteenth meeting, the enforcement branch considered document CC/EB/18/2012/2 containing a list of possible issues for its second stocktaking exercise. The branch considered the list and made a number of revisions which are outlined in the annex to the report on the eighteenth meeting (CC/EB/18/2012/3).
2. The chairperson requested that an updated version of the list of issues that the branch had considered at its eighteenth meeting be added to agendas of future meetings of the branch and be considered as a standing sub-item under the agenda item on other matters or as a separate agenda item for future meetings when the branch considered it appropriate.¹ Below is an updated annotated version of the list of possible issues for consideration at future stocktaking exercises. The updates reflect agreements reached by the branch up to its twentieth meeting.

II. List of issues

A. Decision-making

1. Structure of decisions

(a) Headings/sections of decisions and what should be addressed under each heading/section

3. The headings of preliminary findings and final decisions adopted by the branch are based, in part, on the list that is provided in rule 22, paragraph 1, which is in turn derived from section IX, paragraphs 5 and 9. There have been discussions within the branch on what information is to be included under the heading entitled “background” as well as the heading entitled “conclusions and reasons”, with some members and alternate members noting that all factual information belongs under the section entitled “background.” The branch may wish to recall that at its sixth meeting, it agreed that it would continue to follow its established practice with respect to the structure and sequence of its decisions.²

¹ Paragraph 43, report on the twentieth meeting of the enforcement branch, CC/EB/20/2012/2.

² Paragraph 9, report on the sixth meeting of the enforcement branch, CC/EB/6/2008/3.



At its eighteenth meeting, 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 would 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. At its twentieth meeting, the branch discussed the draft template for its preliminary findings and requested the chairperson, with the assistance of the secretariat, to revise the template and present it for consideration at its next meeting. The changes since the eighteenth meeting, as reflected in the preliminary finding with respect to Slovakia (CC-2012-1-7/Slovakia/EB), have included the numbering of section headers, the inclusions of a new section on information submitted, presented and considered, the renaming of the section on conclusions and reasons as “reasons and conclusions”, and the splitting of the section on findings and conclusions into two separate sections.

2. Content of decisions

(a) Specific issues

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

4. In the instances when a final decision adopted by the branch has confirmed a preliminary finding of non-compliance with one of the eligibility requirements relating to participation in the mechanisms, the final decision has included a paragraph indicating that the consequences set out in the relevant subparagraph of the preliminary finding in relation to such suspension shall be applied taking into account the guidelines adopted under Articles 6, 12 and 17 of the Protocol.

5. There are six eligibility requirements in paragraph 21 of the “Guidelines for the implementation of Article 6 of the Kyoto Protocol” (annex to decision 9/CMP.1; hereinafter referred to as the ‘JI guidelines’) that must be met in order for a Party included in Annex I with a commitment inscribed in Annex B to transfer and/or acquire emission reduction units. The JI guidelines provide for an alternative verification procedure for situations when a Party meets the following three requirements:

- (a) It is a Party to the Kyoto Protocol;
- (b) Its assigned amount pursuant to Article 3, paragraphs 7 and 8, has been calculated and recorded in accordance with decision 13/CMP.1; and
- (c) It has in place a national registry in accordance with Article 7, paragraph 4, and the requirements in the guidelines decided thereunder.³

³ Paragraph 24, JI guidelines, in relation to paragraph 21 thereof.



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This procedure is commonly known as ‘JI track II’. A national system, as required by paragraph 21 (c) of the JI guidelines,⁴ is not required for participation in JI track II.⁵

6. If the eligibility requirement that is not met by the Party concerned relates to its national system, the chairperson reads out the following text after announcing the adoption of a final decision:

In light of the adoption by the enforcement branch of this final decision, the consequences of which take effect forthwith, as of (indicate the date and time) the eligibility [of the Party concerned] to participate in the mechanisms under Articles 6, 12 and 17 of the Kyoto Protocol is suspended in accordance with the relevant provisions under those Articles. This means that [the Party concerned] is not considered to meet the eligibility requirements under Articles 6, 12 and 17 but may issue and transfer emission reduction units for joint implementation projects implemented under the verification procedure under the Joint Implementation Supervisory Committee for which it is the host Party.

7. The branch may wish to consider whether, in cases where a Party concerned is found in non-compliance with the guidelines for national systems, it may wish to use more specific language relating to the consequences of non-suspension in its decisions.⁶

At its eighteenth meeting, the branch agreed that 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), 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” (now renamed to “reasons and conclusions”).

⁴ The requirement, also found in paragraph 31 (c) of the annex to decision 3/CMP.1 and paragraph 3 (c) of the annex to decision 11/CMP.1, is to have in place “a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, in accordance with Article 5, paragraph 1, and the requirements and guidelines decided thereunder.” The “Guidelines for national systems for the estimation of anthropogenic greenhouse gas emissions by sources and removals by sinks under Article 5, paragraph 1, of the Kyoto Protocol” are contained in the annex to decision 19/CMP.1, which defines a national system as including “all institutional, legal and procedural arrangements made within a Party included in Annex I for estimating anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and for reporting and archiving inventory information” (paragraph 2).

⁵ See also the informal note for the enforcement branch entitled “JI Track II and suspension in accordance with the provisions of Article 6” that was circulated to the members and alternate members of the enforcement branch on 8 April 2008.

⁶ See also “Final Decision: Slovakia”, CC-2012-1-9/Slovakia/EB where the Party was under a “partial operational impairment” that resulted in non-compliance with Article 5, paragraph 1, of the Kyoto Protocol and the guidelines decided thereunder, but was not in non-compliance with the eligibility requirements under Articles 6, 12 and 17 of the Kyoto Protocol.



3. Decision-making process

(a) Recourse to expert advice

8. Section VIII, paragraph 5, provides that each branch may seek expert advice. Rule 21 further provides that if the branch decides to seek expert advice, it shall:

- (a) Define the question on which expert opinion is sought;
- (b) Identify the experts to be consulted; and
- (c) Lay down the procedures to be followed.

9. Neither the procedures and mechanisms nor the rules of procedure define when expert advice is to be sought, leaving this decision to the sound discretion of the branch. The enforcement branch has consistently sought expert advice at meetings where it has conducted the hearing and elaborated and adopted a preliminary finding or decision not to proceed further. On those occasions, it has invited representatives of the expert review team (ERT) that produced the report that had identified a question of implementation, as well as other experts from the secretariat's roster of experts, who have recognized expertise on the technical aspects of the question of implementation. The branch has sought to achieve gender and geographical balance in inviting experts in those instances.

10. In addition, the branch also decided to seek expert advice in relation to its consideration of a request for reinstatement⁷ as well as in connection with the review and assessment of the plan submitted by a Party concerned under section XV, paragraph 2.⁸

⁷ See "Expert advice: Bulgaria", CC-2010-1-16/Bulgaria/EB.

⁸ See "Decision on the review and assessment of the plan submitted under paragraph 2 of section XV", CC-2011-1-11/Romania/EB.



At its eighteenth meeting, 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.

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 expert review teams 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.



(b) Absence of a quorum

11. Section II, paragraph 8, provides that the adoption of decisions by the Committee shall require a quorum of at least three-fourths of the members to be present. In the case of the enforcement branch, the adoption of a decision shall, in addition, require a majority of members from Parties included in Annex I present and voting, as well as a majority of members from Parties not included in Annex I present and voting (section II, paragraph 9).

12. Since its first meeting, the enforcement branch has failed to reach quorum to adopt decisions at the following meetings:

- (a) At its eighth meeting held from 23 to 24 November 2009;
- (b) At its sixteenth meeting held from 14 to 18 November 2011;
- (c) At its seventeenth meeting held from 20 to 21 December 2011;
- (d) At its eighteenth meeting held from 7 to 8 and 10 February 2012; and
- (e) At its nineteenth meeting held from 8 to 9 March 2012.

13. It is to be noted that the secretariat does not organize meetings of the Compliance Committee unless information provided to it by members and alternate members indicates that quorum will be achieved. Failure to reach quorum in four of the five meetings listed above was due to last-minute cancellations of members and alternate members who had previously confirmed their availability for the relevant meeting. In addition, the opening of a few of the meetings of the branch has had to be delayed to wait for persons whose attendance would allow the branch to achieve quorum, and the branch has on occasion been under pressure to complete its work in advance of the scheduled end of its meeting due to the risk of losing quorum at a meeting.

In its discussions at its eighteenth meeting, 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.



(c) Resolution of disagreements over adjustments

14. The key text on the enforcement branch role in disagreements regarding adjustments is contained in section X, paragraph 5. However, the procedure that would apply to disagreements regarding adjustments is less clear. In considering the questions of implementation with respect to Slovakia, the branch took the approach of applying the expedited procedure contained in section X, paragraph 1, for reasons of procedural efficiency and clarity, including full procedural safeguards of the Party concerned, noting that the disagreement whether to apply adjustments appeared to be related to one or more of the questions of implementation. The branch noted that there could be a scenario where a disagreement over adjustments could arise even though a question of implementation did not arise.

At its twentieth meeting, the branch briefly considered the approach to considering disagreements whether to apply adjustments to inventories under Article 5, paragraph 2, of the Kyoto Protocol. The chairperson requested that the secretariat arrange a technical presentation on the procedure for the calculation of adjustments at the branch's meeting scheduled in October 2012.

(d) Electronic decision-making by consensus

15. Section II, paragraph 8, provides that the adoption of decisions by the Committee shall require a quorum of at least three-fourths of the members to be present. However, section II, paragraph 9, requires the Committee to make every effort to reach agreement on any decisions by consensus. Rule 11 enables the Committee to use electronic means to take decisions where possible.

16. The term *consensus* is not defined in the Protocol, the rules of procedure being applied,⁹ the procedures and mechanisms, or the rules of procedure. However, the term is generally understood to refer to the absence of a formal objection. Several decisions taken by electronic means have indicated that the decision was adopted by consensus. One member has raised the issue of whether it is possible for a decision that is adopted unanimously through electronic means to be considered as having been adopted by consensus. The recent practice of the branch has been to indicate that a decision has been adopted by consensus when the branch has been invited to adopt the decision by electronic means on a no-objection basis,¹⁰ and to indicate that the decision has been adopted unanimously when the members and alternate members have been invited to vote on a decision and all votes cast have been in favour of the decision.¹¹

⁹ FCCC/CP/1996/2.

¹⁰ See, for example, the decisions on expert advice with respect to Slovakia (CC-2012-1-4/Slovakia/EB) and Lithuania (CC-2011-3-13/Lithuania/EB).

¹¹ See, for example, the "Decision on preliminary examination: Slovakia", CC-2012-1-2/Slovakia/EB, the "Final decision: Slovakia", CC-2012-1-9/Slovakia/EB; and the "Decision not to initiate the expedited procedure referred to in paragraph 1 of section X: Lithuania", CC-2011-3-16/Lithuania/EB.



17. The branch may wish to discuss whether, in its view, a distinction can and should be made between voting and no-objection decision-making (silence procedures) in the case of electronic decision-making and, if so, what procedural safeguards should be in place in the event of no-objection decision-making.

(e) Request by a Party concerned not to initiate the expedited procedure referred to under section X, paragraph 1

18. Section X, paragraph 1, establishes an expedited procedure that applies to questions of implementation relating to eligibility requirements under Articles 6, 12 and 17 of the Kyoto Protocol. Section X, paragraph 1 (a) to (g), creates a procedure reducing the timeframes that would otherwise be available under sections VII to IX. The expedited procedure is designed to resolve a question of implementation that is preventing a Party from participation in the Kyoto Protocol's flexible mechanisms faster than would otherwise be achieved under the procedures and mechanisms.

19. In one instance, in response to a request for reinstatement, the branch concluded that there continued to be a question of implementation with respect to that Party's eligibility and decided not to reinstate that Party. The branch also decided to initiate the expedited procedure referred to in section X, paragraph 1, unless the Party requested the branch before 31 July 2012 not to initiate this procedure.¹² On the basis of such a request made before the due date set by the branch, the branch decided not to initiate the expedited procedure referred to in section X, paragraph 1, pending receipt of the report of an in-country review of that Party's national system in conjunction with the review of its annual report submitted in 2012.¹³

20. In the aforementioned decision, the branch reasoned that the official report of the next in-country review would not be available in time for the branch to consider such report under the procedure referred to in section X, paragraph 1, and to decide, in the context of the expedited procedure, whether the question of implementation had been resolved.¹⁴

21. The situation whereby a Party's request for reinstatement is not granted by the branch (see section X, paragraphs 2 and 3) and an expedited procedure would not enable the branch to consider the most recent information available appears to be the only scenario where the branch would have to decide whether or not to initiate the expedited procedure referred to in section X, paragraph 1. The branch may wish to discuss the procedural implications of a decision to grant such a request definitively or temporarily.

¹² See "Decision under paragraph 2 of section X concerning the request for reinstatement: Lithuania", CC-2011-3-14/Lithuania/EB.

¹³ See "Decision not to initiate the expedited procedure referred to in paragraph 1 of section X: Lithuania", CC-2011-3/16/Lithuania/EB.

¹⁴ Paragraph 6, CC-2011-3/16/Lithuania/EB.



B. Meetings

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

22. At its first stocktaking meeting, the branch discussed whether a practice, working arrangement or appropriate rules of procedure should be developed for adapting the time frames set out in the procedures and mechanisms where there may be a concern about obtaining a quorum because of a holiday or other scheduling conflict, “taking into account the reasonable expectations of and possible need to consult a Party concerned”.¹⁵ No decision was taken on this matter at that meeting.

23. As indicated in paragraph 11 above, there were five occasions when the branch did not achieve quorum at its meetings. The branch will note that three of these meetings were scheduled very close to the sessions of the CMP¹⁶ or to the holidays. In addition, due to the impossibility of reaching quorum at an earlier date, the enforcement branch adopted its preliminary finding with respect to Ukraine on 25 August 2011, although the deadline for the adoption of such a decision was on 11 August 2011.¹⁷

24. Noting the delay in the adoption of the preliminary finding with respect to Ukraine and the need for transparency in future cases of inability to comply with the timeframes set out in the procedures and mechanisms, the branch agreed to develop working arrangements on timeframes.¹⁸ These working arrangements, which were subsequently adopted by the plenary, recall that the enforcement branch is required to make every possible effort to adopt decisions within the timeframes provided for in the procedures and mechanisms and the rules of procedure. The plenary agreed that any decision to delay may only be taken as a last resort, for overriding reasons, and that it should result in the shortest possible delay.¹⁹

At its eighteenth meeting, the branch noted that this issue relates to the quorum matters described above. It further noted that the branch was still gaining experience in applying the working arrangements on timeframes agreed at the ninth meeting of the plenary and agreed to keep them under review.

¹⁵ See CC/EB/6/2008/2.

¹⁶ The fifth session of the CMP took place from 7 to 19 December 2009. The seventh session of the CMP took place from 28 November to 11 December 2011.

¹⁷ Paragraph 17, report on the fourteenth meeting of the enforcement branch, CC/EB/14/2011/2.

¹⁸ Paragraph 12, report on the fifteenth meeting of the enforcement branch, CC/EB/15/2011/2.

¹⁹ Paragraph 17, annual report of the Compliance Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, FCCC/KP/CMP/2011/5.