



ENFORCEMENT BRANCH

Twenty-second meeting

23 March 2013
Bonn, Germany

Provisional agenda and annotations

Provisional agenda

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5. Draft templates for decisions of the enforcement branch
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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. Consideration of the questions of implementation with respect to Slovakia

3. On 20 September 2012, Slovakia submitted the plan referred to in section XV, paragraph 1, of the “Procedures and mechanisms relating to compliance under the Kyoto Protocol”¹ in accordance with 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. At its twenty-first meeting, the enforcement branch adopted a decision on the review and assessment of the plan submitted by Slovakia under paragraph 2 of section XV (CC-2012-1-12/Slovakia/EB). The branch concluded, based on the information submitted and presented, that Slovakia’s plan meets the requirements set out in section XV, paragraph 2, and rule 25 bis, paragraph 1. The branch noted that Slovakia’s plan contains measures that are yet to be implemented and urged Slovakia to further strengthen its national system by implementing these measures. The branch also concluded that the receipt of the report of the review of Slovakia's annual submission submitted in 2012 is required for it to determine whether all the questions of implementation have been resolved.

5. The branch is invited to consider any information submitted by Slovakia on progress in the implementation of the measures contained in the plan submitted by it pursuant to the final decision of the branch. In accordance with section VIII, paragraph 2, Slovakia may also wish to be represented.

5. Draft templates for decisions of the enforcement branch

6. At its twenty-first meeting, the branch discussed a revised version of the draft template for preliminary findings that it had considered at its twentieth meeting and a draft template for final decisions. The branch agreed that the chairperson and vice-chairperson, with the assistance of the secretariat, would revise these templates in light of the discussions at its twenty-first meeting. The branch also agreed that the chairperson and vice-chairperson, with the assistance of the secretariat, would prepare templates for decisions on preliminary examination, expert advice, review and assessment of plans submitted under paragraph 2 of

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.



section XV, and reinstatement under paragraph 2 of section X for consideration at its next meeting. These revised and new templates will be presented to the branch at its twenty-second meeting.

6. Considering disagreements whether to apply adjustments to inventories under Article 5, paragraph 2, of the Kyoto Protocol

7. At its twenty-first meeting, the branch requested the chairperson and vice-chairperson, with the assistance of the secretariat, to develop draft working arrangements relating to the consideration by the branch of disagreements whether to apply adjustments under Article 5, paragraph 2, of the Kyoto Protocol. These draft working arrangements will be presented to the branch at its twenty-second meeting.

7. Other matters

8. In accordance with the practice established at its twentieth meeting, at its twenty-first meeting, the branch agreed that the secretariat will include an updated version of the list of stocktaking issues to the agenda of its next meeting. The branch may wish to consider the updated list, which is contained in the Annex to these annotations.

9. In the context of its discussions on electronic decision-making by consensus, at its twenty-first meeting, the branch developed a draft working arrangement on electronic decision-making and agreed to forward the draft working arrangement, contained in the Annex to the report on that meeting, to the plenary. At its eleventh meeting, the plenary agreed that the branches would further consider this matter, with the facilitative branch considering the possible impact on its work of the adoption by the plenary of such a working arrangement at its next meeting. The plenary noted that, in the absence of a working arrangement on electronic decision-making, the enforcement branch would continue to follow its practice of requiring a vote for decisions taken by electronic means.³ The branch may wish to further consider this matter at its twenty-second meeting.

8. Closure of the meeting

³ See paragraph 10 of the report on the eleventh meeting of the plenary, CC/11/2012/4.



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.⁴
3. 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 until its twenty-first 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

4. 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.
5. 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”.
6. 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

⁴ Paragraph 43, report on the twentieth meeting of the enforcement branch, CC/EB/20/2012/2.



the numbering of section headers, the inclusion 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. Consistent with this change, in adopting final decision with respect to Slovakia (CC-2012-1-9/Slovakia/EB) by electronic means, the branch has renamed the section on conclusions and reasons as “reasons and conclusions”.

At its twenty-first meeting, the branch noted that its consideration of the structure of its decisions is work in progress, noting in particular the development of the templates for various types of decisions. At that meeting, the branch considered a revised version of the draft template for preliminary findings and a draft template for final decisions. The branch agreed that the chairperson and the vice-chairperson, with the assistance of the secretariat, would revise these templates in accordance with discussions at that meeting. The branch also agreed that the chairperson and vice-chairperson, with the assistance of the secretariat, would prepare templates for decisions on preliminary examination, expert advice, review and assessment of plans submitted under paragraph 2 of section XV, and reinstatement under paragraph 2 of section X for consideration at its next meeting.

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

7. 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.

8. 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.⁵

⁵ 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,⁶ is not required for participation in JI track II.⁷

9. 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.

10. 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”).⁸

At its twenty-first meeting, the branch noted that consideration of this issue is work in progress, noting in particular the development of templates for its decisions.

⁶ 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).

⁷ 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.

⁸ In “Final Decision: Slovakia”, CC-2012-1-9/Slovakia/EB, the branch considered that 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

11. 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.

12. 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. In 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 developing its list of experts in those instances.

13. In addition, the branch also decided to seek expert advice in relation to its consideration of a request for reinstatement⁹ as well as in connection with the review and assessment of the plan submitted by a Party concerned under section XV, paragraph 2.¹⁰

14. 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.

15. 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;

⁹ See "Expert advice: Bulgaria", CC-2010-1-16/Bulgaria/EB and the "Decision on expert advice: Lithuania", CC-2011-3-17/Lithuania/EB.

¹⁰ See "Decision on the review and assessment of the plan submitted under paragraph 2 of section XV", CC-2011-1-11/Romania/EB and the "Decision on expert advice: Slovakia", CC-2012-1-11/Slovakia/EB.



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- (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.

(b) Absence of a quorum

16. 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).

17. 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;
- (e) At its nineteenth meeting held from 8 to 9 March 2012; and
- (f) At its twenty-first meeting held from 22 to 24 October 2012.

18. 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 five of the six 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.

19. 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.



20. 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.

21. 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

22. 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 twenty-first meeting, the branch noted the need to develop working arrangements with respect to adjustments which could, over time, become rules of procedure. It requested the chairperson and the vice-chairperson, with the assistance of the secretariat, to develop draft working arrangements relating to the consideration by the branch of disagreements whether to apply adjustments under Article 5, paragraph 2, of the Kyoto Protocol. These draft working arrangements will be presented to the branch at its twenty-second session.

(d) Electronic decision-making by consensus

23. 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.

24. The term *consensus* is not defined under the Protocol, the rules of procedure being applied,¹¹ the procedures and mechanisms or the rules of procedure. Several decisions taken by electronic means have indicated that the decision was adopted by consensus.¹² One member has raised the issue of whether it is possible to consider a decision that is adopted unanimously through electronic means to be considered as having been adopted by consensus.

¹¹ FCCC/CP/1996/2.

¹² See "Decision on the review and assessment of the plan submitted by Lithuania under paragraph 2 of section XV", CC-2011-3-11/Lithuania/EB.



At its twenty-first meeting, the branch considered the issue of whether *consensus* could be achieved where votes are cast both electronically and in-person. The branch noted that consensus could only be achieved for decisions adopted in a face-to-face meeting and concluded that decision-making by electronic means can only be done through the casting of votes. The branch developed the following draft working arrangement on electronic decision-making for consideration by the enforcement branch:

“The plenary agreed that decision-making by electronic means under rule 11, paragraph 2 of the rules of procedure may only take place by voting.”

At its eleventh meeting, the plenary agreed that the branches would further consider this matter, with the facilitative branch considering the possible impact on its work of the adoption by the plenary of such a working arrangement at its next meeting. The plenary noted that, in the absence of a working arrangement on electronic decision-making, the enforcement branch would continue to follow its practice of requiring a vote for decisions taken by electronic means.

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

25. Section X, paragraph 1, establishes an expedited procedure that applies in questions of implementation relating to eligibility requirements under Articles 6, 12 and 17 of the Kyoto Protocol. The effect of section X, paragraph 1 (a) to (g) is to create a procedure that reduces the time frames 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. Notwithstanding this aim, the branch recently decided to allow a Party to request not to initiate the procedure under section X, paragraph 1.¹³

26. 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 In future there may be scenarios where an expedited procedure would not enable the branch to consider the most recent information available, for example, where the schedule of the next in-country review would not allow the consideration of its results by the branch.

27. The branch may wish to have a discussion on whether working arrangements or guidelines are necessary to provide guidance to Parties on the circumstances under which such a request may be submitted.

At its twenty-first meeting, the branch noted it was premature to draw any conclusions with respect to this issue.

¹³ See for example “Decision not to initiate the expedited procedure referred to in paragraph 1 of section X”, CC-2011-3/16/Lithuania/EB and “Decision on Expert Advice: Slovakia”, CC-2012-1-4/Slovakia/EB.

¹⁴ Paragraph, 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

28. 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.

29. As indicated in paragraph 17 above, there were six 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

30. 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 time frames set out in the procedures and mechanisms, the branch agreed to develop working arrangements on time frames.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 time frames 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

31. At its eighteenth meeting, the branch noted that this issue related to quorum matters described 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.

At its twenty-first meeting, the branch noted it was premature to draw any conclusions with respect to this issue.

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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.