



List of issues for enforcement branch stocktaking exercise

Background note

I. Introduction

1. A stocktaking exercise to look back at the branch's work for the year and to reflect on improvements that can be made to its consideration of questions of implementation is scheduled as part of the sixth meeting of the branch that will take place from 6 to 7 October 2008.
2. The list of issues below was finalized by the chairperson and the vice-chairperson following comments from members and alternate members of the branch. The list is intended to enable effective and efficient preparations for the stocktaking exercise. It includes annotations prepared by the secretariat with the guidance of the chairperson and vice-chairperson for the reference and consideration of members and alternate members.

II. List of issues

A. Documentation, translation and communication

1. Types of documents to be provided by the secretariat to the branch during the consideration of a question of implementation:
 - In the consideration of the questions of implementation with respect to Greece (CC-2007-1/Greece/EB) and Canada (CC-2008-1/Canada/EB), the review-specific documents listed in Annex I were provided to the branch at its request, along with the country-specific and general background documents listed in Annex II. The branch may wish to consider whether it requires all of these kinds of documents, if the documents in Annex I alone suffice, or if the required documents can be defined in some other way.
2. Publication of documents considered by the branch:
 - Rule 12, paragraph 2 of the Rules of procedure of the Compliance Committee¹ requires the secretariat to make all documents of the plenary and the branches available to public, subject to section VIII, paragraph 6,² as

¹ Annex to decision 4/CMP.2. All references in this document to the Rules of procedure are to the rules contained in the annex to decision 4/CMP.2.

² Unless otherwise indicated, all section references in this document refer to the Procedures and mechanisms relating to compliance contained in the annex to decision 27/CMP.1.



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well as any guidance provided by the branch. The secretariat has made official documents of the Committee available to the public on the UNFCCC website.³ All documents described under issue A.1 above were made available to the branch, but not to observers or the public. The branch may wish to institute a practice of identifying more explicitly those documents which it has considered and should therefore be made public. It may wish to note the confidentiality provisions for Article 8 reviews contained in paragraphs 9 and 10 of the annex to decision 22/CMP.1; as well as paragraph 7 of section VII, paragraphs 6 and 7 of section VIII; and rules 12.2 and 17(b) of the Rules of procedure.

B. Decisions

1. Electronic decision-making, including the use of QuickPlace:
 - The secretariat provides a secure Web-based work area with restricted access through QuickPlace, which has been used mainly to take decisions using electronic means under rule 11 of the Rules of procedure. The branch may wish to consider whether working arrangements or more specific rules are required to govern such electronic decision-making. For example, it may wish to consider whether and, if so, under what circumstances decision-making can proceed on a no-objection basis and with an assumption of quorum.
2. Structure and logical sequence of decisions:
 - The branch may wish to review the elements that should be included in its decisions (e.g., background, conclusions, reasons and a statement of the decision) and their sequence. It may also wish to consider the use of titles, the use of various established terms (whereas, therefore), and the use of plain language or legal terms. It may further wish to consider the possibility of dissenting opinions.
3. Decisions and *stare decisis*/Precedent-setting nature of decisions:
 - The branch may wish to consider whether it considers itself bound by its previous decisions. No comparable bodies have been identified which are bound by their own precedent. Key references may include the *Statute of*

³ Documents of the plenary are posted on this page:
http://unfccc.int/kyoto_protocol/compliance/plenary/items/3788.php.
Documents of the facilitative branch are available on this page:
http://unfccc.int/kyoto_protocol/compliance/facilitative_branch/items/3786.php.
Documents relating to the enforcement branch can be viewed and downloaded from this page:
http://unfccc.int/kyoto_protocol/compliance/enforcement_branch/items/3785.php.



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the International Court of Justice, Articles 34 and 59,⁴ as well as Article 33, paragraph 2, of the Statute of the International Tribunal for the Law of the Sea.⁵

4. Review and assessment of a plan submitted to the enforcement branch under paragraph 2 or paragraph 6 of section XV:
 - No procedure is specified for such review and assessment. The branch may wish to consider whether to formulate working arrangements or rules to structure a review, specify criteria for assessment, and clarify a possible role for the Party concerned. For example the branch may wish to consider working arrangements or rules of procedure for such review and assessment to be based on the elements set out in paragraph 2 and paragraph 6 of section XV, respectively, and it may wish to consider whether paragraph 2 of section VIII should be read to apply to review and assessment of such a plan, which occurs after the branch has made a determination with respect to the question of implementation.

C. Timing of procedures

1. Deadlines for written submission by the Party concerned:
 - Under Section X, paragraph 1(c), if the Party concerned does not inform the branch in advance that it intends to make a written submission, the branch must hold a hearing on the day the written submission falls due, if no written submission is made on that day. The branch may wish to consider a clarification, based on the approach taken in the questions of implementation it has addressed to date. It could consider working arrangements or a rule of procedure to stipulate that the hearing and the meeting to adopt the preliminary finding will take place within two weeks from the due date of the written submission, unless the Party concerned indicates, by the due date of a request for a hearing, that it does not intend to make a written submission.
2. Flexibility in scheduling in case of conflict with certain official, religious and UN holidays or other UNFCCC meetings:
 - The branch may wish to consider whether a practice, working arrangements or appropriate rules of procedure should be developed for adapting the time

⁴ Article 59 states: "The decision of the Court has no binding force except between the parties and in respect of that particular case." The full statute is available at: <<http://www.icj-cij.org/documents/>>. See also, Brownlie, *Principles of International Law*, 5th Ed., 1998, pages 20-22, 695.

⁵ Article 33, paragraph 2, states "The decision shall have no binding force except between the parties in respect of that particular dispute." The full statute is available at <http://www.itlos.org/start2_en.html>.



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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.

3. Method for calculating deadlines:

- The branch may wish to consider adopting standards for the regular calculation of time-limits. For example, the branch may wish to consider the draft text for a working arrangement or new rule contained in Annex III, which is based on relevant international precedent identified by the secretariat contained in Annex IV,⁶ or whether to provide guidance to the secretariat to follow one of these recognized international standards.

⁶ See International Criminal Court, Regulations of the Court, Regulation 33; at: http://www.icc-cpi.int/library/about/officialjournal/Regulations_of_the_Court_170604-EN.pdf; International Court of Arbitration's Rules of Arbitration, Article 3, at: http://www.sice.oas.org/DISPUTE/comarb/icc/rules.asp#article_3; the *European Convention on the Calculation of Time-Limits*, Articles 2 - 5, at <http://conventions.coe.int/Treaty/en/Treaties/Word/076.doc> and <http://conventions.coe.int/Treaty/en/Reports/Html/076.htm>; *European Patent Convention*, Chapter IV, Rule 83, at: http://www.epo.org/patents/law/legal-texts/html/epc/1973/e/rcvii_iv.html .



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Annex I

List of review-specific documents

No	Title	Date
CC-2007-1/Greece/EB		
1	ERT questions on the national system	24/04/2007
2	Answers to the questions raised by ERT on 24 Apr 2007. Head of the Division of Atmospheric Pollution Control (P. Zikos), Athens, Greece	28/04/2007
3	ERT final presentation	27/04/2007
4	Potential problems and further questions from the ERT formulated during the course of the in-country review of Greece initial report under the Kyoto Protocol and 2006 inventory submission	28/04/2007
5	Law no. 3017/2002 for the ratification of the Kyoto Protocol (in Greek). Hellenic Republic, Athens, Greece	2002
6	Common Ministerial Decision 54409/2632/2004 (in Greek). Hellenic Republic, Athens, Greece	2004
7	Additional information provided by Greece to the potential problems and further questions from the ERT formulated in the course of the in-country review of Greece initial report under the Kyoto Protocol and 2006 inventory submission. Covering letter to UNFCCC secretariat, with 13-page annex. Hellenic Republic, Ministry for the Environment, Physical Planning and Public Works Division of Air Pollution and Noise Control, Athens, Greece	8/06/2007
8	Additional information provided by Greece to the potential problems and further questions from the ERT. Letter to UNFCCC secretariat with 2-page annex concerning the national system. Hellenic Republic, Ministry for the Environment, Physical Planning and Public Works, Division of Air Pollution and Noise Control, Athens, Greece	12/06/2007
9	Additional information provided by Greece to the ERT's request for additional information as part of the procedures for the calculation of adjustments. Covering letter to UNFCCC secretariat. Hellenic Republic, Ministry for the Environment, Physical Planning and Public Works, Division of Air Pollution and Noise Control, Athens, Greece	23/07/2007
10	In-country review of Greece's Initial Report under the Kyoto Protocol and 2006 inventory submission (23-28 Apr 2007). Response from the ERT on information forwarded by Greece to	16/07/2007

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No	Title	Date
	the potential problems	
11	Greece's acknowledgment of receipt of the draft report on the review of the initial report under the Kyoto Protocol, with advice to the UNFCCC secretariat regarding transmittal of information on the national registry. Hellenic Republic, MEPPPW, DAPNC, Athens, Greece	24/10/2007
12	Greece's response to the draft report on the review of the initial report under the Kyoto Protocol of Greece. Hellenic Republic Ministry for the Environment Physical Planning and Public Works Division of Air Pollution Abatement and Noise Control	13/11/2007
13	Letter from the Deputy Minister for the Environment, Mr. Stavros Kaloyannis, to the UNFCCC Executive Secretary	3/12/2007
14	Comments by Greece on the draft Initial Review Report	28/12/2007
CC-2008-1/Canada/EB		
1.	Presentation from Canada to ERT	05/11/2007
2.	Note on additional information provided by Canada to the ERT during the review week on National Registry	07/11/2007
3.	ERT presentation to Canada on the findings of the Review of the National Registry	09/11/2007
4.	Potential and further questions document from the ERT formulated during the course of the in-country review Canada's initial report and the 2006 inventory submission	10/11/2007
5.	Canada's response to the potential problems and further questions document	25/12/2007 (original)- 22/01/2008 (revised version)
6.	Letter from UNFCCC to Canada on the National Registry, independent assessment report and the review schedule	29/01/2008
7.	Canada's response to the UNFCCC letter on the National Registry	19/03/2008
8.	Canada's response to the draft initial review report	17/03/2008
9.	Final initial review report	14/04/2008

Annex II**List of country-specific and general background documents****1. Documentation for Initial Reviews under the Kyoto Protocol**

Generic (same for all Parties)	In public domain
• UNFCCC reporting guidelines on annual inventories by Parties included in Annex I to the Convention (FCCC/SBSTA/2004/8)	Yes
• UNFCCC guidelines for the technical review of GHG inventories from Parties included in Annex I to the Convention (FCCC/CP/2002/8, pages 83-92)	Yes
• Modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol (13/CMP.1)	Yes
• Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol (decision 15/CMP.1)	Yes
• Guidelines for review under Article 8 of the Kyoto Protocol (decision 22/CMP.1)	Yes
• Guidelines for national systems under Article 5, paragraph 1, of the Kyoto Protocol (decision 19/CMP.1)	Yes
• Land use, land-use change and forestry (decision 16/CMP.1)	Yes
• Good practice guidance and adjustments under Article 5, paragraph 2, of the Kyoto Protocol (decision 20/CMP.1)	Yes
• Procedures and mechanisms relating to compliance under the Kyoto Protocol (decision 27/CMP.1)	Yes
• IPCC Documents, including IPCC Revised 1996 Guidelines, IPCC Good Practice Guidance and IPCC Good Practice Guidance on LULUCF	Yes
• Synthesis and Assessment Report, Part I (S&A-I)	Yes
• The Review Handbook	Yes
• KP reference manual	Yes
• Conclusions from Lead Reviewers Meetings	No
• Materials for adjustments (technical and generic)	No
Specific (for each Party)	
• The 2006 Status Report	Yes
• Review transcript 2006 (Party specific) + instructions (generic)	No
• Report of the 2005 inventory review	Yes
• Report of the 2004 inventory review	Yes
• Review transcript 2005 (including experts comments)	Yes



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2. Data Package for Initial Reviews under the Kyoto Protocol

Generic (same for all Parties)	In public domain
<ul style="list-style-type: none">• Software tool for reviewing GHG inventory information (Locator)	No
Specific (for each Party)	
<ul style="list-style-type: none">• Initial report	Yes
<ul style="list-style-type: none">• The GHG inventory submitted together with the Initial Report (usually this is 2006 inventory)	Yes
<ul style="list-style-type: none">• The 2006 GHG inventory (only for few Parties that do not submit 2006 inventory together with the initial report)	Yes
<ul style="list-style-type: none">• The 2005 GHG inventory	Yes



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Annex III

“For purposes of the calculation of dates [under these rules]:

1. Days shall be understood as full calendar days. Calculation of a time limit shall start on the day following the day on which a specified event occurs until the day on which the time limit expires [at midnight at the seat of the UNFCCC secretariat].
2. Where a time-limit is expressed in weeks the day on which the time limit expires shall be the same day of week as the day from which the time limit begins.
3. When a period is expressed in months, it shall end in the specified month on the same day of the month as the day on which the time limit begins, unless that month does not have such a day, in which case the time limit shall end on the last day of that month.
4. When a period is expressed as a certain number of years, it shall end in the specified year in the month of the same name and on the same day of the month as the time limit begins, provided that if that month does not have such a day, the time limit shall end on the last day of that month.
5. Saturdays, Sundays and official holidays shall be counted when a time-limit is calculated. However, where the day on which the time-limit ends falls is a Saturday, Sunday, official UNFCCC holiday [or official holiday in the Party concerned], the time-limit shall be extended to include the first working day thereafter.”



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Annex IV

A. International Criminal Court, Regulations of the Court, Regulation 33:

Regulation 33 - Calculation of time limits:

1. The calculation of time for the purposes of any proceedings before the Court shall be made as follows:
 - (a) Days shall be understood as calendar days. When the last day of a time period falls upon a Saturday, a Sunday or an official holiday of the Court, the next working day of the Court shall be considered the last day;
 - (b) Days shall only be understood as “full days”, the day of notification of a document or the day of filing of a response or a reply by a participant to that document not being taken into consideration for the calculation of the time period available to file a document.
2. Documents shall be filed with the Registry between 9am and 4pm The Hague time or the time of such other place as designated by the Registrar.

B. International Court of Arbitration’s Rules of Arbitration, Article 3

1. All pleadings and other written communications submitted by any party, as well as all documents annexed thereto, shall be supplied in a number of copies sufficient to provide one copy for each party, plus one for each arbitrator, and one for the Secretariat. A copy of any communication from the Arbitral Tribunal to the parties shall be sent to the Secretariat.
2. All notifications or communications from the Secretariat and the Arbitral Tribunal shall be made to the last address of the party or its representative for whom the same are intended, as notified either by the party in question or by the other party. Such notification or communication may be made by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram or any other means of telecommunication that provides a record of the sending thereof.
3. A notification or communication shall be deemed to have been made on the day it was received by the party itself or by its representative, or would have been received if made in accordance with the preceding paragraph.
4. Periods of time specified in, or fixed under the present Rules, shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with the preceding paragraph. When the day next following such date is an official holiday, or a non-business day in



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the country where the notification or communication is deemed to have been made, the period of time shall commence on the first following business day. Official holidays and non-business days are included in the calculation of the period of time. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication is deemed to have been made, the period of time shall expire at the end of the first following business day.

C. International Court of Justice, Rules of Court⁷

Article 44

The Court may, at the request of the party concerned, extend any time-limit, or decide that any step taken after the expiration of the time-limit fixed therefor shall be considered as valid, if it is satisfied that there is adequate justification for the request. In either case the other party shall be given an opportunity to state its views.

Article 48

Time-limits for the completion of steps in the proceedings may be fixed by assigning a specified period but shall always indicate definite dates. Such time-limits shall be as short as the character of the case permits.

D. European Convention on the Calculation of Time-Limits, Articles 2 - 5:

Article 2

For the purpose of this Convention the term *dies a quo* means the day from which the time-limit runs and the term *dies ad quem* means the day on which the time-limit expires.

Article 3

1. Time-limits expressed in days, weeks, months or years shall run from the *dies a quo* at midnight to the *dies ad quem* at midnight.
2. However, the provisions of the foregoing paragraph do not preclude that an act which is to be performed before the expiry of a time-limit may be performed on the *dies ad quem* only before the expiry of the normal office or business hours.

⁷ See: <http://www.icj-cij.org/documents/index.php?p1=4&p2=3&p3=0>



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Article 4

1. Where a time-limit is expressed in weeks the *dies ad quem* shall be the day of the last week whose name corresponds to that of the *dies a quo*.
2. Where a time-limit is expressed in months or in years the *dies ad quem* shall be the day of the last month or of the last year whose date corresponds to that of the *dies a quo* or, when there is no corresponding date, the last day of the last month.
3. Where a time-limit is expressed in months and days or fractions of months, whole months shall be counted first, and afterwards the days or fractions of months; for the purpose of calculating fractions of months, a month shall be deemed to consist of 30 days.

Article 5

Saturdays, Sundays and official holidays shall count when calculating a time-limit. However, where the *dies ad quem* of a time-limit before the expiry of which an act shall be performed is a Saturday, a Sunday, an official holiday or a day which shall be considered as an official holiday, the time-limit shall be extended to include the first working day thereafter.

E. *European Patent Convention, Chapter IV, Rule 83:*

1. Periods shall be laid down in terms of full years, months, weeks or days.
2. Computation shall start on the day following the day on which the relevant event occurred, the event being either a procedural step or the expiry of another period. Where the procedural step is a notification, the event considered shall be the receipt of the document notified, unless otherwise provided.
3. When a period is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.
4. When a period is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.



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5. When a period is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred.

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