



*FACILITATIVE BRANCH*

**Eleventh meeting**

6–8 February 2012  
Bonn, Germany

**Report on the meeting**

**1. Opening of the meeting**

1. Mr. Kunihiko Shimada, chairperson of the facilitative branch, declared the meeting open. He extended a warm welcome to Mr. Luis Paz Castro, Mr. Dariusz Dybka, Mr. Per Hallström, Mr. Rafik Hiahemzizou and Mr. Delano R. Verwey, who were attending their first meeting as members and alternate members of the branch.

2. At the request of the chairperson, the secretariat provided information on participation and quorum, as well as on key administrative, logistical and housekeeping arrangements. The secretariat confirmed that all members and alternate members present had signed the 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.

**2. Elections of chairperson and vice-chairperson**

3. The branch proceeded with an election by acclamation of Mr. Khalid Abuleif and Mr. Adrian Roberts as its new chairperson and vice-chairperson, respectively. The new chairperson extended the thanks of the branch to the former chairperson and vice-chairperson, Mr. Kunihiko Shimada and Mr. Javad Aghazadeh Khoei.

**3. Adoption of the agenda**

4. The branch reviewed and adopted the provisional agenda, as amended (CC/FB/11/2012/1/Rev.1).

**4. Organization of work**

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

- a. First, to consider issues arising from reports of in-depth reviews of fifth national communications and information submitted pursuant to Article 7 of the Kyoto Protocol;
- b. Second, to consider consistency of reviews under Article 8.



**5. Issues arising from reports of in-depth reviews of fifth national communications and information submitted pursuant to Article 7 of the Kyoto Protocol**

6. Under this item, the branch agreed on indicative working arrangements for its provision of advice and facilitation under section IV, paragraph 6(a), of the “Procedures and mechanisms relating to compliance under the Kyoto Protocol”<sup>1</sup> (see Annex 1). The branch agreed that these arrangements are work in progress, developed with a view to having a clear point of reference on how the branch is to develop its practice in addressing issues relating to early warning of potential non-compliance (hereinafter referred to as “early warning issues”). The arrangements will be tested in practice and kept under review, as the branch considers its first cases.

7. The branch also had an exchange of views on the information it will use in the elaboration of decisions on specific cases. In particular, the branch recalled the agreement reached at its ninth meeting<sup>2</sup> that its function of providing advice and facilitation under section IV, paragraph 6(a), of the procedures and mechanisms could be triggered only by the information contained in review reports made available to it pursuant to section VI, paragraph 3, of the procedures and mechanisms. It therefore agreed that in its deliberations over decisions about whether to be seized of a particular case, it will consider whether or not there is sufficient information in the relevant reports submitted to it under section VI, paragraph 3, indicating potential non-compliance with commitments under Article 3, paragraph 1, of the Kyoto Protocol. In doing so, the branch will focus on emission projections, as well as what measures are being taken by the Party to address such problems and/or gaps.

8. Furthermore, the branch noted that in discharging its facilitative role vis-à-vis an individual Party it would also facilitate and promote compliance by Parties in general.

9. The branch had a fruitful discussion on the status of Parties that are members of the European Union (EU) Burden Sharing Agreement, in accordance with Article 4 of the Kyoto Protocol and how it should address issues of potential non-compliance in such cases. The branch was of the view that its role was to provide advice and facilitation to individual Parties of the EU Burden Sharing Agreement on compliance with their commitments under Article 3, paragraph 1, of the Kyoto Protocol.

10. On the basis of the above, the branch considered the information brought to its attention at its tenth meeting with regard to Italy.<sup>3</sup>

11. The branch considered the factual information before it, as contained in the “Report of the in-depth review of the fifth national communication of Italy” (FCC/IDR.5/ITA) and the

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

<sup>2</sup> See FCCC/KP/CMP/2011/5, paragraph 55.

<sup>3</sup> See CC/FB/10/2011/3, paragraph 16.



“Compilation and synthesis of supplementary information incorporated in fifth national communications submitted in accordance with Article 7, paragraph 2, of the Kyoto Protocol” (FCCC/SBI/2011/INF.2).

12. The branch concluded that the information available was not sufficient in order for it to engage in an early warning exercise with regard to Italy. The branch agreed not to proceed with the matter at this time, but to revisit it once later reports of the individual reviews of the annual submission of Italy become available, at which time the branch will also take into account any outcomes of its deliberations with regard to consistency of reviews under Article 8 of the Kyoto Protocol.

13. With regard to concerns raised at its tenth meeting in connection with potential non-compliance by Canada,<sup>4</sup> the branch considered information available to it, as contained in the “Report of the individual review of the annual submission of Canada submitted in 2010” (FCCC/ARR/2011/CAN), the “Report of the in-depth review of the fifth national communication of Canada” (FCCC/IDR.5/CAN) and the “Compilation and synthesis of supplementary information incorporated in fifth national communications submitted in accordance with Article 7, paragraph 2, of the Kyoto Protocol” (FCCC/SBI/2011/INF.2). The branch noted strong concern expressed by the ERT in the Report of the in-depth review of the fifth national communication of Canada with regard to Canada’s potential to become non-compliant with the obligations under Article 3, paragraph 1, of the Kyoto Protocol.

14. The branch also noted that Canada had submitted to the Depositary a notification of withdrawal from the Protocol and that such withdrawal will be effective as of 15 December 2012. While the branch agreed that the consequences of withdrawal after 15 December 2012 would have to be assessed at a later stage, Canada, for the time being, remained a Party to the Protocol. Based on the indicative working arrangements related to the exercise of its early warning mandate under section IV, paragraph 6(a) (see paragraph 6 above), the branch concluded that it was seized of an early warning issue relating to Canada and mandated its chairperson to send a letter to Canada.

## **6. Consistency of reviews under Article 8 of the Kyoto Protocol**

15. Recalling that at its ninth meeting the plenary had invited it to further consider the issue of consistency of reviews under Article 8 of the Kyoto Protocol, the facilitative branch had an initial exchange of views on the possible outcome of and plans for its future work on this issue. The branch also received background information on the issue from two members of the enforcement branch, who were nominated by the bureau to contribute to the work of the branch, in accordance with section II, paragraph 7.

16. The branch asked its chairperson to communicate with the chairperson of the enforcement branch, through the bureau, with a view to receiving from the enforcement branch an indicative list of priority elements. The facilitative branch would consider these elements, alongside any elements it identifies in its further work. The branch also discussed

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<sup>4</sup> Ibid.



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the possibility to organize a workshop, with the assistance of the secretariat, to further discuss the issue of consistency amongst Committee members and alternate members and, possibly, lead reviewers.

### 7. Other matters

17. No other matters were raised.

### 8. Closure of the meeting

18. The chairperson of the branch declared the meeting closed on 8 February 2012, at 17:50 hrs.

### 9. Attendance

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

<b>Members (in alphabetical order)</b>	<b>Alternate Members</b>
1) <b>ABULEIF</b> , Khalid Mr.	YOO, Yeon-Chul Mr.
2) <b>AGHAZADEH KHOEI</b> , Javad Mr.	IVANOVA, Jadranka Ms.
3) <b>COYE-FELSON</b> , Janine E. Ms.	ST. LOUIS, Teddy Mr.
4) <b>HIAHEMZIZOU</b> , Rafik Mr.*	<b>NASR</b> , Mohamed I. Mr.†
5) JALOUTA, Najmadeen B.M. Mr.	<i>Vacant</i> ‡
6) <b>PAZ CASTRO</b> , Luis Mr.	<b>LIMA</b> , Antonio Monteiro Mr.
7) <b>ROBERTS</b> , Adrian Mr.	<b>HALLSTRÖM</b> , Per Mr.*
8) <b>SEDYAKIN</b> , Valeriy Mr.	<b>NIKITSIN</b> , Siarhei Mr.
9) <b>SHIMADA</b> , Kunihiro Mr.	BERMAN, Mark Mr.
10) <b>VERWEY</b> , Delano Ruben Mr.	<b>DYBKA</b> , Dariusz Mr.

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\* Mr. Hiahemzizou was absent on 6 February and in the morning of 7 February 2012.

† Mr. Nasr acted as member in Mr. Hiahemzizou's absence.

‡ No nomination was put forward at the seventh session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.

\* Mr. Hallström was absent on 6 February 2012.



Annex 1

**Provision of advice and facilitation under section IV, paragraph 6(a)**

**Indicative working arrangements**

1. The branch recalled the need to ensure due process and fair and equal treatment of Parties as well as consistency in the application of procedures across the two branches. To this end, the branch came to the following conclusions regarding working arrangements in its provision of advice and facilitation under section IV, paragraph 6(a), of the “Procedures and mechanisms relating to compliance under the Kyoto Protocol”.<sup>5</sup>
2. The branch emphasized that its function under section IV, paragraph 6(a), was primarily providing advice and facilitation to Parties in implementing the Kyoto Protocol. As such, any decision in this context is aimed at assisting Parties and promoting compliance. In this regard, it noted that the branch would make all efforts to reach consensus, recalling section II, paragraph 9.
3. The branch reiterated that its function of providing advice and facilitation under section IV, paragraph 6(a), could be triggered, in the absence of a question of implementation, only by the information contained in review reports made available to it pursuant to section VI, paragraph 3.
4. A member or alternate member may draw the branch’s attention to an issue relating to early warning of potential non-compliance (“early warning issue”) on the basis of those reports. Such issues should be raised at least 4 weeks in advance, with a view to their inclusion in the provisional agenda, in accordance with rule 7, paragraphs 3 and 4 of the rules of procedure.<sup>6</sup> A member or alternate member may also raise an early warning issue during a meeting. In the latter case, the branch may initiate its consideration of the early warning issue to determine whether it should be seized of that issue. If further time is needed, the branch may decide that such determination could be made through electronic means within an agreed time frame or at its following meeting.
5. The branch recalled that the Guidelines for review under Article 8 of the Kyoto Protocol<sup>7</sup> have the objective of promoting consistency in the review of the information contained in the national communication of Annex I Parties (see paragraph 2 (b) of annex to decision 22/CMP.1). Hence, if a member or alternate member raises an early warning issue based on a concern clearly stated in a report prepared under such guidelines, the branch would consider the early warning issue on its own merits.

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<sup>5</sup> This and subsequent references to sections, as well as references to the procedures and mechanisms, refer to the annex to decision 27/CMP.1.

<sup>6</sup> 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.

<sup>7</sup> Annex to decision 22/CMP.1



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6. The branch also noted that the issue of consistency of reviews under Article 8 of the Kyoto Protocol is a separate item on its agenda and it decided to revisit its approach to this issue on the basis of its further deliberations under that agenda item.
7. The branch also discussed the importance of considering all the relevant reports received under section VI, paragraph 3, in order to ensure fair and equal treatment of all Parties in its consideration of early warning issues. The branch concluded that it would further consider this matter at its next meeting.
8. The branch agreed that, once an early warning issue is brought to its attention, it needs to determine whether it should be seized of such an issue. To that end, the branch recognized that the procedure under section VII, paragraph 2, relating to “preliminary examination” could provide useful guidance to the branch. Through its practice, the branch would further develop its specific approach to applying such procedure.
9. If the branch is seized of the matter, section VIII could provide useful procedural guidance. Through its practice, the branch would further develop its specific approach to applying such a procedure. In this regard, the branch noted the need to ensure consistency in the application of procedures between the two branches, while at the same time providing for sufficient flexibility, noting that the early warning procedure was primarily aimed at providing advice and facilitation to Parties and promoting compliance in implementing the Kyoto Protocol.
10. In view of the above and noting sections VII and VIII, and rule 24 of the rules of procedure, the branch agreed that it should notify a Party to which an early warning issue relates as soon as it becomes seized of the matter. Such notification would be by letter from the Chair. It should, inter alia:
  - a. Inform the Party that the branch is seized of the matter;
  - b. Provide the Party with sufficient information to enable it to comment;
  - c. Ask the Party whether it wishes to engage in a dialogue with the branch, for example whether it wishes to attend the meeting to make oral representations or whether it prefers to respond in writing and whether it wishes the branch to provide any advice and facilitation; and
  - d. Include a timeline by which the Party is required to provide any comment or indicate whether (and, if so, how) it wishes to engage in such a dialogue.
11. Having notified the Party and given it an opportunity to engage in a dialogue, in accordance with paragraph 10 above, the branch may decide to apply the consequences set out in section XIV, sub-paragraphs (a) and (c).