



Experience of the facilitative branch of the Kyoto Protocol Compliance Committee in providing advice and facilitation to Parties in implementing the Kyoto Protocol

I. Background: mandate and content of the document

1. The facilitative branch of the Kyoto Protocol Compliance Committee,¹ at its nineteenth meeting, held on 7 September 2016 in Bonn, Germany,² continued its consideration of how it can provide advice and timely facilitation to Parties, strengthen the non-confrontational part of the compliance regime and make the facilitative role more visible and attractive to Parties. The branch had a productive discussion and began to identify possible ways to address these issues, such as through a toolbox of measures to assist Parties in implementing the Kyoto Protocol and for promoting compliance by Parties with their commitments.³

2. The facilitative branch noted that it has a rich body of experience to share in relation to the provision of advice and facilitation. Therefore, it decided to request the secretariat to prepare, in consultation with the bureau of the facilitative branch and the members and alternate members of the branch, a document that captures the past experience of the facilitative branch in providing advice and facilitation to Parties in implementing the Kyoto Protocol.⁴

(a) The document would describe the framework set out by decision 27/CMP.1, as applicable to the facilitative branch, and how the branch had applied its functions in practice, including:

- (i) The branch's own consideration of its role to provide advice and facilitation, including requests made to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) and the development of its own practice;
- (ii) The branch's experience in applying its functions and in developing the branch's own procedure in the case of early warning.

(b) Within each of these elements, the strengths, weaknesses and challenges would be identified on a factual level, without any additional assessment.⁵

3. In accordance with this request, the present document has been prepared by the secretariat, in consultation with the Chair and Vice-Chair of the facilitative branch, and the branch's members and alternate members, and is being made available for consideration at the next meeting of the facilitative

¹ Also referred to in this document as 'the branch'.

² Report on the nineteenth meeting of the facilitative branch (held 7 September 2016), CC/FB/19/2016/2. – All reports of the facilitative branch are available at: <http://unfccc.int/3786.php>.

³ *ibid*, paragraph 6. See also Annual report of the Compliance Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (2016), FCCC/KP/CMP/2016/3, paragraph 34. – All annual reports of the Committee are available at: <http://unfccc.int/3788.php>.

⁴ Report on the nineteenth meeting of the facilitative branch (footnote 2), paragraph 6. Annual report of the Compliance Committee to the CMP (2016) (footnote 3 above), paragraph 35.

⁵ Report on the nineteenth meeting of the facilitative branch (footnote 2), paragraphs 6–7.



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branch, to be held on 7 September 2017 in Bonn, Germany. The document covers the period from the beginning of the operations of the facilitative branch, in 2006, until the first half of 2017.

II. Framework set out by decision 27/CMP.1, as applicable to the facilitative branch, and how the branch applied its function in practice

A. Mandate and functions

1. Overall mandate

4. The **overall mandate** of the facilitative branch is set out in paragraph 4 of section IV of the “Procedures and mechanisms relating to compliance under the Kyoto Protocol” (annex to decision 27/CMP.1).⁶ In accordance with this mandate, the branch is responsible for **providing advice and facilitation to Parties in implementing the Kyoto Protocol**, and for **promoting compliance by Parties with their commitments** under the Protocol, taking into account the principle of common but differentiated responsibilities and respective capabilities as contained in Article 3, paragraph 1, of the Convention.

5. In accordance with paragraph 5 of section IV, within its overall mandate, the facilitative branch shall be responsible for addressing questions of implementation (other than those addressed by the enforcement branch⁷) in relation to:

- (a) **Response measures** – i.e. matters under Article 3, paragraph 14, of the Protocol, including questions of implementation arising from the consideration of information on how a Party included in Annex I⁸ (hereinafter, Annex I Party) is striving to implement Article 3, paragraph 14, of the Protocol; and
- (b) **Supplementarity** with regard to the use of flexible mechanisms – i.e. provision of information on the use by an Annex I Party of Articles 6, 12 and 17 of the Protocol as supplemental to its domestic action, taking into account any reporting under Article 3, paragraph 2, of the Protocol.⁹

6. In its practice so far, there has been no action or decision taken by the facilitative branch with regard to these specific functions under section IV, paragraph 5.

7. Since the beginning of the operations of the Compliance Committee in 2006, the facilitative branch has seen the need to reflect on its overall mandate in section IV, paragraph 4, and has gradually developed its own understanding and practice with regard to it as well as with regard to the early

⁶ In this document references to sections, as well as references to procedures and mechanisms, refer to the annex to decision 27/CMP.1.

⁷ As per section V, paragraph 4, the enforcement branch addresses questions of implementation with regard to quantified emission limitation and reduction commitments under Article 3, paragraph 1, of the Protocol (QELRCs); methodological and reporting requirements under Article 5, paragraphs 1 and 2, and Article 7, paragraphs 1 and 4, of the Kyoto Protocol; and eligibility requirements under Articles 6, 12 and 17 of the Protocol.

⁸ As defined in Article 1, paragraph 7, of the Kyoto Protocol.

⁹ Section IV, paragraph 5 (a–b).



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warning function (see paragraphs 10–16 below),¹⁰ on the basis of the procedures and mechanisms, and the rules of procedure.¹¹

8. During the following years, the Compliance Committee sought, through requests to the CMP, clarification as to the Committee's role with regard to facilitation. In particular, it asked for further guidance on actions the Committee could take in relation to delayed submission of national communications (NC) by Annex I Parties.

- (a) In **2007**, the facilitative branch noted with concern the late submission by several Parties of their fourth national communication (NC4) and the failure of two Parties to submit their NC 4 more than 20 months from the deadline.¹² Subsequently, the Committee, in its annual report to the CMP noted the failure of four Parties (Canada, Ireland, Italy and Luxembourg) to submit its NCs containing supplementary information required under Article 7, paragraph 4, of the Kyoto Protocol. It also noted that a significant number of Parties did not submit in a timely manner their NC4 containing information to enable the respective expert review teams (ERT) to perform their reviews.¹³
- (b) To this end, the Committee invited the CMP to clarify whether it requests the Committee to take any specific action when delays in submission by an Annex I Party of its NC have been brought to the attention of the secretariat, pursuant to paragraph 139 of the annex to decision 22/CMP.1.¹⁴
- (c) In that year, CMP 3 expressed its concern that not all Annex I Parties had submitted their NC4 and the supplementary information required under Article 7, paragraph 2, of the Kyoto Protocol in a timely manner. However, it did not provide guidance on the specific issues raised by the Committee with regard to its role.¹⁵
- (d) In **2008**, the facilitative branch continued its discussions on how to carry out its responsibility to provide advice and facilitation. In this context, the branch noted with increasing concern the failure of one Party (Luxembourg) to submit its NC4.¹⁶ This concern was reported by the Committee in its third annual report to the CMP (2008).¹⁷
- (e) Subsequently, in **2009**, following a proposal of the facilitative branch arising from discussions at its seventh meeting, the plenary of the Committee agreed to invite the CMP

¹⁰ See, e.g., Report on the first meeting of the facilitative branch (held 1–3 March 2006), CC/FB/1/2006/2, paragraph 3; Report on the second meeting of the facilitative branch (held 30–31 May 2006), CC/FB/2/2006/2, paragraph 3; Report on the fourth meeting of the facilitative branch (held 6 September 2006), CC/FB/4/2006/2, paragraph 4.

¹¹ The Committee developed its rules of procedure during its first year of operation. They were adopted by CMP 2 in 2006 and subsequently amended in 2008 and 2013. See Rules of procedures of the Compliance Committee of the Kyoto Protocol, annex to decision 4/CMP.2, amended by decisions 4/CMP.4 and 8/CMP.9. Informal consolidated version of 3 February 2014 available at: <http://unfccc.int/2875.php> (or: http://unfccc.int/files/kyoto_protocol/compliance/application/pdf/consolidated_rop_with_cmp_4&cmp9_amend_2014feb03.pdf).

¹² Report on the fifth meeting of the facilitative branch (held 6 September 2007), CC/FB/5/2007/2, paragraph 5.

¹³ Annual report of the Compliance Committee to the CMP (2007), FCCC/KP/CMP/2007/6, paragraphs 21–22.

¹⁴ Annual report 2007 (footnote 13), paragraph 4(b). See also footnote 51 below.

¹⁵ Decision 5/CMP.3 (2007), paragraph 2.

¹⁶ Report on the seventh meeting of the facilitative branch (held 26 October 2009), CC/FB/7/2009/2, paragraphs 5–6. Annual report of the Compliance Committee to the CMP (2008), FCCC/KP/CMP/2008/5, paragraph 20.

¹⁷ *ibid.*



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to clarify any action that the Committee could take in relation to its facilitative function and within the context of its mandate, including with respect to the continuing delays in the submission of national communications.¹⁸

- (f) CMP 5 (2009) urged Annex I Parties that had not yet submitted their NC4 and the supplementary information required under Article 7, paragraph 2, of the Kyoto Protocol to do so as a matter of priority.¹⁹ However, the CMP did not provide further clarification on the actions that the Compliance Committee could take in relation to its facilitative function.

9. During **2010–2012**, the facilitative branch advanced in the development of its own practice and the understanding of its role.

- (a) At its eight meeting, in July 2010, the branch noted that the Committee had sought advice from the CMP on two occasions on possible action in relation to delayed submission of NCs by Annex I Parties, and that the CMP had not yet addressed its request.²⁰ It also noted the need to take **proactive action** with respect to Parties that had not yet submitted their NC5.²¹ The branch underlined that, while it would welcome clarification, it was also useful to develop its own practice based on its mandate, as in the case of Monaco (see paragraph 37 below).²²
- (b) The facilitative branch continued the consideration of its role at its tenth meeting in October 2011.²³ With regard to the overall mandate under section IV, paragraph 4, the branch considered that the reference to having to “take into account the circumstances pertaining to the questions before it” in that paragraph should not be interpreted to necessarily refer to “questions of implementation”. It was rather a reference to the issues before it, which could include questions of implementation. The action by the branch in the case of Monaco’s delay in submitting its NC 5, was an example of the branch developing its practice pursuant to section IV, paragraph 4, **in the absence of a question of implementation**.²⁴
- (c) With regard to the further clarification of its practice and/or procedures, the facilitative branch found it premature to attempt to formalize its evolving practice at this stage and agreed to **continue to develop its practice** on the basis of the overall and specific mandates under section IV, paragraphs 4 to 6, and the rules of procedure.²⁵

¹⁸ Report on the sixth meeting of the plenary of the Compliance Committee (held 12–13 October 2009), CC/6/2009/4, paragraph 10. Annual report of the Compliance Committee to the CMP (2009), FCCC/KP/CMP/2009/17, paragraphs 4 (b), 20 and 22.

¹⁹ Decision 6/CMP.5 (2009), paragraph 2.

²⁰ Report on the eighth meeting of the facilitative branch (held 7 July 2010), CC/FB/8/2010/4, paragraphs 7–8. Annual report of the Compliance Committee to the CMP (2010), FCCC/KP/CMP/2010/6, paragraph 45.

²¹ Annual report 2010 (footnote 20), paragraph 46.

²² Report on the ninth meeting of the facilitative branch (held 30 September 2010), CC/FB/9/2010/2, paragraph 5. Annual report 2010 (footnote 20), paragraph 45.

²³ Report on the tenth meeting of the facilitative branch (held 20 October 2011), CC/FB/10/2011/3, paragraphs 5–11; see also background note prepared by the secretariat at a request by the Chair of the facilitative branch, CC/FB/10/2011/2.

²⁴ Report on the tenth meeting of the facilitative branch (footnote 23), paragraph 7.

²⁵ Report on the tenth meeting facilitative branch (footnote 23), paragraph 11. With regard to the interpretation of the rules of procedure, the facilitative branch further noted that “[in] this context, rule 24, paragraphs 1 and 2, which outline procedures to be followed by the branch in the context of its consideration of a question of implementation, should not be read as



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2. *Early warning*

10. Further to the overall mandate and the functions in section IV, paragraphs 4 and 5, paragraph 6 of section IV provides for specific functions of the facilitative branch with regard to ‘early warning’. With the aim of promoting compliance and providing for early warning of potential non-compliance, the branch shall be responsible for providing advice and facilitation for compliance with:

- (a) **Quantified emission limitation and reduction commitments (QELRCs)** – i.e. commitments under Article 3, paragraph 1, of the Protocol, prior to the beginning of the relevant commitment period and during that commitment period (early warning function under paragraph 6 (a));²⁶
- (b) **National systems** – i.e. commitments under Article 5, paragraphs 1 and 2, of the Protocol, prior to the beginning of the first commitment period;²⁷ and
- (c) **Greenhouse gas inventories** – i.e. commitments under Article 7, paragraphs 1 and 4, of the Protocol prior to the beginning of the first commitment period.²⁸

11. Similar to its consideration of its overall mandate, the facilitative branch has, throughout the years, **developed its practice** and own understanding regarding this ‘early warning’ function. While its engagement on the functions under paragraphs 6(b) and 6(c) was limited by the temporal component – both sub-paragraphs being restricted to the time prior to the beginning of the first commitment period, i.e. before 2008 –,²⁹ the facilitative branch developed a practice with regard to the function under **paragraph 6 (a)**, i.e. early warning of **potential non-compliance with commitments under Article 3, paragraph 1, of the Protocol (QELRCs)**. In the context of this mandate the facilitative branch discussed, at its tenth meeting, in October 2011, ways to address concerns with regard to potential non-compliance by Parties with their commitments under Article 3, paragraph 1, of the Protocol, identified in or on the basis of review reports received by the branch under section VI, paragraph 3.³⁰

12. Building on its discussions, the facilitative branch, at its eleventh meeting, in February 2012, agreed on **indicative working arrangements** for providing advice and facilitation under section IV, paragraph 6 (a). These included, *inter alia*, the following considerations:³¹

- (a) In general terms, the facilitative branch emphasized that any decision in the context of its function under section IV, paragraph 6(a), is **aimed at assisting Parties and promoting**

implying a limitation to the power of the branch to act in order to discharge its broader mandate under section IV, as it did in the case of Monaco”.

²⁶ Section IV, paragraph 6 (a).

²⁷ Section IV, paragraph 6 (b).

²⁸ Section IV, paragraph 6 (c).

²⁹ On this question see, e.g., Report on the thirteenth meeting of the facilitative branch (held 23 March 2013), CC/FB/13/2013/2, paragraph 7: “However, the branch noted ... the temporal limitations of paragraphs (b) and (c). In this regard, it noted that while many issues had been raised during the review process about national systems, its early warning function under paragraph 6 (b) in respect of this issue was limited.”

³⁰ Report on the tenth meeting of the facilitative branch (footnote 23), paragraphs 12–17; see also background note prepared by the secretariat at the request of the Chair of the branch, CC/FB/10/2011/2.

³¹ Provision of advice and facilitation under section IV, paragraph 6 (a) – Indicative working arrangements, contained in: Report on the eleventh meeting of the facilitative branch (held 6–8 February 2012), CC/FB/2012/2, annex 1. See also Annual report of the Compliance Committee to the CMP (2012), FCCC/KP/CMP/2012/6, paragraph 66.



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compliance. In this regard, the facilitative branch would make all efforts to reach consensus, recalling section II, paragraph 9.

- (b) The facilitative 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** – i.e. in final reports of ERTs other than those under Article 8 referred to in section IV paragraph 1 (see paragraphs 17(d) and 22–23 below).³² A member or alternate member may draw the branch’s attention to an issue relating to early warning of potential non-compliance on the basis of those reports.
- (c) The facilitative 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.
- (d) 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 facilitative 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 facilitative branch would further develop its specific approach to applying such procedure.
- (e) If the branch is seized of the matter, section **VIII (“General procedures”)** 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 facilitative 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.
- (f) 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** (including, *inter alia*, asking the Party whether it wishes to engage in a dialogue with the branch).
- (g) Having notified the Party and given it an opportunity to engage in a **dialogue** the branch may decide to apply the consequences set out in section XIV, sub-paragraphs (a) and (c).³³

13. The indicative arrangements, as noted in the Committee’s seventh annual report (2012), are work in progress and have been developed with a view to having a clear point of reference on how the facilitative branch would develop its practice in addressing issues relating to early warning of potential non-compliance. They would be tested in practice and kept under review, while the branch considered

³² Section VI, paragraphs 1 and 3, of the procedures and mechanisms read: “1. The Committee shall receive, through the secretariat, questions of implementation indicated in reports of expert review teams under Article 8 of the Protocol, together with any written comments by the Party which is subject to the report.” “3. In addition to the reports referred to in paragraph 1 above, the Committee shall also receive, through the secretariat, other final reports of expert review teams.”

³³ Indicative working arrangements (footnote 31), paragraphs 2–11.



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its first cases. In its deliberations over decisions about whether to be seized of a particular case, the facilitative branch would consider **whether or not there was 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.³⁴

14. The facilitative branch **applied** these arrangements at its eleventh meeting, when it considered the information regarding Italy.³⁵ – At this occasion the facilitative branch also set out its understanding that its role included the provision of advice and facilitation to individual Parties of the EU Burden Sharing Agreement (‘EU bubble’) on compliance with their commitments with Article 3, paragraph 1, of the Kyoto Protocol.³⁶ – The facilitative branch concluded at that meeting that the information available was not sufficient to engage in an early warning exercise.³⁷ Similarly, the facilitative branch, at its twelfth meeting, in October 2012, considered information with respect to Austria and Croatia in their NC5 and in their 2012 annual submissions, and concluded that the information available was not sufficient to engage in an early warning exercise.³⁸

15. The facilitative branch considered information with regard to all three Parties again in October 2013 and concluded that the information available was not sufficient to engage in an early warning exercise, but that the facilitative branch would revisit the matter.³⁹ In the following year, at its sixteenth meeting, in September 2014, the facilitative branch concluded its consideration of these three cases on the basis of the reports of the sixth national communication (NC6) and individual reviews of 2013, noting that they were all on track to meet their commitments.⁴⁰

16. The facilitative branch has **made use of measures with regard to early warning** in two cases, namely with regard to Monaco and with regard to Canada. These are described in the section on consequences (see paragraphs 37 and 39 below).

B. Submissions and initiation of procedures

17. There are various ways through which the Compliance Committee and its branches can **receive information** and become active on the basis of this information.

³⁴ Annual report 2012 (footnote 31), paragraph 68.

³⁵ Information from the in-depth review of Italy’s NC5 (FCC/IDR.5/ITA), and from the Compilation and synthesis of supplementary information incorporated in fifth NCs submitted in accordance with Article 7, paragraph 2, Kyoto Protocol (FCCC/SBI/2011/INF.2). See Report on the eleventh meeting of the facilitative branch (footnote 31), paragraph 11.

³⁶ Report on the eleventh meeting of the facilitative branch (footnote 31), paragraph 9. Annual report 2012 (footnote 31), paragraph 65.

³⁷ The facilitative 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. See Report on the eleventh meeting of the facilitative branch (footnote 31), paragraph 12; and Annual report 2012 (footnote 31), paragraph 67.

³⁸ Report on the twelfth meeting of the facilitative branch (held 22–23 October 2012), CC/FB/12/2012/3, paragraphs 14–17. See also Annual report 2012 (footnote 31), paragraph 68.

³⁹ Report on the fourteenth meeting of the facilitative branch (held 16 September 2013), CC/FB/14/2013/3, paragraphs 5–7; Annual report of the Compliance Committee to the CMP (2013), FCCC/KP/CMP/2013/3, paragraph 53. See also Report on the fifteenth meeting of the facilitative branch (held 18 March 2014), CC/FB/15/2014/2, paragraphs 7–10.

⁴⁰ Report on the sixteenth meeting of the facilitative branch (held 4 September 2014), CC/FB/16/2014/2, paragraph 9. Annual report of the Compliance Committee to the CMP (2014), FCCC/KP/CMP/2014/2, paragraph 36.



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- (a) According to the section VI of the procedures and mechanisms, the Committee receives, through the secretariat, questions of implementation indicated in **reports of ERTs under Article 8** of the Kyoto Protocol, together with any written comments by the Party which is subject to the report.⁴¹
- (b) Furthermore, the Committee can receive questions of implementation submitted by any **Party with respect to itself** (also known as ‘Party self-trigger’),⁴²
- (c) The Committee can also receive questions of implementation submitted by any **Party with respect to another Party**, supported by corroborating information (‘Party-to-Party trigger’).⁴³
- (d) In addition to questions of implementation indicated in ERT reports under Article 8 of the Kyoto Protocol (sub-paragraph 17(a) above), the Committee also receives, through the secretariat, **other final reports of ERTs**.⁴⁴
- (e) Finally, the facilitative branch may receive a question of implementation by way of **referral** from the enforcement branch.⁴⁵

18. Based on any of such submissions, the facilitative branch or the enforcement branch becomes active upon **allocation** by the bureau of the Committee of the question of implementation to the appropriate branch (in accordance with the mandates of each branch set out in section IV, paragraphs 4–7, and section V, paragraphs 4–6).⁴⁶ (As mentioned, ‘where appropriate’, the enforcement branch may also, at any time, refer a question of implementation to the facilitative branch for consideration, see paragraph 17(e) above.)

1. Questions of implementation raised in ERT reports under Article 8 of the Kyoto Protocol

19. So far, no cases have been allocated to the facilitative branch based on questions of implementation raised in ERT reports under Article 8 of the Kyoto Protocol.⁴⁷

2. ‘Party-self-trigger’

20. A question of implementation submitted by a Party with respect to itself has not been received by the Committee until today.

⁴¹ Section VI, paragraph 1. See paragraph 19 below.

⁴² Section VI, paragraph 1(a). See paragraph 20 below.

⁴³ Section VI, paragraph 1(b). See paragraph 21 below.

⁴⁴ Section VI, paragraph 3. See paragraphs 22–23 below.

⁴⁵ Section IX, paragraph 12. See paragraph 24 below.

⁴⁶ Section VII, paragraph 1. See paragraph 24 below.

⁴⁷ As per section VI, paragraph 1 (sub-paragraph 17(a) above). – On activities based on information in ‘other final reports by ERTs’, see paragraphs 22–23 below.



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3. *Party-to-Party submission of questions of implementation*

21. The facilitative branch received and considered one **Party-to-Party submission** to date. In May 2006, South Africa, in its capacity as chair of the Group of 77 and China, made a submission with respect to 15 Parties (Austria, Bulgaria, Canada, France, Germany, Ireland, Italy, Latvia, Liechtenstein, Luxembourg, Poland, Portugal, Russian Federation, Slovenia and Ukraine). The matter concerned the late submission of NCs. The submission made reference to section IV, paragraphs 4 and 6(a), of the procedures and mechanisms (i.e. both to the overall mandate and the early warning function of the branch), and was allocated by the bureau to the facilitative branch.⁴⁸ The branch began a **preliminary examination** on 31 May, which resulted (through the use of electronic means) on 21 June 2006 in the following:

- (a) The facilitative branch decided not to proceed against two Parties (Latvia and Slovenia), as both had submitted their reports by the time the facilitative branch considered whether or not to proceed;
- (b) In relation to the other Parties the facilitative branch was unable to adopt either a decision to proceed or a decision not to proceed, as neither decision met the required majority as per the procedures and mechanisms (majority of three-fourths of the members present and voting, as required by section II, paragraph 9, and section VII, paragraphs 4 and 6).⁴⁹

4. *Other final reports of ERTs, and information required by CMP decisions*

22. Under this category, the facilitative branch has been active in many occasions. ‘**Other final reports of ERTs**’, which the Committee and its branches receive through the secretariat as per section VI, paragraph 3, have been the major source of information for the facilitative branch’s activity in fulfilment of its mandate and functions. This source has been complemented by rule 24 of the Committee’s rules of procedure.⁵⁰ Rule 24, paragraph 3, specifies that the facilitative branch shall receive, through the secretariat, **information as required under relevant decisions of the CMP**. A relevant example is information provided in accordance with paragraph 139 of the annex to decision 22/CMP.1.⁵¹

23. All reports forwarded to the Compliance Committee are made publicly available on the UNFCCC website.⁵² Based on these reports and on other information received through the secretariat in

⁴⁸ Annual report of the Compliance Committee to the CMP (2006), FCCC/KP/CMP/2006/6, paragraphs 19–25. The case was considered before the adoption of the rules of procedure by CMP 2, at Nairobi, in November 2006 (see footnote 11).

⁴⁹ For details, including the wording of the decision to proceed and the decision not to proceed, see “Report to the Compliance Committee on the deliberations in the facilitative branch relating to the submission entitled ‘Compliance with Article 3.1 of the Kyoto Protocol’” contained in annex IV to the Annual report 2006 (footnote 48). For documentation of the submissions and reports regarding the individual Parties of the case see <http://unfccc.int/5516.php>.

⁵⁰ Rule 24 (in section 11 of the Committee’s rules of procedure, entitled ‘Procedures for the facilitative branch’) contains three paragraphs. On rule 24, paragraphs 1 and 2, see paragraph 36 below.

⁵¹ Decision 22/CMP.1, annex, ‘Guidelines for review under Article 8 of the Kyoto Protocol’. Paragraph 139 specifies that if an Annex I Party expects difficulties with the timeliness of its NC submission, it should inform the secretariat before the due date of the submission. If the NC is not submitted within six weeks after the due date, the delay shall be brought to the attention of the CMP and the Compliance Committee and made public (emphasis added).

⁵² See <http://unfccc.int/9104.php> and <http://unfccc.int/9121.php>. These include, in particular:

1. Reports forwarded by the secretariat to the Compliance Committee in accordance with section VI, paragraph 1 or 3:
 - Annual status reports of greenhouse gas inventories (see also paragraph 49 of the annex to decision 22/CMP.1)



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accordance with decisions of the CMP, the facilitative branch has, for example: considered early warning with regard to various Parties;⁵³ identified potential problems in the fulfilment of some Parties' commitments (in context of consideration under section IV, paragraph 6(a), on the basis of reports on an in-depth review of an NC, and the individual review of an annual submission, respectively);⁵⁴ engaged in a dialogue with a Party and asked whether it wished the branch to provide advice and facilitation.⁵⁵

5. *Referral by the enforcement branch*

24. So far, there have been no cases referred by the enforcement branch to the facilitative branch in accordance with paragraph 12 of section IX. While there have been some requests by the Party concerned to do so, the enforcement branch has concluded, in each case, that as long as there are unresolved problems pertaining to language of a mandatory nature, it was not appropriate to consider referral of the question of implementation to the facilitative branch.⁵⁶

C. *Procedures of the branch*

25. Apart from provisions on mandate and functions (section IV, see above), on submissions (section VI, see above), and on consequences (section XIV, see below), the annex to decision 27/CMP.1 provides for **procedures** and mechanisms that guide both branches in the conduct of their business. Relevant provisions are contained, for example, in section II,⁵⁷ section VII (allocation and preliminary examination)⁵⁸ and section VIII (general procedures). Again, many of these are complemented by the rules of procedure of the Committee.⁵⁹

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- Reports on the individual reviews of annual submissions
 - Reports on the expedited reviews for Annex I Parties
 - Reports on the reviews of reports upon expiration of the additional period for fulfilling commitments (true-up period) for the first commitment period of the Kyoto Protocol (see also <http://unfccc.int/9023.php>);
2. Reports forwarded by the secretariat in accordance paragraph 4 of decision 13/CMP.1:
- Annual compilation and accounting reports for Annex B Parties under the Kyoto Protocol.

⁵³ See paragraphs 14–16 above

⁵⁴ In 2011, the facilitative branch considered information on the basis of the in-depth review report concerning the NC5 of Italy and the report on the individual review of the 2010 annual submission of Canada, see Report on the tenth meeting of the facilitative branch (footnote 23), paragraph 16–17. At this occasion, the branch agreed to continue its consideration of the information contained in all reports submitted to it under section VI, paragraph 3, including those relating to Canada and Italy, at its future meetings, with a view to determining any appropriate action it may need to take under section IV, paragraph 6(a) (emphasis added). See also Annual report of the Compliance Committee to the CMP (2011), FCCC/KP/CMP/2011/5, paragraph 58.

⁵⁵ On two occasions, see paragraphs 37 and 39 below.

⁵⁶ See, e.g., Written Submission from Ukraine (22 July 2016), CC-2016-1-5/Ukraine/EB, executive summary, and paragraph 47; and the Final decision of the enforcement branch (7 September 2016), CC-2016-1-6/Ukraine/EB, with reference to previous decisions of the enforcement branch: CC-2011-1-8/Romania/EB, annex, paragraph 22; and CC-2011-3-8/Lithuania/EB, annex, paragraph 22 (b).

⁵⁷ See, e.g., paragraph 7 of section II, which requests the facilitative branch and the enforcement branch to interact and cooperate in their functioning, as well as the rules on quorum and decision-making in paragraphs 8 and 9 (see paragraph 30 below).

⁵⁸ Applied, e.g., in the case of the submission by South Africa (see paragraph 21 above).

⁵⁹ For example, rules 14–23 contain 'General procedures for the branches', which are relevant for the practical operations of both the facilitative and the enforcement branch.



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1. Participation of the Party concerned

26. The general rules governing the participation of the Party concerned are found in section VIII, in particular, in paragraphs 2, 6, 7 and 8, and complemented by the rules of procedure, particularly rules 16, 17, 18, as well as various provisions that require notification of the Party concerned of certain actions and decisions.⁶⁰ Typically, these rules related to the participation of the Party concerned become relevant when the facilitative branch, pursuant to its functions and based on the information received, decides to seize of a matter and to engage with a Party,⁶¹ as well as in any case that may be allocated to the facilitative branch.⁶²

2. Information available to the branch

27. In addition to the information that the facilitative branch receives according to section VI, which can lead to the branch's engagement with a Party, the facilitative branch may wish to seek further information once it is seized with a matter.

- (a) An important source in this regard are the reports by the Conference of the Parties (COP), the CMP, and the subsidiary bodies (section VIII, paragraph 3(d)).
- (b) Also competent intergovernmental and non-governmental organizations may submit relevant factual and technical information to the relevant branch (section VIII, paragraph 4). However, this has not been used by such organizations so far.
- (c) Furthermore, the facilitative branch may seek **expert advice**, in accordance with section VIII, paragraph 5, and rule 21 of the rules of procedure. Following some consideration of the question whether the branch may seek such expert advice also in the absence of a question of implementation, the facilitative branch noted in 2013 – subsequently to the development of its initial working arrangements relating to early warning – that, while it did not find it necessary to seek expert advice during its previous consideration of matters under its indicative working arrangements, it may wish to seek such advice in the future if it considers it necessary to do so, acting in accordance with the procedures and mechanisms.⁶³ Further, the facilitative branch noted that when it provides advice and facilitation it may need to call on expert advice, which could be given by lead reviewers involved in the ERT that had originally identified the problem with respect to a Party.⁶⁴

3. Observer participation

28. The participation of observers and the question whether meetings should be open or closed are governed by rule 9 of the rules of procedures.

⁶⁰ For example, the decision of referral of a question of implementation to the facilitative branch, rule 23, paragraph 2.

⁶¹ Such as in the two instances of a dialogue described in paragraphs 37 and 39 below.

⁶² Such as in the case allocated to the Committee described in paragraph 21 above.

⁶³ Report on the thirteenth meeting of the facilitative branch (footnote 29), paragraph 11. Annual report 2013 (footnote 39), paragraph 51.

⁶⁴ Report on the fourteenth meeting of the facilitative branch (footnote 39), paragraph 8.



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- (a) In accordance with **rule 9, paragraph 1**, meetings of the facilitative branch are to be “held in public unless the plenary or branch of its own accord or at the request of the Party concerned decides, for overriding reasons, that part or all of the meeting shall be held in private.” In practice, this means that the meetings of the facilitative branch are, in general, **open** to observers and the public; however, parts of the meetings have been closed for deliberations that considered information **concerning individual Parties** and could be of a **sensitive nature**.⁶⁵ Furthermore, meetings of the Committee have been closed, when information was reported from a meeting that had been closed.⁶⁶
- (b) In addition, **rule 9, paragraph 2**, provides that during the **elaboration and adoption of a decision** by a branch, only members and alternate members of the Committee and secretariat officials may be present.

29. With regard to the modalities of participation by observers and the general public, rule 9 of the rules of procedures has been further operationalized through general **working arrangements on public participation**, which were adopted by the plenary of the Committee at its fourth meeting, in 2007,⁶⁷ and subsequently reviewed and confirmed by the Committee in 2009.⁶⁸ The working arrangements foresee, among other things, that: those meetings of the Committee and the branches that are to be held in public will be recorded and broadcast on the Internet through the UNFCCC website; and that the secretariat take certain measures to facilitate the participation of observers.⁶⁹ The annual reports of the Compliance Committee regularly contain a section on transparency, communication and information to summarize the practice of the Committee and its branches in this regard.

4. *Quorum and decision-making*

30. The rules on quorum and decision-making for the branch follow the general provisions of section II, paragraphs 8 and 9.

- (a) Paragraph 8 requires for the adoption of decisions a **quorum of at least three fourths** of the members to be present. This quorum is not always met. In the practice of the facilitative branch, the use of **electronic means** – as provided for in **rule 11** of the rules of procedures – has therefore been of importance for the efficient proceeding of the facilitative branch’s

⁶⁵ For example, when the facilitative branch considered the information relating to Croatia and Austria (paragraph 14 above), see Report on the twelfth meeting of the facilitative branch (footnote 38), paragraph 12; or the information concerning Austria, Croatia, and Italy, Report on the fourteenth meeting of the facilitative branch (footnote 39), paragraph 6; as well as during the deliberation on information concerning Monaco and Slovenia (paragraphs 37 and 38 below), Report on the fifteenth meeting of the facilitative branch (footnote 39), paragraph 13.

⁶⁶ For example, during discussions on a joint workshop that had been held in private, see Report on the twelfth meeting of the plenary of the Compliance Committee (held 22–23 March 2013), CC/12/2013/3, paragraph 7; or during reports by bureau members from lead reviewers meeting, see Report on the fourteenth meeting of the plenary of the Compliance Committee (held 18 March 2014), CC/14/2014/4, paragraph 6 (see also paragraph 41 below); and Report on the sixteenth meeting of the plenary of the Compliance Committee (held 5 March 2015), CC/16/2015/2, paragraph 7.

⁶⁷ Annual report 2007 (footnote 13), paragraphs 15–18.

⁶⁸ Annual report 2010 (footnote 20), paragraph 16.

⁶⁹ In this regard, the secretariat is requested to: (a) Announce the dates and venue of each meeting of the plenary and the branches on the UNFCCC website in advance of the meeting and to provide information on how to register as observers or follow it on the Internet; (b) Establish a simple system of registration for observers on a first come first served basis; (c) Accommodate a limited number of observers in the room where the meeting of the plenary or the branches is being held and, in the event of space constraints, in an adjacent room that will have a live video feed of the parts of the meeting that are held in public; *ibid*, paragraph 16.



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work: Rule 11, paragraph 2, allows the Committee and its branches to “elaborate and take decisions in a written procedure using electronic means, where possible”. Such electronic means have been used by the facilitative branch in a number of instances, including in situations of a lack of quorum at a meeting, to progress its work subsequently to the meeting through electronic means.⁷⁰

- (b) For the decision-making itself, section II, paragraph 9, requires the facilitative branch to make every effort to reach agreement on any decisions by consensus. It further specifies that “if all efforts at reaching consensus have been exhausted, the decisions shall as a last resort be adopted by a majority of at least **three fourths of the members present and voting**”. For example, in the case submitted by South Africa in 2006, the branch failed to reach majority for either of the proposed decisions on the preliminary examination (see paragraph 21 above).

5. *Other aspects of the procedures*

31. Many other provisions are relevant for the regular operations of the facilitative branch, such as the provisions on **elections** of members and alternate members, on **chairing**, and **voting** rights.⁷¹

32. The rules to prevent possible **conflict of interest** or incompatibility with the requirements of **independence and impartiality** are also of high importance.

- (a) The main principles are reflected in rule 4, paragraphs 1 and 2, of the rules of procedure, which require each member and alternate member:
- (i) To serve in his or her individual capacity, act in an independent and impartial manner and avoid **real or apparent** conflicts of interest;⁷² and
- (ii) To **disclose** immediately any interest in any matter under discussion before the Compliance Committee which may constitute a conflict of interest or which might be incompatible with the requirements of independence and impartiality, and **refrain from participating** in the work of the Committee in relation to such matter.⁷³
- (b) In its discussions of this matter at its seventh and eighth meetings in 2010, the plenary of the Committee reached several understandings, also referred to as the Committee’s **working arrangements** on conflict of interest, including the following:
- (i) Being a member of a delegation to meetings under the Convention or its Kyoto Protocol and a member or alternate member of the Compliance Committee does not constitute in or of itself a conflict of interest or incompatibility with the requirements of independence and impartiality. However, there may be circumstances in which this situation could result in a conflict of interest or incompatibility with the requirements

⁷⁰ See for example, Report on the third meeting of the facilitative branch (held 6 September 2006), CC/FB/3/2006/2, paragraph 4. Similarly, Report on the ninth meeting of the facilitative branch (footnote 22), paragraph 6.

⁷¹ Section II, paragraphs 3–5; and rule 3 of the rules of procedures.

⁷² Rule 4, paragraph 1, of the rules of procedure.

⁷³ The latter is stated by each member and alternate member in his or her oath of service, in accordance with rule 4, paragraph 2. See also rule 4, paragraphs 3–6, of the rules of procedure.



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of independence and impartiality. Members and alternate members of the Committee should exercise due diligence in such circumstances.

- (ii) Rule 4, paragraph 4, of the rules of procedure allows the bureau to engage in informal discussions with the member or alternate member in relation to whom evidence of a possible conflict of interest has been received in accordance with this rule.
- (iii) Issues relating to potential conflicts of interest or incompatibility with the requirements of independence and impartiality should be raised in a timely manner. Such issues should be brought to the Committee's attention at the earliest possible time in the proceedings, when the information on the facts giving rise to a potential conflict of interest is available to the Party concerned, and not later than the hearing.⁷⁴

33. Occasionally, the **working arrangements** on conflict of interest have been invoked by facilitative branch members or alternate members with regard to themselves. In these cases, the member or alternate member then recused himself or herself from the consideration of the matter at hand in order to avoid possible perception of a conflict of interest.⁷⁵

D. Consequences

34. The procedures and mechanisms, in **section XIV**, envisage several **consequences** that the facilitative branch can apply. Taking into account the principle of common but differentiated responsibilities and respective capabilities, the branch shall decide on the application of one or more of the following:

- (a) Provision of advice and facilitation of assistance to individual Parties regarding the implementation of the Protocol;
- (b) Facilitation of financial and technical assistance to any Party concerned, including technology transfer and capacity-building from sources other than those established under the Convention and the Protocol for the developing countries;
- (c) Facilitation of financial and technical assistance, including technology transfer and capacity-building, taking into account Article 4, paragraphs 3, 4 and 5, of the Convention; and
- (d) Formulation of recommendations to the Party concerned, taking into account Article 4, paragraph 7, of the Convention.⁷⁶

⁷⁴ See Report on the eighth meeting of the plenary of the Compliance Committee (held 17–18 September 2010), CC/8/2010/7, paragraphs 11–13. Annual report 2010 (footnote 20), paragraphs 50–51.

⁷⁵ Report on the fifteenth meeting of the facilitative branch (footnote 39), paragraph 8; and Report on the sixteenth meeting of the facilitative branch (footnote 40), paragraph 8. See also Report on the eighteenth meeting of the facilitative branch (held 6 September 2015), CC/FB/18/2015/2, paragraph 6.

⁷⁶ Section IV, paragraph 7, and section XIV.



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35. When considering these consequences in the context of developing its mandate and functions under section IV, paragraphs 4 and 6, the facilitative branch generally agreed that, while the above sub-paragraphs (b) and (d) clearly refer to consequences to be applied by the branch in the case of a Party in relation to which a question of implementation had been raised ('the Party concerned' as defined in section VI, paragraph 2), sub-paragraphs (a) and (c) refer to consequences to be applied by the facilitative branch **outside** of its consideration of **questions of implementation**.⁷⁷ With regard to early warning under section IV, paragraph 6(a), this understanding (on the applicability of the consequences under sub-paragraphs (a) and (c) above to constellations other than questions of implementation) has subsequently been reflected in the initial working arrangements.⁷⁸

36. As mentioned above (paragraph 22), the various forms how the procedures can be initiated and measures can be used by the branch are complemented by rule 24 of the Committee's rules of procedure. This provision states that: (1) the facilitative branch may have a **dialogue** with the representative of the Party concerned; and (2) the representative of the Party concerned may enter into a dialogue with the facilitative branch in order to **seek advice and facilitation**.⁷⁹ So far, the facilitative branch has engaged in such a dialogue with respect to two Parties, in both cases in the form of an exchange of **letters**,⁸⁰ and in another instance considered engaging in such a dialogue.

37. The facilitative branch exchanged **letters** with a Party (Monaco) regarding the **timely fulfilment of its reporting obligations**. The branch has done so in two instances:

- (a) In 2010, the facilitative branch considered a delay in the submission by Monaco of its NC5. Upon decision by the branch (by electronic means), the Chair of the facilitative branch sent a letter (dated 28 July 2010) to the Party asking if the facilitative branch could provide advice and assistance. The Party replied (on 16 September 2010) stating its NC5 would be submitted by early November. When no report was received by mid-November, the facilitative branch Chair wrote to the Party again, as agreed by the branch, seeking when the report would be submitted and inquiring again if the branch could provide any advice or facilitation.⁸¹ Monaco submitted its NC5 on 25 March 2011.
- (b) In 2014, at its fifteenth meeting, the facilitative branch noted that Monaco was again late in submitting its NC (NC6).⁸² As agreed by the branch, the facilitative branch Chair wrote a letter to Monaco on 22 April 2014 asking whether the branch could provide any advice or facilitation. Monaco responded on 18 June 2014 explaining the delay and indicating that it did not need support. At its sixteenth meeting, the facilitative branch concluded its consideration of the matter.⁸³

⁷⁷ See Report on the tenth meeting of the facilitative branch (footnote 23), paragraph 10.

⁷⁸ Indicative working arrangements (see footnote 31), paragraph 11.

⁷⁹ Rule 24, paragraphs 1–2.

⁸⁰ See also Indicative working arrangements (see footnote 31), paragraph 10(c); and paragraph 12 (f–g) above.

⁸¹ Report on the ninth meeting of the facilitative branch (footnote 22), paragraph 6. Annual report 2010 (footnote 20), paragraphs 45–46.

⁸² Report on the fifteenth meeting of the facilitative branch (footnote 39), paragraphs 13–14.

⁸³ Report on the sixteenth meeting of the facilitative branch (footnote 40), paragraphs 12–13, and annex. Annual report of the Compliance Committee to the CMP (footnote 40), paragraph 37.



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38. In the same year, the branch also noted that another Party (Slovenia) was late in submitting its NC6 and agreed to write to them should they not meet the deadline given by the secretariat. As the Party submitted its NC6 before the deadline, no further action was taken.⁸⁴

39. In the case of another Party (Canada), the facilitative branch, following indications of potential problems, and subsequent strong concerns raised by the ERT regarding **potential non-compliance with Article 3, paragraph 1**, of the Protocol, offered the Party to engage in a dialogue:

- (a) In 2011 the facilitative branch noted that the report of the individual review of the annual submission of Canada pointed to a potential problem in fulfilment of this Party's commitments, which the facilitative branch considered to trigger its **functions under section IV, paragraph 6(a)**, of the procedures and mechanisms (early warning of potential non-compliance with commitments under Article 3, paragraph 1, of the Protocol, see paragraphs 10–16 above).⁸⁵
- (b) In 2012, the facilitative branch noted the strong concern by the ERT with regard to Canada's potential to become non-compliant with Article 3, paragraph 1. It also noted that Canada's **withdrawal** from the Protocol would be effective as of December 2012. While Canada was still a Party to the Protocol and applying the indicative working arrangements, the branch concluded it was seized of the matter and mandated its Chair to send a **letter** to Canada.⁸⁶ In the Chair's letter of 9 February 2012 Canada was offered to engage in a dialogue with the branch. Canada replied on 5 April 2012 indicating that in light of its withdrawal it saw little value in engagement with the facilitative branch. The Chair responded noting this would be taken up at the next meeting and seeking permission to publish the correspondence. In light of this, the facilitative branch concluded its consideration of the matter at its twelfth meeting.⁸⁷

E. Other activities of the facilitative branch

40. The facilitative branch has also played an active role in the Committee's efforts to ensure the **consistency of reviews** under Article 8 of the Kyoto Protocol. This issue has been under regular consideration by the Committee since 2008, not the least because it had been brought up by Parties in the context of questions of implementation (considered by the enforcement branch).⁸⁸ It received increased attention also from the facilitative branch over the years and was included as an item on its agenda from 2012 onwards.⁸⁹ The branch held that consistency is important because of **fairness**, which

⁸⁴ Report on the fifteenth meeting of the facilitative branch (footnote 39), paragraph 14. Annual report 2014 (footnote 40), paragraph 38.

⁸⁵ Report on the tenth meeting of the facilitative branch (footnote 23), paragraphs 16–17. Annual report 2011 (footnote 54), paragraphs 58–59.

⁸⁶ Report on the eleventh meeting of the facilitative branch (footnote 31), paragraphs 13–14.

⁸⁷ On the exchange of letters see: Report on the twelfth meeting of the facilitative branch (footnote 38), paragraph 6, and annex; Annual report 2012 (footnote 31), paragraphs 71–74, and annex II.

⁸⁸ See Report on the fifth meeting of the plenary of the Compliance Committee (held 8–9 October 2008), CC/5/2008/6, paragraphs 10–11; Report on the sixth meeting of the plenary of the Compliance Committee (footnote 18), paragraphs 12–13; and subsequent reports (available at: <http://unfccc.int/3788.php>).

⁸⁹ Report on the eleventh meeting of the facilitative branch (footnote 31), paragraphs 15–16.



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in turn generates confidence in the reporting, review and compliance system.⁹⁰ The branch noted the usefulness of examining how mandatory language is used in ERT reports, in particular with respect to identifying questions of implementation and their resolution; and also how the reports might signal the **risk of potential non-compliance** and the **need for early warning**.⁹¹

41. In order to foster shared understanding of consistency with ERTs, the Committee as a whole has engaged in exchanges and **dialogue with lead reviewers** in various ways. This has included **participation** of members of the bureau (i.e. of the Chair and/or the Vice-Chair of any of the two branches) in meetings of greenhouse gas inventory lead reviewers, as well as **joint workshops** of inventory lead reviewers and the Compliance Committee.

- (a) The first joint workshop on consistency of reviews under Article 8 of the Kyoto Protocol was held on 21 March 2013, which the facilitative branch noted to be a useful exchange, in particular in enabling a face to face discussion with lead reviewers that led to a better understanding of the reviewers' role and challenges faced by them in the review process.⁹²
- (b) A second joint workshop took place on 4 March 2015, with the participation of 25 members and alternate members of the Committee and 50 inventory lead reviewers. The workshop addressed a number of issues related to **consistency of the terminology and assessments** applied in the annual review reports. At its subsequent meeting the Committee noted that there was some scope for further joint discussion between members and alternate members and lead reviewers, and that such discussions could focus, in particular, on the understanding of the ERTs' mandate as well as further streamlining of terminology and explanations on the qualified assessment used in review reports.⁹³

42. At its seventeenth meeting in March 2015, the facilitative branch also considered that its work could include the identification of issues contained in review reports where the branch could have a role in providing advice and facilitation to Parties, for example, if review reports contained **repeated recommendations** that had not been addressed by the Party under review. The branch also noted that it would be useful to have 'case studies' to help advance its understanding. In this regard, members or alternate members could identify issues in the review reports relating to the implementation of the Kyoto Protocol and bring them to the attention of the branch. The branch could consider these issues and decide whether to engage in a dialogue with the relevant review teams, seek other expert input and/or offer advice and facilitation to the Party concerned.⁹⁴

43. Following the approach described in the paragraph above, members and alternate members of the facilitative branch reviewed a number of reports and identified specific issues, which were then discussed at the eighteenth meeting of the branch, in September 2015. In its consideration of the

⁹⁰ Report on the twelfth meeting of the facilitative branch (footnote 38), paragraph 25. In this context, the branch noted that consistency issues may arise across Parties and through time and that, in this regard, different Parties in similar positions should be treated similarly and that Parties should be treated consistently from one year to another.

⁹¹ *ibid.*

⁹² Report on the thirteenth meeting of the facilitative branch (footnote 29), paragraph 7. See also Report on the twelfth meeting of the plenary of the Compliance Committee (held 22–23 March 2015), CC/12/2013/3, paragraph 7.

⁹³ Report on the sixteenth meeting of the plenary of the Compliance Committee (footnote 66), paragraph 8.

⁹⁴ Report on the seventeenth meeting of the facilitative branch (held 5 March 2015), CC/FB/17/2015/2, paragraph 6. In this context, the branch also raised concerns on the use of language in the review reports and the need for consistency in its use across reports, *ibid.*, paragraph 7.



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information and how to take this work forward, the branch noted a number of issues that may require further consideration, including where recommendations contained in previous review reports have been reiterated and where there were **qualifying references** (such as ‘generally transparent’ and ‘generally complete’) regarding completeness and transparency.⁹⁵ The facilitative branch also reiterated the importance of maintaining a dialogue with expert reviewers in this context.⁹⁶ For their part, the lead reviewers have dedicated considerable time and effort to issues of consistency of reviews. The consideration of improvements to the quality, efficiency and consistency of reviews have become a standing item on the agenda of the lead reviewers meetings.⁹⁷

F. Next steps

44. The facilitative branch, at its meeting in September 2017, will be invited to consider the present document and take any further action it deems appropriate.

⁹⁵ Report on the eighteenth meeting of the plenary of the Compliance Committee (held 6 September 2015), CC/18/2015/2, paragraph 8. Further, the branch noted that it was important from a legal perspective to distinguish mandatory requirements and that it was sometimes difficult to assess the degree of seriousness of an issue raised in the review reports; *ibid.*

⁹⁶ *ibid.*

⁹⁷ See, e.g., Fourteenth meeting of greenhouse gas inventory lead reviewers (held 8–9 March 2017), Conclusions and recommendations, paragraphs 35–36. (The conclusions from this and previous meetings and further information is available at: <http://unfccc.int/2762.php>.) – It should be noted here that, while the considerations of the facilitative branch, and the Compliance Committee in general, are by nature of its mandate and legal foundation focused on the reviews under the Kyoto Protocol, the lead reviewers’ efforts to improve consistency relate to aspects of reviews both in the Kyoto Protocol and in the Convention context. (See also relevant references to improving the quality, efficiency and consistency of reviews contained in decision 13/CP.20, annex, paragraphs 6, 44 and 51.)