



Draft Rules of Procedure

Note by the secretariat

1. Pursuant to paragraph 2 of the “Procedures and mechanisms relating to compliance under the Kyoto Protocol,” the Compliance Committee is to develop any further rules of procedure that may be needed, including rules on confidentiality, conflict of interest, submission of information by intergovernmental and non-governmental organizations, and translation, for adoption by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, by consensus.
2. This note contains the draft rules of procedure prepared by the secretariat based on the rules of procedure contained in document FCCC/CP/1996/2, and on decision 27/CMP.1, as well as the rules of procedure adopted under other relevant multilateral agreements.



Draft rules of procedure*

I. Objective

Rule 1

These rules of procedure shall apply to the meetings of the Compliance Committee, including its Enforcement Branch and Facilitative Branch, as defined in the annex to decision 27/CMP.1. They shall be read together with and in furtherance of the procedures and mechanisms set out in that decision.

II. Definitions

Rule 2

1. References in these rules to a numbered section shall be understood as references to the section so numbered in the annex to decision 27/CMP.1.
2. For the purposes of these rules:
 - (a) “branch” means the Enforcement Branch or the Facilitative Branch established by section II.2;
 - (b) “co-chairs” means the chair of the Enforcement Branch and the chair of the Facilitative Branch acting together in the plenary of the Committee in accordance with section III.1;
 - (c) “Committee” means the Compliance Committee established by section II.1;
 - (d) “Party” means a Party to the Kyoto Protocol to the United Nations Framework Convention on Climate Change;
 - (e) “secretariat” means the secretariat referred to in section XVII.

* Explanatory notes on each of the Rules follow the draft text. These have been provided solely to facilitate discussion.



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III. Place of meetings

Rule 3

The Committee and its two branches shall meet at the seat of the secretariat, unless the Committee or the branch in question decides otherwise, subject to availability of funds.

IV. Dates and notice of meetings

Rule 4

At each meeting of the Committee and of a branch, its members shall decide on the dates and duration of their next meeting.

Rule 5

The secretariat shall notify all members of the Committee of the dates of a meeting of the Committee or a branch at least four weeks before it is due to commence, except in the case of a meeting of the Enforcement Branch under the expedited procedures specified in section X when the members shall be notified at least two weeks in advance.

V. Agendas and documentation

Rule 6

The agendas of the Committee and its two branches shall be limited to their respective functions as specified in sections III to V and to matters necessarily related thereto.

Rule 7

1. The secretariat shall draft the provisional agenda for each meeting of the Committee in agreement with the bureau of the committee.
2. The secretariat shall draft the provisional agenda for each meeting of the Enforcement Branch and Facilitative Branch in agreement with the branch's chair and vice-chair.

Rule 8

The provisional agenda for a meeting shall be distributed by the secretariat to all members of the Committee together with the notification referred to in Rule 5. At the same time, the secretariat shall distribute to the members of the Committee or of the branch in question, the official documents for its own meeting.



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Rule 9

1. The secretariat shall, with the agreement of the co-chairs, include in a supplementary agenda any items proposed for consideration by a member of the Committee that are received by the secretariat after the provisional agenda has been produced but before the commencement of the meeting. The Committee shall examine the supplementary agenda together with the provisional agenda.

2. The secretariat shall, with the agreement of the chair and vice-chair of the branch in question, include in a supplementary agenda any item proposed for consideration by a member of the branch that is received by the secretariat after the provisional agenda has been produced but before the commencement of the meeting. The branch shall examine the supplementary agenda together with the provisional agenda.

Rule 10

The Committee or a branch, when adopting its agenda, may decide to add, delete, defer or amend items. Only items that the Committee or branch considers to be urgent, important and sufficiently well prepared may be added to an agenda.

Rule 11

1. Relevant factual and technical information relating to an issue currently under consideration by a branch may be submitted in writing to the secretariat by any competent intergovernmental or non-governmental organization. If the chair of the branch concerned is satisfied that the information could be relevant to the issue under consideration, the secretariat shall distribute it as soon as practicable to the members of the Enforcement Branch or Facilitative Branch, as appropriate.

2. The branch to which such information is distributed shall consider it in the context of the agenda item to which it relates.

3. Any intergovernmental or non-governmental organization whose information has been distributed to a branch for consideration shall be informed individually by the secretariat of the final decision to which the information relates.

VI. Members

Rule 12

1. The term of service of a member, or alternate member, of the Committee shall start on 1 January of the calendar year immediately following his/her election and shall end on 31 December, two or four years thereafter, as applicable.



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2. Any reference in these rules to a member shall be considered to include a reference to his/her alternate when such alternate acts in place of the member.
3. During the absence of a member from all or part of a meeting of the Committee or of the branch to which he/she has been elected, his/her alternate shall act as the member.

Rule 13

Each member of the Committee shall, with respect to any matter that is under consideration by the Committee or the branch to which he/she has been elected, act in an independent and impartial manner and avoid direct or indirect conflicts of interest. Any interest that may constitute a conflict of interest or which might be incompatible with the requirements of independence and impartiality expected of a member of the Committee shall be disclosed as soon as possible to the secretariat which shall forthwith notify the members of the Committee. The member shall refrain from participating in the work of the Committee or the branch concerned in relation to such matter.

VII. Officers

Rule 14

The chair and vice-chair of each branch shall serve in those capacities until their successors have been elected.

Rule 15

1. In addition to exercising the powers conferred upon him or her elsewhere in these rules, a chair shall:
 - (a) Declare the opening and closure of the meeting;
 - (b) Preside over the meeting;
 - (c) Ensure the observance of these rules;
 - (d) Accord members the right to speak;
 - (e) Put questions to the vote and announce decisions;
 - (f) Rule on any points of order; and
 - (g) Subject to these rules, have complete control over the proceedings and maintain order.



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2. A chair may also propose:
 - (a) The closure of the list of speakers;
 - (b) A limitation on the time to be allowed to speakers and on the number of times a member may speak on an issue;
 - (c) The adjournment or closure of debate on an issue; and
 - (d) The suspension or adjournment of the meeting.
3. A chair, in the exercise of his or her functions, remains under the authority of the Committee or, as the case may be, of the Enforcement Branch or Facilitative Branch.

Rule 16

1. If a co-chair is temporarily absent from a meeting of the Committee or any part thereof, the vice-chair of the branch of which he or she is a member shall act as co-chair.
2. If the chair is temporarily absent from a meeting of his or her branch or of any part thereof, the vice-chair of that branch shall act as chair.

Rule 17

If a chair or co-chair resigns or is otherwise unable to complete the assigned term or the functions of his or her office, the branch in question shall elect, in accordance with the terms of section II.4, a replacement from among its existing members for the unexpired period of that officer's mandate.

VIII. Participation in proceedings of Committee and its branches

Rule 18

Where a Party is the subject of proceedings before the Enforcement Branch or the Facilitative Branch, it shall be invited to participate in the branch's consideration of its case. The Party shall not, however, take part in the elaboration and adoption of the decision of the branch. The decision shall be forwarded to the Party for information as soon as possible.

Rule 19

The members of the Committee and any Party that participates in the proceedings of a branch shall protect the confidentiality of any information that the Committee or the branch receives in confidence.



IX. Secretariat

Rule 20

1. The secretariat shall prepare the documents for each meeting of the Committee in consultation with the co-chairs.
2. The secretariat shall prepare the documents for the meetings of each branch in consultation with the chair and vice-chair of that branch.
3. In addition, the secretariat shall:
 - (a) Arrange for the preparation, reproduction and distribution of the documents;
 - (b) Arrange for the custody and preservation of the documents of each meeting in the archives of the secretariat;
 - (c) Provide resources for the work of the Compliance Committee in accordance with the approved budget; and
 - (d) Perform such other tasks as the Committee or its branches may require in relation to their respective functions.

X. Conduct of Business

Rule 21

Meetings of the Committee and its branches shall be held in private, unless its members decide otherwise.

Rule 22

1. No one may speak at a meeting of the Committee or a branch without having previously obtained the permission of its chair. Subject to rules 23, 24 and 26, the chair shall in general call upon members in the order in which they signify their wish to speak. The secretariat shall maintain a list of speakers. The chair may call a member to order if his or her remarks are not relevant to the issue under discussion.
2. A meeting may, on a proposal from its chair or a member, decide to limit the time allowed to each speaker and the number of times a member may speak on an issue. When it has been decided to so limit the time for debate and a member exceeds the allotted time, he or she shall be called to order without delay.



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Rule 23

At any time during the discussion of an item, a member may raise a point of order, which shall be ruled upon immediately by the chair in accordance with these rules. Any member may appeal against the ruling. The appeal shall be put to a vote immediately and the ruling shall stand unless it is overturned by a majority of the members present and voting. A member may not, in raising a point of order, speak on the substance of the item under discussion.

Rule 24

1. Any motion by a member of the Committee calling for a decision on the competence of the Committee to discuss a matter or to adopt a proposal or an amendment to a proposal shall be decided upon by the Committee before the matter is discussed or a decision is taken on the proposal or amendment in question.
2. Any motion by a member of the branch calling for a decision on the competence of a branch to discuss a matter or to adopt a proposal or an amendment to a proposal shall be decided upon by that branch before the matter is discussed or a decision is taken on the proposal or amendment in question.

Rule 25

1. Proposals and amendments to proposals by a member of the Committee for consideration by the Committee shall normally be presented in writing to the secretariat which shall circulate copies to the other members of the Committee.
2. Proposals and amendments to proposals by a member of a branch for consideration by the branch shall normally be presented in writing to the secretariat which shall circulate copies to the other members of the branch in question.
3. As a general rule, no proposal shall be discussed or decided upon at any meeting unless copies of it were circulated to the members at least the day before. The chair may, however, permit the discussion and consideration of amendments to proposals or of procedural motions even though those amendments or motions have not been circulated or have been circulated only the same day.

Rule 26

1. Subject to Rule 20, the following motions shall have precedence, in the order indicated below, over all other proposals or motions:
 - (a) To suspend the meeting;
 - (b) To adjourn the meeting;



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- (c) To adjourn debate on a question under discussion;
 - (d) For closure of the debate on a question under discussion.
2. Permission to speak on a motion falling within paragraph 1 (a) to (d) shall be granted only to the member proposing the motion and to one speaker against the motion, after which it shall immediately be put to a vote.

Rule 27

A proposal or motion may be withdrawn by the member who proposed it at any time before voting on it has begun, provided that the proposal or motion has not been amended. A proposal or motion withdrawn may be reintroduced by any other member of the Committee or branch in question.

Rule 28

When a proposal has been adopted or rejected, it may not be reconsidered during the same meeting, unless the Committee or branch by a three-quarters majority of its members present and voting decides in favour of reconsideration. The meeting shall not proceed to a vote on such a proposal unless one member speaks in support of the mover of the motion to reconsider. Permission to speak shall, however, be accorded only to the mover and one supporter, after which the motion shall immediately be put to the vote.

Rule 29

If two or more proposals relate to the same issue, the meeting shall, unless it decides otherwise, decide on the proposals in the order in which they have been submitted. The meeting may, after each decision on a proposal, decide whether or not to take a decision on the next proposal.

Rule 30

1. Any member may request that part of a proposal or of an amendment to a proposal be decided on separately. If objection is made to the request for division, the chair shall permit two members to speak, one in favour of and the other against the motion, after which a decision shall immediately be taken on it.
2. If the motion referred to in paragraph 1 is adopted, those parts of the proposal or of the amendment to the proposal which have been approved shall then be decided on as a whole. If all the operative parts of the proposal or amendment have been rejected, the proposal or amendment shall be considered to have been rejected as a whole.



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Rule 31

A motion is considered to be an amendment to a proposal if it in any way adds to, deletes from or revises that proposal. The meeting shall decide on an amendment before it decides on the proposal to which it relates and, if the amendment is adopted, the amended proposal shall then be voted on.

Rule 32

If two or more amendments to a proposal are moved, the meeting shall first decide on the amendment furthest removed in substance from the original proposal, then on the amendment next furthest removed therefrom, and so on, until decisions have been made on all the amendments.

Rule 33

Voting on a single proposal shall normally be by show of hands. A roll call shall be taken if one is requested by any member. It shall be taken in the English alphabetical order of the names of the Parties from which the members participating in the meeting come, beginning with the member whose name is drawn by lots by the chair.

Rule 34

The vote of each member participating in a roll call vote shall be recorded in the report of the meeting.

Rule 35

After the chair has announced the beginning of voting, no member shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. The chair may permit members to explain their votes, either before or after the voting, and may limit the time allowed for such explanations.

Rule 36

In the absence of consensus, the elections referred to in section II.4 and rule 17 shall be decided by means of a secret ballot.

Rule 37

1. If, when one person is to be elected, no candidate obtains in the first ballot a majority of the votes cast by the members of the branch present and voting, a second ballot restricted to the



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two candidates obtaining the largest number of votes shall be taken. If in the second ballot the votes are equally divided, the chair shall decide between the candidates by drawing lots.

2. In the case of a tie in the first ballot among three or more candidates obtaining the largest number of votes, a second ballot shall be held. If a tie results among more than two candidates, the number shall be reduced to two by lot and the balloting, restricted to them, shall continue in accordance with the procedure set forth in paragraph 1 of this rule.

XI. Languages

Rule 38

The working language of the Committee and its branches shall be English.

Rule 39

A representative of a Party taking part in the proceedings of a branch may speak in a language other than the working language if that Party provides for interpretation into the working language of the branch.

Rule 40

Decisions of the Committee and its branches shall be drawn up in English and translated into the other official languages.

XII. Amendments to rules of procedure

Rule 41

Amendments to these rules of procedure shall be adopted by consensus of the Committee and submitted to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol for approval.

XIII. Overriding authority of the Protocol and decision 27/CMP.1

Rule 42

In the event of a conflict between any provision in these rules and any provision in the Kyoto Protocol or decision 27/CMP.1, the provision of the Protocol or, as the case may be, the decision shall prevail.



Explanatory notes

Rule 1

The Annex to decision 27/CMP.1 contains many provisions that would normally be found in rules of procedure. This is recognized in the opening words of section III, paragraph 2(d). Rather than repeat all those provisions in the present text, the second sentence of R1 defines the relationship of the present text to the Annex to decision 27/CMP.1. For example, decision-making for the Compliance Committee and its branches is covered in decision 27/CMP.1.

Rule 2

In order to avoid having to make frequent references to the Annex to COP decision 27/CMP.1 throughout the rules (e.g. in RR 2 (a)(b)(c) and (e), 6, 17 and 36), a provision such as paragraph 1 could be included. Various formulations are possible. Another would be:

- (a) References in these rules to a “section” mean the section that bears that number in the Annex to decision 27/CMP.1.

Rule 3

As written, the Rule assumes that the Committee and its branches may meet away from Bonn and that either the Committee or the branch concerned may so decide. If, however, the CC concludes that (a) all meetings must take place in Bonn, the text should stop after “secretariat” and (b) meetings may take place away from Bonn, but only if the Plenary of the Committee so decides, the phrase “or the branch in question” should be deleted.

Rule 4

The CC will recall that already section II.10 of the Annex to decision 27/CMP.1 provides that the Committee will:

- (a) meet at least twice a year (unless the Committee decides otherwise); and
- (b) take into account the desirability of holding meetings in conjunction with those of the UNFCCC’s subsidiary bodies.

Rule 5

The words “and place” should be deleted if the CC decides in Rule 3 that all meetings must be held in Bonn. It seems appropriate to circulate all notifications of meetings, as well as all draft agendas (see R 8), to each Committee member for members of the Facilitation Branch will need to keep abreast of what is happening in the Enforcement Branch and vice versa.



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Rule 6

The phrase “and to matters necessarily related thereto” would make explicit a point that the Parties would almost certainly consider to be implicit in the terms of R6.

Rule 7

See UNFCCC, R.9.

Rule 8

Cf. UNFCCC, R 11, which in line 1 says “shall be distributed in the official languages”. However, see R 40, below, which provides that all decisions of the Committee and its branches shall be translated into all the official languages of the UNFCCC.

Rule 9

See UNFCCC, R 12.

Rule 10

See UNFCCC, R 13. The phrase “sufficiently well prepared” is new. It is included since it is assumed that, in view of the nature of the their work, the Committee and its branches will wish to deal with work only if it has been sufficiently prepared to enable proper judgments to be made in respect of them.

Rule 11

1. Provision for the submission of information by IGOs and NGOs is envisaged by section III.2 (d) of the Annex to decision 27/CMP.1. Section VIII, paragraph 4, foresees such information, if it is relevant, factual and technical in nature, being forwarded to the relevant branch.

2. The CC may wish to consider criteria to determine competency.

Rule 12

See RR 4.2, 5.2 and 5.3 of the ROP of the CDM’s Executive Board.



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Rule 13

See R 10. of the CDM's ROP on conflict of interest and confidentiality, which provide for an oath of service, and R7, which provides for suspension and termination, and the WTO's Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes, which provides for self-disclosure.

Rule 14

See UNFCCC RR 22 and 26. Instead of "in those capacities" the CC may prefer to say "as the officers of the Committee and the branch of which they are members" (as in, eg, Aarhus, R 18.1.)

Rule 15

See UNFCCC, R 23.

Rule 16

See UNFCCC, R 24.

Rule 17

See UNFCCC, R 25.

Rule 18

See the Basel compliance procedure, para. 15 (part); however, its final words ("for consideration and an opportunity to comment. Any such comments shall be forwarded with the report of the Committee to the COP") have been omitted since the present rules have been drafted on the basis that all comments from a Party concerned should be presented before the branch elaborates and adopts its decision.

Rule 19

The Basel compliance procedure, para. 26, speaks of protecting the confidentiality of information received whilst the LRTBAP Convention's compliance procedure, para. 7, is expressed in terms of ensuring confidentiality. The modalities and procedures for the CDM go into greater detail on confidentiality where the Executive Board's members are concerned.

Rule 20

See UNFCCC, R 28.



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Rule 21

Meetings dealing with specific submissions relating to the compliance of an individual Party shall not be open to other Parties or the public, unless the Committee and the Party whose compliance is in question agree otherwise.

Rule 22

See UNFCCC, R 32. “In general” in paragraph 1 does not appear in the precedents, but it reflects reality.

Rule 23

See UNFCCC, R 34.

Rule 24

Cf. UNFCCC, R 35 which in line 3 of its equivalent of paragraphs 1 and 2 speaks of “put to a vote” rather than “decided upon”, which is the phrase used in certain other precedents.

Rule 25

See UNFCCC, R 36.

Rule 26

Cf. UNFCCC, R 38. The ROP of open-ended bodies such as the COPs of UNFCCC and the Montreal Protocol provide for there to be two speakers against the motion before there is a vote, but in view of the restricted sizes of the Committee and its branches, the CC may consider one speaker against would be sufficient.

Rule 27

See UNFCCC, R 39.

Rule 28

1. Cf. UNFCCC, R 40. The precedents provide for decisions on reconsideration of proposals to be taken by a $\frac{2}{3}$ majority. Section II.9 of the Annex to decision 27/CMP.1 states, however, that failing achievement of consensus, the Committee (and by inference also its branches) shall adopt decisions by a $\frac{3}{4}$ majority. No distinction is made in section II.9 between decisions on matters of substance and decisions on matters of procedure, despite the fact that in the case of procedural decisions a simple majority is the tradition. Given that R28 concerns a procedural matter, the CC might suggest that, notwithstanding section II.9, R 28



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should provide for simple majority voting. If, on the other hand, the conclusion is that the approach of the typical multilateral environmental agreement should be followed, it would be necessary to alter $\frac{3}{4}$ to $\frac{2}{3}$ in the text above. (See also the note on R.37, below.)

2. The ROP of open-ended bodies, such as the COPs of UNFCCC and the Montreal Protocol, provide – as in the draft above – for there to be no more than two speakers (both of them in support of the motion) before a motion to reconsider a proposal is voted on. Even in the case of bodies of restricted size, such as the Committee and the branches, there is reason to keep the number of speakers at two since it gives the meeting an indication that the proposer of the motion has some support and hence that a vote called for has at least some prospect of success. If, on the other hand, the CC decides not to go as far as this, it could substitute for the second sentence of the above rule, the following which, whilst still restricting the number of speakers to two, does not make it a precondition of holding a vote that the proposal is seconded:

- (a) Permission to speak on a motion to reconsider shall be accorded to the mover, and the motion may be seconded by one supporter, after which it shall immediately be put to a vote.

Rule 29

See UNFCCC, R.43.

Rule 30

See UNFCCC, RR.44 and 45.

Rule 31

See UNFCCC, R.46.

Rule 32

See UNFCCC, R.47.

Rule 33

See UNFCCC, R.48. The members of the Committee are appointed and serve in their individual capacities (see section II.3 and II.6 of the Annex to decision 27/CMP.1). Hence it would seem appropriate to refer in this rule to the order of voting being based on the alphabetical order of the Parties from which the members “come”, rather than which they “represent.”



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Rule 34

See UNFCCC, R.49.

Rule 35

See UNFCCC, R.50.

Rule 36

Elections to the Committee under section II.3 of the Annex to decision 27/CMP.1 will be governed by the ROP of the COP/MOP and hence are not the concern of the present rules. UNFCCC, R.51 provides that: All elections shall be held by secret ballot, unless otherwise decided by the Conference of the Parties.

Rule 37

Cf. UNFCCC, R.52.

Rule 38

1. Cf. UNFCCC, R.54.

2. Unlike the decision on the modalities and procedures of the CDM, decision 27/CMP.1 makes no provision concerning the languages to be used by the Committee and its branches. It is possible that the reference in section III, paragraph 2 (d), of the Annex to decision 27/CMP.1 to developing “any further rules that may be needed...on ...translation” is an invitation to the CC to make appropriate provision in the ROP. To this end, the CC would seem to be free to follow either the COP model and provide for interpretation and documentation in all six United Nations languages or alternatively, bearing in mind that the Committee is a technical body of small size, make provision for working in one language only. In this latter regard, it may be noted that:

- (a) draft rules for the CDM provide that “The working language of the Executive Board shall be English” and that “Decisions shall be made available in all six official languages of the United Nations”; and
- (b) the Compliance Committees of other multilateral environmental agreements (e.g. Montreal Protocol and the Long-Range Transboundary Air Pollution Convention) use English as their only working language.



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Rule 39

See UNFCCC, R.55.2.

Rule 40

1. As pointed out in the Note to R 38, above, section III, paragraph 2(d), of the Annex to decision 27/CMP.1 expressly envisages the possibility of the ROP including provision with regard to translation but is silent on the question of what that provision must, or should, be. Section VII, paragraph 9, stipulates that a Party concerned may require certain documentation to “be translated into one of the six official languages of the United Nations”, the implication being that normally the documentation of the Committee and its branches will be in just one language.
2. R 54 of the ROP of the United Nations Framework Convention on Climate Change (as applied) specifies that the official languages of the COP shall be Arabic, Chinese, English, French, Russian and Spanish.

Rule 41

It is normal for the adoption and amendment of the ROP of MEAs to be by consensus: see, eg UNFCCC, Article 7.2(k) and R.58.1. Decision 27/CMP.1 was itself adopted by consensus and it provides in section III.2(d) for the adoption of the “further rules” it envisages to be by consensus. As matters currently stand under the ROP of the UNFCCC and Kyoto Protocol, consensus would be required for the adoption of the present rules but, if between now and the adoption of the rules, the outstanding issues relating to those rules are resolved, the adoption of the present rules could be by some form of majority vote. This is because Operative Paragraph of 2 of decision 27/CMP.1 is silent on the voting majority it recommends the COP/MOP to apply.

Rule 42

See UNFCCC, R.59.
