



ENFORCEMENT BRANCH

Twenty-sixth meeting

5 March 2015
Bonn, Germany

Provisional agenda and annotations

Provisional agenda

1. Opening of the meeting
2. Adoption of the agenda
3. Organization of work
4. Effects of a Party's withdrawal from the Kyoto Protocol on its reporting obligations
5. Other matters
6. Closure of the meeting



Annotations to the provisional agenda

1. Opening of the meeting

2. Adoption of the agenda

1. The branch may wish to consider the provisional agenda for adoption.

3. Organization of work

2. The branch may wish to consider the organization of its work for the meeting, including its schedule.

4. Effects of a Party's withdrawal from the Kyoto Protocol on its reporting obligations

3. At its twenty-fifth meeting, the branch discussed the matter of Canada's withdrawal from the Kyoto Protocol and its effects on Canada's reporting obligations under the Protocol.¹ At the request of the branch, the secretariat conveyed the report on the twenty-fifth meeting of the branch to the expert review team (ERT) established to consider Canada's national inventory report (NIR) and common reporting format tables submitted on 11 April 2014 (Canada's 2014 annual submission), and informed the ERT of the discussions and considerations of the branch related to this agenda item.

4. The branch will be invited to consider the information provided by the secretariat in its further consideration of this matter.

5. Other matters

5. At its twenty-fifth meeting, the branch considered the delay in the submission by Monaco of its 2014 NIR and the written explanation provided by Monaco.²

6. At the request of the branch, the secretariat conveyed the report on the twenty-fifth meeting of the branch to the ERT established to consider Monaco's 2014 annual submission, and informed the ERT of the discussions and considerations of the branch related to this agenda item.

7. The secretariat will provide any updates, if available, on the review of Monaco's 2014 annual submission.

8. In accordance with the practice established at its twentieth meeting, an updated version of the list of stocktaking issues is contained in the Annex to these annotations.

¹ CC/EB/25/2014/3, paragraphs 8–9.

² CC/EB/25/2014/3, paragraphs 10–12.



COMPLIANCE COMMITTEE

**CC/EB/26/2015/1
3 February 2015**

9. The branch may wish to consider the updated list and determine whether any of these matters need to be discussed at its twenty-sixth meeting, and whether any items need to be added to this list.

10. The branch may wish to consider when to meet next, taking into account its expected workload.

6. Closure of the meeting



Annex

Annotated list of stocktaking issues for the enforcement branch

I. Introduction

1. At its eighteenth meeting, the enforcement branch considered document CC/EB/18/2012/2 containing a list of possible issues for its second stocktaking exercise. The branch considered the list and made a number of revisions which are outlined in the Annex to the report on its eighteenth meeting (CC/EB/18/2012/3).
2. The chairperson requested that an updated version of the list of issues that the branch had considered at its eighteenth meeting be added to agendas of future meetings of the branch and be considered as a standing sub-item under the agenda item on other matters or as a separate agenda item for future meetings when the branch considered it appropriate.¹
3. Below is an updated annotated version of the list of possible issues for consideration at future stocktaking exercises. The updates reflect agreements reached by the branch until its twenty-fourth meeting, as well as outcomes of discussions by the plenary at its fourteenth meeting.²

II. List of issues

A. Decision-making

1. Structure of decisions

(a) Headings/sections of decisions and what should be addressed under each heading/section

4. The headings of preliminary findings and final decisions adopted by the branch are based, in part, on the list that is provided in rule 22, paragraph 1, of the “Rules of procedure of the Compliance Committee of the Kyoto Protocol”³ which is in turn derived from section IX, paragraphs 5 and 9, of the “Procedures and mechanisms relating to compliance under the Kyoto Protocol.”⁴
5. There have been discussions within the branch on what information is to be included under the heading entitled “background” as well as the heading entitled “conclusions and reasons”, with some members and alternate members noting that all factual information belongs under the section entitled “background”.

¹ CC/EB/20/2012/2, paragraph 34.

² No further updates arose from discussions at the twenty-fifth meeting of the enforcement branch or at the fifteenth meeting of the plenary.

³ This and subsequent references to rules, as well as to rules of procedure, refer to those contained in the annex to decision 4/CMP.2 as amended by decisions 4/CMP.4 and 8/CMP.9.

⁴ This and subsequent references to sections, as well as to references to procedures and mechanisms, refer to the annex to decision 27/CMP.1.



6. At its eighteenth meeting, the branch requested the chairperson and vice-chairperson, with the assistance of the secretariat, to develop draft templates for preliminary findings and final decisions. These templates would provide: (i) headings for each of the sections of the decision, (ii) model paragraphs, and (iii) a narrative under each heading, describing what elements are to be addressed and not to be addressed in that section. The branch agreed that the templates to be developed would be considered at its next meeting. At its twentieth meeting, the branch discussed the draft template for its preliminary findings and requested the chairperson, with the assistance of the secretariat, to revise the template and present it for consideration at its next meeting. The changes since the eighteenth meeting, as reflected in the preliminary finding with respect to Slovakia (CC-2012-1-7/Slovakia/EB), have included the numbering of section headers, the inclusion of a new section on information submitted, presented and considered, the renaming of the section on conclusions and reasons as “reasons and conclusions”, and the splitting of the section on findings and conclusions into two separate sections. Consistent with this change, in adopting final decision with respect to Slovakia (CC-2012-1-9/Slovakia/EB) by electronic means, the branch has renamed the section on conclusions and reasons as “reasons and conclusions”.

7. At its twenty-first meeting, the branch noted that its consideration of the structure of its decisions is work in progress, noting in particular the development of the templates for various types of decisions. At that meeting, the branch considered a revised version of the draft template for preliminary findings and a draft template for final decisions.

8. At its twenty-second meeting, the branch considered revised templates for preliminary findings and final decisions, as well as templates for decisions on preliminary examination, expert advice, review and assessment of plans submitted under paragraph 2 of section XV, and reinstatement under paragraph 2 of section X. The branch requested the chairperson and vice-chairperson, with the assistance of the secretariat, to update the templates on the basis of discussions at that meeting and to make the revised templates available at its next meeting.

At its twenty-third meeting, the branch agreed that subsequent discussions of these draft templates would form part of any future stocktaking exercise.

2. Decision-making process

(a) Absence of a quorum

9. Section II, paragraph 8, provides that the adoption of decisions by the Committee shall require a quorum of at least three-fourths of the members to be present. In the case of the enforcement branch, the adoption of a decision shall, in addition, require a majority of members from Parties included in Annex I present and voting, as well as a majority of members from Parties not included in Annex I present and voting (section II, paragraph 9).

10. Since its first meeting, the enforcement branch has failed to reach quorum to adopt decisions at the following meetings:

- (a) At its eighth meeting held from 23 to 24 November 2009;
- (b) At its sixteenth meeting held from 14 to 18 November 2011;
- (c) At its seventeenth meeting held from 20 to 21 December 2011;



COMPLIANCE COMMITTEE

CC/EB/26/2015/1
3 February 2015

- (d) At its eighteenth meeting held from 7 to 8 and 10 February 2012;
- (e) At its nineteenth meeting held from 8 to 9 March 2012;
- (f) At its twenty-first meeting held from 22 to 24 October 2012;
- (g) At its twenty-second meeting held from 22 to 23 March 2013; and
- (h) At its twenty-third meeting held from 3 to 4 July 2013.

11. It is to be noted that the secretariat does not organize meetings of the Compliance Committee unless information provided to it by members and alternate members indicates that quorum will be achieved. Failure to reach quorum in seven of the eight meetings listed above was due to last-minute cancellations by members and alternate members who had previously confirmed their availability for the relevant meeting. In addition, the opening of a few of the meetings of the branch has had to be delayed to wait for persons whose attendance would allow the branch to achieve quorum, and the branch has on occasion been under pressure to complete its work in advance of the scheduled end of its meeting due to the risk of losing quorum at a meeting.

12. In its discussions at its eighteenth meeting, the branch considered two scenarios relating to quorum issues, namely, where a quorum issue is raised during the planning of a meeting and where a quorum issue arises in the course of a meeting.

13. If it is clear at the planning stage that there will be no quorum for a meeting scheduled for a certain date, the branch concluded that the chairperson and vice-chairperson of the branch should exercise their discretion to either: (i) defer the meeting or (ii) continue with the planning of the meeting and collect additional votes by electronic means during the meeting.

14. Where a lack of quorum only becomes apparent at the commencement of a meeting, the branch noted its preference to wait for members to arrive to enable decision making. However, if there is a strict timeline that requires adoption of a decision prior to the arrival of a member or where it becomes apparent that the member will not arrive, the branch will resort to collecting additional votes by electronic means.

15. At its thirteenth meeting, the plenary addressed the concern expressed by the enforcement branch over the repeated failure to meet quorum requirements at its meetings. The plenary shared the concern of the branch with regard to the issue of quorum and also noted with concern that the overall participation of members and alternate members of the plenary has declined over the last several years. The low levels of participation have limited the input to the discussion on matters brought before the Committee and reduced the richness of such discussions. The plenary invited the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) to consider inviting Parties, when proposing candidates for membership of the Committee, to give careful consideration to the demands of such membership (see FCCC/KP/CMP/2013/3, para. 42). It requested the secretariat to conduct a survey among former and present members and alternate members of the Committee to determine the possible reasons for failure to attend past meetings. The outcomes of the survey were presented at the fourteenth meeting of the plenary.



At its fourteenth meeting, the plenary took note of the presentation on the results of the web-based survey referred to in paragraph 15 above and considered a number of factors which could facilitate participation by members and alternate members. It noted, in particular, the desirability of fixing meeting dates in advance for the whole year; the need to avoid, where possible, scheduling the Committee meetings back-to-back with negotiating sessions; the importance of continuing to issue invitations well in advance of meetings; as well as the restricting factor of funding not being made available through decisions by the CMP to support participation by members and alternate members from Parties included in Annex I.

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

16. Section X, paragraph 1, establishes an expedited procedure that applies in questions of implementation relating to eligibility requirements under Articles 6, 12 and 17 of the Kyoto Protocol. The effect of section X, paragraphs 1 (a) to (g) is to create a procedure that reduces the time frames that would otherwise be available under sections VII to IX. The expedited procedure is designed to resolve a question of implementation that is preventing a Party from participation in the Kyoto Protocol's flexible mechanisms faster than would otherwise be achieved under the procedures and mechanisms. Notwithstanding this aim, the branch recently decided to allow a Party to request not to initiate the procedure under section X, paragraph 1.⁵

17. In the aforementioned decision, the branch reasoned that the official report of the next in-country review would not be available in time for the branch to consider such report under the procedure referred to in section X, paragraph 1, and to decide, in the context of the expedited procedure, whether the question of implementation had been resolved.⁶ In future, there may be scenarios where an expedited procedure would not enable the branch to consider the most recent information available, for example, where the schedule of the next in-country review would not allow the consideration of its results by the branch.

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

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

⁵ See for example "Decision not to initiate the expedited procedure referred to in paragraph 1 of section X", CC-2011-3/16/Lithuania/EB and "Decision on Expert Advice: Slovakia", CC-2012-1-4/Slovakia/EB.

⁶ Paragraph 6, CC-2011-3/16/Lithuania/EB.



B. Meetings

1. Flexibility in scheduling in case of conflict with certain official, religious and UN holidays or other UNFCCC meetings

19. At its first stocktaking meeting, the branch discussed whether a practice, working arrangement or appropriate rules of procedure should be developed for adapting the time frames set out in the procedures and mechanisms where there may be a concern about obtaining a quorum because of a holiday or other scheduling conflict, “taking into account the reasonable expectations of and possible need to consult a Party concerned”.⁷ No decision was taken on this matter at that meeting.

20. As indicated in paragraph 10 above, to date there have been eight occasions when the branch did not achieve quorum at its meetings. The branch will note that three of these meetings were scheduled very close to the sessions of the CMP⁸ or to the holidays. In addition, due to the impossibility of reaching quorum at an earlier date, the enforcement branch adopted its preliminary finding with respect to Ukraine on 25 August 2011, although the deadline for the adoption of such a decision was on 11 August 2011.⁹

21. Noting the delay in the adoption of the preliminary finding with respect to Ukraine and the need for transparency in future cases of inability to comply with the time frames set out in the procedures and mechanisms, the branch agreed to develop working arrangements on time frames.¹⁰ These working arrangements, which were subsequently adopted by the plenary, recall that the enforcement branch is required to make every possible effort to adopt decisions within the time frames provided for in the procedures and mechanisms and the rules of procedure. The plenary agreed that any decision to delay may only be taken as a last resort, for overriding reasons, and that it should result in the shortest possible delay.¹¹

22. At its eighteenth meeting, the branch noted that this issue related to quorum matters described above. It further noted that the branch was still gaining experience in applying the working arrangements on time frames agreed at the ninth meeting of the plenary and agreed to keep them under review.

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

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⁷ CC/EB/6/2008/2, section II.C, paragraph 2.

⁸ The fifth session of the CMP took place from 7 to 19 December 2009. The seventh session of the CMP took place from 28 November to 11 December 2011.

⁹ CC/EB/14/2011/2, paragraph 17.

¹⁰ CC/EB/15/2011/2, paragraph 12.

¹¹ Paragraph 17, annual report of the Compliance Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, FCCC/KP/CMP/2011/5.