



Operationalizing rule 9 of the Rules of procedure

Note by the secretariat

I. Introduction

1. Rule 9, paragraph 1 of the Rules of procedure of the Compliance Committee of the Kyoto Protocol (annex to decision 4/CMP.2, hereinafter, "Rules of procedure") provides in part that:

“[s]ubject to paragraph 2, meetings of the plenary and the branches shall 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”.

2. Paragraph 2 of the same rule adds that only members and alternate members of the Committee and secretariat officials may be present during the elaboration and adoption of a decision of a branch.

3. In consultation with the Compliance Committee bureau, the secretariat has made arrangements for the fourth meeting of the plenary, the second meeting of the enforcement branch and the fifth meeting of the facilitative branch to be recorded and broadcast on the Internet through the UNFCCC website.

A. Scope of the note

4. This note describes the practice of the Executive Board of the Clean Development Mechanism (CDM Executive Board), the Joint Implementation Supervisory Committee (JISC) and the Compliance Committee under the Cartagena Protocol on Biosafety (Cartagena Protocol Compliance Committee) on the matter of public participation in its meetings, reviews applicable rules and decision text related to meetings and deliberations of the branches of the Compliance Committee and functions of the secretariat, and lists questions that the plenary of the Committee may wish to consider in relation to rule 9.

B. Possible action by the plenary of the Compliance Committee

5. The plenary may wish to provide guidance on how the provisions of rule 9 could be further operationalized.



II. Practices of other constituted bodies

A. The CDM Executive Board

6. Meetings of the CDM Executive Board are open to attendance, as observers, by all Parties and all UNFCCC accredited observers and stakeholders,¹ except where otherwise decided by the Executive Board (paragraph 16, Modalities and procedures for a clean development mechanism, annex to decision 3/CMP.1). The Executive Board may decide to limit attendance at its meetings to members, alternate members and secretariat support staff “in the interest of economy and efficiency” (paragraph 2, rule 27 of the Rules of procedure of the Executive Board of the Clean Development Mechanism, Annex 1 to decision 4/CMP.1). In such instances, the Executive Board will take all practicable steps to accommodate in other ways the interests of Parties, non-Parties to the Kyoto Protocol that are Parties to the Convention and accredited UNFCCC observers and stakeholders to observe the proceedings, except when the Executive Board decides to close all or a portion of a meeting (*Id.*).

7. At its second meeting (14 to 16 January 2002), the CDM Executive Board set the rule that observers must register with the secretariat no later than three weeks before the meeting.² For reasons of security and logistical arrangements, the CDM Executive Board emphasized at its 18th meeting (1 to 3 December 2004) that the deadline for registration of observers will be strictly enforced.³ This reminder has been repeated at subsequent meetings.

8. To allow registered observers to attend its meetings, the CDM Executive Board initially requested the secretariat to secure a viewing room for about 50 observers for its third

¹ “Stakeholders” are defined as “the public, including individuals, groups or communities affected, or likely to be affected, by the proposed clean development mechanism (CDM) project activity” (paragraph 1(e), annex to decision 3/CMP.1, Modalities and procedures for a clean development mechanism as defined in Article 12 of the Kyoto Protocol). Paragraph 9 (b) of Annex III (Procedures for review as referred to in paragraph 41 of the modalities and procedures for a clean development mechanism) and paragraph 9 (b) of Annex IV (Procedures for review referred to in paragraph 65 of the modalities and procedures for a clean development mechanism) to decision 4/CMP.1, Guidance relating to the clean development mechanism, provides that stakeholders who are interested in the review of a proposed CDM project activity and the review of a proposed issuance of certified emission reductions (CERs) will be given an opportunity to attend the CDM Executive Board meetings where these matters will be discussed. When registering, stakeholders must indicate how they are to be affected or likely to be affected by the proposed CDM project activity under review or requested for review (See Revision to the clarifications to facilitate the implementation of the procedures for review as referred to in paragraph 41 of the modalities and procedures for a clean development mechanism (Annex III to Decision 4/CMP.1), Annex 15 to the report on the twenty-ninth meeting of the Executive Board of the Clean Development Mechanism, available at http://cdm.unfccc.int/EB/029/eb29_repan15.pdf).

² See paragraph 33, report on the second meeting of the Executive Board of the Clean Development Mechanism, CDM-EB-02, available at <http://cdm.unfccc.int/EB/002/eb02report.pdf>. Subsequent meeting reports have indicated the deadline for registration by observers with the secretariat for each succeeding meeting.

³ See paragraph 82, report on the eighteenth meeting of the Executive Board of the Clean Development Mechanism, CDM-EB-18, available at <http://cdm.unfccc.int/EB/018/eb18rep.pdf>.



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meeting held from 9 to 10 April 2002.⁴ At its 16th meeting (21 to 22 October 2004) the CDM Executive Board modified this request to space for 70 observers.⁵

9. At its sixth meeting (23 to 24 October 2002) the CDM Executive Board agreed, for the first time, to meet with accredited observers and Parties for informal briefings in the afternoon and evening of the last day of the meeting.⁶ At its eighth meeting (19 to 20 March 2003) the CDM Executive Board agreed to continue to meet registered observers for informal briefings in the afternoon of the second day of its future meetings, unless otherwise indicated. It also agreed to webcast those meetings, starting with the one held on the afternoon of 20 March 2003.⁷ In view of the expansion of the CDM Executive Board's meetings to three days, it decided, at its 25th meeting (19 to 21 July 2006) that it would continue with its informal briefings for registered observers in the afternoon of the last day of future meetings, unless otherwise indicated.⁸

10. At the same meeting, the CDM Executive Board also agreed that for its 26th meeting, it would hold open sessions on 28 and 29 September to facilitate observer attendance.⁹ At its 30th meeting (21 to 23 March 2007) the CDM Board agreed that for its 31st meeting to be held from 2 to 4 May 2007, it would hold open sessions on the afternoon of 3 to 4 May 2007.¹⁰

11. In general, observers at the meetings of the CDM Executive Board are either representatives of Parties to the Convention or representatives of admitted NGO observer organizations.¹¹ Nominations of representatives for meetings of the CDM Executive Board must be communicated through the designated contact point for climate change of the admitted observer organizations. To register for upcoming meetings, the secretariat advises

⁴ See paragraph 33, report on the second meeting of the Executive Board of the Clean Development Mechanism, CDM-EB-02.

⁵ See paragraph 39, report on the sixteenth meeting of the Executive Board of the Clean Development Mechanism, CDM-EB-16, available at <http://cdm.unfccc.int/EB/016/eb16report.pdf>.

⁶ See paragraph 19, report on the sixth meeting of the Executive Board of the Clean Development Mechanism, CDM-EB-06, available at <http://cdm.unfccc.int/EB/006/eb06rep.pdf>.

⁷ See paragraph 25, report on the eighth meeting of the Executive Board of the Clean Development Mechanism, CDM-EB-08, available at <http://cdm.unfccc.int/EB/008/ebrep08.pdf>.

⁸ See paragraph 135, report on the twenty-fifth meeting of the Executive Board of the Clean Development Mechanism, CDM-EB-25, available at <http://cdm.unfccc.int/EB/025/eb25rep.pdf>.

⁹ See paragraph 138, report on the twenty-fifth meeting of the Executive Board of the Clean Development Mechanism, CDM-EB-25.

¹⁰ See paragraph 67, report on the thirtieth meeting of the Executive Board of the Clean Development Mechanism, CDM-EB-30, available at <http://cdm.unfccc.int/EB/030/eb30rep.pdf>.

¹¹ Stakeholders meeting the criteria set out in footnote 1 above who meet the two and three-week deadlines set out in footnote 22 below are registered as observers subject to availability of space on a first come first served basis. (See Clarifications to facilitate the implementation of the procedures for review as referred to in paragraph 41 of the modalities and procedures for a clean development mechanism (Annex II to decision 18/CP.9), Annex 5 to the report on the sixteenth meeting of the Executive Board of the Clean Development Mechanism, available at <http://cdm.unfccc.int/EB/016/eb16repan5.pdf>) and Revision to the clarifications to facilitate the implementation of the procedures for review as referred to in paragraph 41 of the modalities and procedures for a clean development mechanism (Annex III to Decision 4/CMP.1), Annex 15 to the report on the twenty-ninth meeting of the Executive Board of the Clean Development Mechanism).



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interested individuals to contact one of the accredited organizations and ask them to endorse his or her attendance.¹²

B. The Joint Implementation Supervisory Committee

12. Meetings of the JISC are also open to attendance, as observers, by all Parties and by all UNFCCC accredited observers and stakeholders,¹³ except where otherwise decided by the JISC (paragraph 18, Guidelines for the implementation of Article 6 of the Kyoto Protocol, annex to decision 9/CMP.1). As in the case of the CDM Executive Board, the JISC may, in the interest of economy and efficiency, decide to limit physical attendance at its meetings to members, alternate members and secretariat support staff. In such instances, the JISC must take all practicable steps to accommodate in other ways the interest of Parties to the Kyoto Protocol, Parties to the Convention that are not Parties to the Kyoto Protocol and accredited UNFCCC observers and stakeholders to observe its proceedings, except when the Committee decides to close all or a portion of a meeting (rule 22, paragraph 2, Rules of procedure of the Joint Implementation Supervisory Committee).¹⁴

13. Paragraph 5 (d) of decision 10/CMP.1, Implementation of Article 6 of the Kyoto Protocol encourages the JISC to collaborate with, among others, observers to its meetings through regular question-and-answer sessions.

14. At its first meeting held from 2 to 3 February 2006, the JISC agreed:

- (a) That the deadline for registration as observers is two weeks before a meeting, with the date being indicated on the dedicated meeting page of the UNFCCC JI website;
- (b) To make available a live webcast of its open meeting sessions; and

¹² See, for instance, the notification for the thirty-fourth meeting of the CDM Executive Board, <http://cdm.unfccc.int/EB/034/index.html>.

¹³ “Stakeholders” are defined as “the public, including individuals, groups or communities affected, or likely to be affected, by the [joint implementation (JI)] project” (Paragraph 1(e), annex to decision 9/CMP.1, Guidelines for the implementation of Article 6 of the Kyoto Protocol). Stakeholders interested in the review of a determination regarding a project design document or a determination of reported reductions in anthropogenic emissions by sources or enhancements of anthropogenic removals by sinks of a JI project will be given an opportunity to attend relevant JISC meetings. When requesting registration as observers, stakeholders shall briefly indicate how they are affected, or likely to be affected, by the (proposed) project (Paragraphs 11 (c) and 32 (d), Procedures for reviews under the verification procedure under the Joint Implementation Supervisory Committee adopted by the JISC at its third meeting, available at http://ji.unfccc.int/Ref/Documents/Review_procedures.pdf).

¹⁴ Annex I to the Annual report of the Joint Implementation Supervisory Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP), FCCC/KP/CMP/2006/5. The rules of procedure of the JISC were adopted by the CMP through decision 2/CMP.2, Implementation of Article 6 of the Kyoto Protocol.



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- (c) To have a question and answer session with registered observers at each of its meetings, with such session also being webcast.¹⁵

15. Observers who register within the deadline set by the JISC can follow the JISC meeting in an observer room.¹⁶

C. Compliance Committee under the Cartagena Protocol on Biosafety

16. Under rule 14 of the Rules of procedure for the meetings of the Compliance Committee under the Cartagena Protocol on Biosafety,¹⁷ the Committee can decide whether it will meet in open or closed sessions. The rule further provides that such decisions, including reasoning, must be reflected in the reports of the Committee. In accordance with this provision, the Committee decided to have an open session for its third meeting in Kuala Lumpur, Malaysia from 5 to 7 March 2007. As indicated in the report of its third meeting, “[t]he reason for the Committee to decide to have an open meeting was to gain experience on how potential observers would respond to such invitation”.¹⁸ The meeting was opened to interested observers from Parties, other governments, and relevant international organizations, including non-governmental organizations.¹⁹

17. A note by the Chairman of the Committee dated 12 February 2007 requested anyone intending to attend the meeting to inform the secretariat no later than 20 February 2007, or two weeks before the scheduled meeting. Third World Network, a Malaysian based international non-governmental organization, was represented as an observer.²⁰ Noting the positive experience of the third session, the Committee decided to conduct its fourth meeting in open session in order to gain further experience.²¹

¹⁵ Paragraph 27, report on the first meeting of the Joint Implementation Supervisory Committee, JISC 01, available at http://ji.unfccc.int/Sup_Committee/Meetings/001/Documents/Report.pdf. At its seventh meeting held from 3 to 4 May 2007, the JISC confirmed that it would continue the practice of informal interaction in the form of a webcasted question-and-answer session on the last day of each meeting. See paragraph 30, report of the seventh meeting of the Joint Implementation Supervisory Committee, JISC 07, available at http://ji.unfccc.int/Sup_Committee/Meetings/007/Reports/Report.pdf.

¹⁶ See the notification for the eighth meeting of the JISC, available at http://ji.unfccc.int/Sup_Committee/Meetings/008/index.html.

¹⁷ Annex to decision BS-II/1 of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety.

¹⁸ Report of the Compliance Committee under the Cartagena Protocol on Biosafety on the work of its third meeting, UNEP/CBD/BS/CC/3/3 (7 March 2007).

¹⁹ The Compliance Committee decides to conduct its third meeting in open session. Note by the Chairman of the Committee, UNEP/CBD/BS/CC/3/INF/1 (12 February 2007).

²⁰ Report of the Compliance Committee under the Cartagena Protocol on Biosafety on the work of its third meeting.

²¹ *Id.*



III. Questions for consideration by the Committee

A. General questions

18. In addition to recording and broadcasting meetings of the plenary and the branches of the Compliance Committee, does the Committee wish to allow observers to be physically present in the meeting room or in an adjacent room, where they could watch a live video feed of the meeting? What criteria, if any, should be applied to persons who do not represent Parties or UNFCCC accredited observers?

19. The CDM Executive Board and the JISC use a combination of the following means to make their meetings accessible to the public:

- Live and on demand (i.e., delayed) web casting (available to the general public through internet access);
- Attendance pre-registered observers in an adjacent room, which gets a live video feed of the parts of the meeting that are open to the public;
- Attendance by pre-registered observers in an informal briefing session/question-and-answer session in the same room where the meeting is being held.

20. Members of the public have notice of the dates of the meetings of the plenary based on information found on the UNFCCC website (http://unfccc.int/meetings/unfccc_calendar/items/2655.php). An expectation that subsequent meetings of the plenary will be open to attendance by the public may be raised by the practice followed by the CDM Executive Board and the JISC.

21. To enable the secretariat to register all observers, the Committee may wish to adopt the same three-week rule used for meetings of the CDM Executive Board²² or the two-week rule followed by the JISC. The plenary may also wish to discuss whether consideration should be given to other related meeting management issues. These include:

- (a) Practices for opening or closing sessions to the public, keeping in mind considerations of scheduling and the technical arrangements for web casting. For instance, would the Committee, like the CDM Executive Board, decide in advance which days of its meeting would be open to the public, and when they

²² In the case of stakeholders interested in the review of a proposed CDM project activity or the proposed issuance of CERs, the deadline is two weeks from the date of the meeting of the CDM Executive Board, if it is the first time that the Board will be considering the request for review. For any meeting thereafter, when the proposed CDM project activity is on the agenda, the normal three week deadline is to be observed (See Clarifications to facilitate the implementation of the procedures for review as referred to in paragraph 41 of the modalities and procedures for a clean development mechanism (Annex II to decision 18/CP.9), Annex 5 to the report on the sixteenth meeting of the Executive Board of the Clean Development Mechanism, available at <http://cdm.unfccc.int/EB/016/eb16repan5.pdf>) and Revision to the clarifications to facilitate the implementation of the procedures for review as referred to in paragraph 41 of the modalities and procedures for a clean development mechanism (Annex III to Decision 4/CMP.1), Annex 15 to the report on the twenty-ninth meeting of the Executive Board of the Clean Development Mechanism).



would hold meetings in private? Decisions in advance of a meeting would facilitate planning and scheduling of the discussion of agenda items. If the Committee prefers to retain the flexibility to decide during a meeting which parts of that meeting should be open to the public or held in private, the meeting would need to be briefly suspended before a session that is intended to be conducted in private starts to ensure that these sessions are not inadvertently broadcast.

- (b) Availability of documents relating to these meetings (e.g., whether the agenda for a meeting held in private should be made available to the public and what to do with the agenda when discussions relating to some items on the agenda are to be held in private, and other discussions to be open to the public).

B. Meetings of the branches

22. In accordance with section VI, paragraph 2 of the Procedures and mechanisms relating to compliance under the Kyoto Protocol (annex to decision 27/CMP.1, hereinafter “procedures and mechanisms”), the secretariat must make any question of implementation submitted to the Committee available forthwith to the Party in respect of which the question of implementation is raised (the “Party concerned”). After the preliminary examination by the branch to which the bureau has allocated the question of implementation, the secretariat is to notify the Party concerned in writing of the decision of the branch and, in the event of a decision to proceed, provide the Party with a statement identifying the question of implementation, the information on which it is based, and the branch that will consider the question (section VII, paragraph 4, procedures and mechanisms).

23. There is no provision for the secretariat to advise the Party concerned of the decision of the bureau to allocate the question of implementation. Absent such a notification, the Party concerned would, in theory, not be aware of when the preliminary examination of the question of implementation relating to it would be held. Without further guidance on this issue, the secretariat would not provide notice to the Party concerned. Furthermore, no provision is made for notice to the public. However, in accordance with paragraph 2, rule 12, the secretariat makes all documents of the Committee and its branches available to the public. The practice of the secretariat has been to make these documents available on the public website of the UNFCCC once documents are approved or officially forwarded to the Committee, as applicable.

24. The Committee may therefore wish to decide that the preliminary examination of a question of implementation would be closed to the public. The Committee may, in the alternative, wish to decide that the Party concerned should be given advance notice of the agenda for the meeting in which the branch will conduct the preliminary examination of any question involving it, and be invited to attend such meeting.

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