

Section K [Facilitating implementation and compliance]¹

Version of 11 June 2015 at 16:00

Output of facilitated meeting

Observations:

- Some Parties reiterated the observation that it is premature to enter into a substantive discussion on facilitating implementation and compliance, given the uncertainty on issues such as the legal form of the agreement, the nature of the commitments, and differentiation. Other Parties pointed out that a discussion on the design of a compliance mechanism would be useful even in the face of such uncertainties.
- Parties appreciated the conducive exchange of views on facilitating implementation and compliance in order to clarify the concepts and options in the Geneva negotiating text.
- Parties considered the co-facilitators' textual input (below) and agreed to capture it as an output of the facilitated meeting.

K. [[Facilitating implementation and compliance]]*

Option I:

193.

[Option 1 (chapeau): In order to [assist Parties in implementing their commitments/contributions] [and/or to address] [facilitate, promote and enforce] compliance [issues] [with commitments under this agreement] [in a manner that is expert-based, non-confrontational and non-judicial]:

[Option 2 (chapeau): A compliance system that is preventative and cooperative is hereby established to facilitate the implementation of commitments under this agreement:

[The nature of the proceedings of the compliance regime should be primarily facilitative, transparent, non-judicial and non-adversarial.] {para. 193 d.iii)};

[Option 1: The governing body shall adopt procedures and/or mechanisms;

[Option 2: The governing body shall, at its first session, approve appropriate and effective procedures and mechanisms to facilitate the implementation and enforcement of the provisions of this agreement, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance, building on experience under the Convention and its instruments;

[Option 3: The governing body shall adopt procedures and/or mechanisms, including the strengthening of transparency arrangements in support of implementation and compliance;

[Option 4: The governing body shall adopt appropriate and effective procedures to promote compliance;

[Option 5: [A] [The] compliance [mechanism or] committee/[implementation committee]/[a standing body] [responsible for promoting implementation and compliance and assessing Parties performance] is established. [The composition of the compliance committee shall be based on equitable geographical representation, ensuring representation of small island developing States. The body shall comprise [X] members. Decisions of the compliance committee shall be made by consensus where possible and, as a last resort, by a [two-thirds/three-fourths] majority;]

For Options 1–5: Arrangements shall cover:

a. Regarding commitments / contributions (substantive scope):

[Option (a): All commitments / contributions in the agreement, including reporting;

[Option (b): Specified commitments / contributions, excluding adaptation, including reporting;

[Option (c): Implementation of Parties' schedules and the submission of biennial communications;

¹ The paragraphs refer to the numbering as in the streamlined and consolidated text, 4 June, 14:00 hrs. http://unfccc.int/files/bodies/application/pdf/adp20151e_incl_working_doc@1400.pdf

* Some Parties consider that it is premature to discuss this section.

- Option (d):** Mitigation, MRV and accounting commitments only.
- b. Regarding Parties:
Option (a): All Parties;
Option (b): [Developed country Parties][Parties included in annex X] regarding their commitments / contributions on mitigation, finance, transfer of technology and capacity-building.
- c. Structure of the mechanism / committee:
Option (a): Separate branches – an enforcement branch for Parties that have a quantified emission reduction commitment in annex A / to review compliance with commitments made by [developed country Parties][Parties included in annex X] and those [developing country Parties][Parties not included in annex X] that have made economy-wide quantified emission reduction commitments, with respect to their commitments on mitigation, as well as commitments on adaptation, finance, technology transfer and capacity-building, and a facilitative branch for commitments and strategies in annex B / to review the implementation of contributions made by [developing countries][Parties not included in annex X] and to assist them in their efforts to implement these contributions; the compliance committee may establish technical panels to assist it in its task;
Option (b): Separate branches – an enforcement branch and a facilitative branch
Option (c): The Compliance Committee shall have two branches, namely an enforcement branch and a facilitative branch {*Option 3 (chapeau)*};
Option (d): A standing, non-political, expert body of members who serve in their individual capacity, responsible for facilitating and promoting compliance with the obligations under this agreement;
Option (e): One body for facilitation;
Option (f): Platforms to deal with early warning, facilitation and enforcement.
- d. Modalities such as:
i. Membership;
ii. Triggers to commence a procedure:
- Early warning for potential non-compliance;
- Technical expert teams triggering questions of implementation;
- Parties may trigger with respect to themselves or with respect to other Parties questions of implementation under articles [X, Y & Z];
iii. Use of economic instruments:
- Use of economic instruments such as market mechanisms as a way to promote compliance.
iv. Measures and/or consequences:
- **Option (a):** Facilitative [measures] [only] [and [sanctions [for recurring non-compliance]]] [and other adequate measures];
- **Option (b):** Facilitative measures for [non-Annex I Parties][Parties not included in annex X] and sanctions for Annex I Parties [Parties included in annex X];
- **Option (c):** Expert groups that support developing country Parties in the preparation and implementation of contributions;
- **Option (d):** A differentiated system of consequences to be applied in a graduated manner depending on the nature of the commitment and in proportion to the nature and extent of non-compliance with the commitment.]
194. [Further details of the compliance mechanism shall be adopted no later than at the first session of the governing body.]
195. [New institutional arrangements or strengthened institutional arrangements may be needed to serve this agreement.]

Option II:

193. [In order to ensure compliance of developed countries and facilitate implementation for developing countries, the COP/governing body shall further elaborate the modalities of the mechanism/committee in accordance with the differentiated commitments of developed and developing countries under the Convention and on the basis of the experience with the compliance mechanism under the Kyoto Protocol. These arrangements shall include:
a. A mandatory compliance mechanism for the commitments of developed countries on mitigation, adaptation, finance, technology development and transfer, capacity-building, and transparency of action and support;
b. A voluntary facilitative forum for developing countries for enhanced action on mitigation, adaptation and transparency of action.]

Option III:

193. [The compliance committee shall have two branches, namely an enforcement branch and a facilitative branch.
194. The role of the enforcement branch is to review compliance with commitments made by developed country Parties and those developing country Parties that have made economy-wide quantified emission reduction commitments, with respect to their commitments on mitigation as well as their commitments with respect to adaptation, finance, technology transfer and capacity-building.
195. The enforcement branch of the compliance committee shall review:
 - a. Biennial reports;
 - b. Reports of technical expert teams that have undertaken reviews as part of the international assessment and review process {196}.
196. The enforcement branch may recommend actions to be taken against Parties that fail to make progress towards fulfilling commitments taken on under annex A and commitments with respect to adaptation, finance, technology transfer and capacity-building.
197. The role of the facilitative branch is to review the implementation of contributions made by developing countries and to assist in them in their efforts to meet these contributions {195}.
198. The facilitative branch may recommend actions to assist Parties that have commitments inscribed in annex B to fulfil these commitments.
199. The compliance committee may establish technical expert panels to assist it in its task.]

For options I and III above:

The compliance committee shall report annually to the Conference of the Parties to this agreement.

Option IV:

193. [Implementation shall be strengthened through enhanced transparency, including through the consideration of the multilateral consultative process under Article 13 of the Convention;]

Option V:

195. [Establishes the international climate justice tribunal to oversee, control and sanction the fulfilment of and compliance with the obligations of Annex I and Annex II Parties under this agreement and the Convention.]

Option VI:

[No specific provisions required.]
