

APA 1.5
30 April – 10 May 2018
Bonn, Germany

Draft elements of APA agenda item 7
Modalities and procedures for the effective operation of the committee
to facilitate implementation and promote compliance referred to in Article 15.2 of the
Paris Agreement

Tool by the Co-facilitators to illustrate a possible flow of section III of the Informal
Note of 13 November 2017

4 May 2018 at 00:15

This tool has been prepared by the co-facilitators of the negotiations on this agenda item under their own responsibility and on the basis of the deliberations by Parties at this session and the views they have submitted.

This tool does not supersede the final iteration of the [Informal Note by the co-facilitators issued at APA 1.4 \(Final version of 13 November 2017\)](#).¹

The tool attempts to illustrate a possible flow of section III of the Informal Note of APA 1.4, with a view to developing a textual narrative.

In developing this flow, the explanatory narrative (in italics) reflected in the Informal Note of APA 1.4 has been omitted here.

The headings of the sections that have been changed vis-à-vis the Informal Note of APA 1.4 are highlighted in grey. These are: Institutional arrangements; Scope and initiation of consideration; Process; Measures and outputs; Identification of systemic issues; Sources of information.

This tool is preliminary and should not be considered as final in any way; they are offered as a basis for work and do not prejudice further work or prevent Parties from expressing their views in the future. It is recognized that the outcome of deliberations on this item will form part of the overall outcome under the Paris Agreement work programme.

III. Elements of relevant guidance²

A. Purpose, principles and nature

A.1 Purpose

- Facilitate implementation and promote compliance (Art 15.1)³
- *Encourage, assist and enable Parties to implement provisions and comply with their obligations*
- *Prevent situations of non-implementation or non-compliance*
 - o *Preventive role is inconsistent with the facilitative and non-adversarial nature of the Committee*
- *Thereby:*
 - o *Enhance effectiveness and durability of the Agreement*

¹ https://unfccc.int/files/na/application/pdf/apa_7_informalnote_final_version.pdf

² Headings, subheadings and formatting are without prejudice to the eventual modalities and procedures and are intended as a tool to collect and organize issues for the purposes of this document.

³ References to articles (Art) are to those of the Paris Agreement (PA).

- *Enhance credibility, confidence, consistency and effectiveness of actions, and trust among Parties*
- *Complement other processes and mechanisms under the PA and the Convention*
- *Avoid politicization*

A.2 Principles

1. Established under the Paris Agreement (PA)
 - *Nothing in the design or operations of the Art 15 Mechanism can change the content or legal character of the PA's provisions.*

2. Paris Agreement and Convention principles:

Views:

- (1) Art 15 Mechanism must reflect equity and the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) in line with the Convention
 - *The modalities need to respect and be informed by the principles, including with regard to nature, scope, functions, commencement, measures/outputs, and procedures*
 - *This includes differentiation between developed and developing countries*
- (2) The PA already reflects CBDR-RC in the light of different national circumstances: no further reflection in the modalities
 - *Differentiation is already embedded in the PA provisions, and is embedded in Article 15 in a particular way.*
 - *Art 15 mechanism is applicable to all Parties*
- (3) Reference to Articles 2 and 15

3. Other relevant principles:

Views:

- *transparency*
- *non-duplication of effort/complementarity*
- *effectiveness*
- *independence*
- *inclusiveness*

A.3 Nature

- Functioning in a facilitative, transparent, non-adversarial, non-punitive manner (Art 15.2)
- Expert-based and facilitative (Art 15.2)
- Paying particular attention to the respective national capabilities and circumstances of Parties (Art 15.2)
- *Transparent (see below: Procedural matters) (Art 15.2)*
- *Non-punitive (Art 15.2), i.e.:*
 - *No enforcement*
 - *No penalties or sanctions*
- *Non-adversarial, (Art 15.2), i.e.:*
 - *Not a mechanism to settle disputes*
 - *Respecting national sovereignty*

- *Consultative*
- *Advisory*

B. Functions

Facilitate implementation and promote compliance (Art 15.1):

Views

- (1) Two distinct functions:
 - With differences based on scope, triggers, and/or measures;*
 - (1.1) As a dual function; distinct but complementary; may not be mutually exclusive;
 - (1.2) Two distinct roles, reflecting differentiated approach throughout PA and national circumstances;
- (2) Continuum within the spectrum of functions:
 - *With the difference being determined by the legal nature of the provision in question:*
 - *Facilitation and compliance for legally binding provisions; only facilitation for non-legally binding*
 - *With the difference being determined by what is the appropriate measure/output in each case*
- (3) One function: with no difference in measures/outputs as its outcomes are advisory and non-binding

NCC: to be taken into account in the exercise of its functions / Whether and how to operationalize this element under this section to be explored

C. Institutional arrangements

Composition (1/CP.21, para 102)

The Committee to be comprised of twelve members with recognized competence in relevant scientific, technical, socioeconomic or legal fields to be elected by the CMA on the basis of equitable geographical representation, with two members each from the five regional groups of the United Nations and one member each from the small island developing States and the least developed countries, while taking into account the goal of gender balance.

Members / alternates and expert based nature

Option A: Members of the Committee

Option B: Members and an alternate for each member of the Committee

- to be elected by the CMA
- taking into account the expert-based nature of the Committee in accordance with Article 15 of the Parties Agreement
- giving consideration to diversity of the relevant fields of expertise

Term of office, staggered election for continuity

- Members / and alternate members / to be elected to serve for a period of three years and be eligible to serve a maximum of two consecutive terms

- Six members / and six alternate members / to be elected at CMA x initially for a term of two years and six members and alternate members for a term of three years
- Thereafter, the CMA to elect at each of its regular sessions six members / and alternate members / for a period of three years
- The members / and alternate members / to remain in office until their successors are elected

Resignation / replacement

- If a member / or an alternate member / resigns or is otherwise unable to complete the term of office or to perform the functions of that office, the Committee may decide, bearing in mind the proximity of the next session of the CMA, to appoint a member / or an alternate member / from the same group or constituency to replace said member for the remainder of that member's / alternate member's / mandate
- Such term of office to count as one term

Individual vs expert capacity

Members of the Committee / and their alternate members / to serve in their

Option A: individual capacity

Option B: expert capacity

Bureau: election, term of office and geographical representation

Option A:

- The Committee to elect from amongst its members for a period of two/three years the Chair and Vice-Chair as well as three other members to serve as the Bureau of the Committee
 - In electing the Bureau, the Committee to ensure equitable representation of the five regional groups of the United Nations
 - The positions of the Chair and Vice Chair to alternate between a member from a developed country Party and a developing country Party
- [placeholder for any additional functions of the Bureau that may not be addressed elsewhere in the modalities and procedures]*

Option B: No bureau provisions in the modalities

Frequency of meetings

- Unless otherwise decided, the Committee to meet at least:

Option A: once a year

Option B: twice a year

- Beginning in:

Option A: 2019

Option B: 2020

Open or closed meetings

Meetings of the Committee to be

Option A: {open as default}

- held in public

- unless the Committee, of its own accord or at the request of the Party concerned, decides for part or all of the meeting to be held in private
- only members / and alternate members / of the Committee and secretariat officials to be present during the elaboration and adoption of a decision of the Committee

Option B: {closed as default}

- held in a closed session, subject to the provisions of the present modalities and procedures on the participation of the Party concerned
- the Committee of its own accord, at the request of the Party or otherwise concerned, may invite the Party concerned to participate in a part of its meeting
- only members / and alternate members / of the Committee and secretariat officials to be present during the elaboration and adoption of a decision of the Committee

Quorum

Adoption of decisions by the Committee requires a quorum of at least three fourths of the members to be present

Decision-making

The Committee to

Option A: {consensus}

- reach agreement on any decision by consensus

Option B: {consensus as first option, vote as a final option}

- make every effort to reach agreement on any decision by consensus
- if all efforts at reaching consensus have been exhausted, as a last resort, the decisions to be adopted by a majority of
 - ***Option 1:*** the members present and voting
 - ***Option 2:*** at least two-third of the members present and voting
 - ***Option 3:*** at least three-fourth of the members present and voting

Electronic decision-making

- Possibility to elaborate and take decisions in a written procedure using electronic means, where possible
- Such decisions to be deemed taken at the headquarters of the secretariat

Reasoning

Any decisions of the Committee concerning facilitation of implementation and promotion of compliance by Parties to be made in writing and supported by reasoning

Conflict of Interest

Members / and alternate members / to

- disclose any interest in any matter under discussion before the Committee which may constitute a conflict of interest or which might be incompatible with the requirements of independence and impartiality expected of a member / or alternate member / of the Committee
- refrain from participating in the work of the Committee in relation to such matter

Rules of procedure of the Committee

Option A: {Committee to develop proposal for CMA}

The Committee to develop its rules of procedure for consideration and adoption by the CMA

Option B: {Rules of procedure to be elaborated in this text}

The elements may need to include the following issues (indicative, non-exhaustive list):

- Dates for start and end of terms of office of members
- Details on the role of alternate members, if alternate members are included
- Oath of service provisions
- Further details on how conflict of interest issues could be addressed
- Elaboration on the replacement of Bureau officers
- Elaboration on the tasks of the Bureau
- Details on the timing of document circulation
- Process of elaboration of meeting agenda
- Timelines for circulation for specific categories of documents to members
- Timelines for circulation of specific documents and other notifications to Parties
- Details on how timeframes are to be calculated, e.g. taking into account working days and holidays
- Detailed procedures for the use of electronic means of decision-making: what types of decision, what procedures, etc.
- Working language

D. Scope and initiation of consideration

Option A: Self-referral only	Option B: Other means of initiation in addition to self-referral
Self-referral only: Committee activity may be initiated by the Party concerned with respect to all provisions of the PA	<p><i>(Options below are not necessarily mutually exclusive):</i></p> <p>Option 1: Initiation by another Party/by a group of Parties:</p> <p>Option 2: Initiation by the Committee:</p> <ul style="list-style-type: none">○ With respect to:<ul style="list-style-type: none">▪ Option 2.1: All provisions of the PA▪ Option 2.2: All 'shall' provisions / obligations under Articles 4, 6, 7, 9, 10, 11 and 13▪ Option 2.3: Article X, paragraph Y of the PA (list of specific provisions on objectively identifiable 'binary' issues (yes/no))▪ Option 2.4: also relevant provisions of decisions by the CMA / for recurrent

	<p>and/or significant inconsistencies with the guidelines developed under Art. 13</p> <ul style="list-style-type: none"> ○ On the basis of: <ul style="list-style-type: none"> ▪ Information from the NDC registry ▪ Status reports prepared by the Secretariat on submissions under transparency arrangements of Art 13 ↔⁴ ▪ Technical expert review reports under the transparency arrangements of Art 13 ↔ ▪ Information provided by other bodies, mechanisms and arrangements under PA ↔ ○ For Option 2.1-2.4: <ul style="list-style-type: none"> ▪ <u>Option (a)</u>: Party consent is required. ▪ <u>Option (b)</u>: Party consent is not required. <p>Option 3: Request by the CMA for an activity by the Committee</p> <p>Option 4: Initiation by other bodies and arrangements established under or serving the Paris Agreement</p> <p>Option 5: Differentiated approach: <i>For developed countries also other referrals possible; for developing countries self-referral only, recognizing special circumstances of LDCs and SIDS.</i></p>
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E. Process

Steps/phases (not necessarily consecutive)

Option A: Self-referral only	Option B: Other means of initiation in addition to self-referral
Verification of sufficient information: <i>Party concerned to provide information on efforts made to use other arrangements and mechanism</i>	Determination of admissibility
	Notification to the Party concerned
Any additional questions to Party concerned - Flexibility regarding timelines for response	Invite Party to provide written inputs/comments - Flexibility regarding timelines for response
Consent of the Party concerned at every stage of the process:	

⁴ ↔ Possible elements reflecting any linkages (could be further explored).

Option A: required

Option B: not required

Obtaining information from the relevant sources (*see subsection on sources of information*)

Assistance provided to a Party during the process before the Committee, including possibility of support to enable participation

Dialogue with Party concerned (of facilitative nature)

- Consultation at different stages
- Possibility to make written inputs
- Representation at meetings, including right to make representations and opportunity to respond (including via video)
- Possibility/right to request a hearing
- Possibility to invite other bodies when needed

Identification of causes, challenges and constraints (in consultation with the Party concerned)

Identification of measures/outputs

Committee, when identifying appropriate measures/outputs, to take into account:

- National capabilities and circumstances (NCC)
- Lack of capacity versus lack of will
- Capacities and technology needs of developing countries
- Legal nature of the provision concerned
- Based on whether developed country, developing country
- Special circumstances of LDCs and SIDS
- Impact of response measures
- Other relevant national circumstances, e.g. force majeure, to be taken into account

Preliminary outputs to be sent to Party concerned for comments.

F. Measures and outputs

For Options A and B of initiation (see section C above)

Range of measures (not necessarily mutually exclusive or consecutive):

Sharing of information, experience and lessons learned;

Identification of challenges faced by the Party concerned;

Action plan/Implementation plan/Compliance plan

- Initiation/request for elaboration of implementation/compliance plan – *Views:*
 - (1) Whether only upon request by the Party concerned
 - (2) Whether also by the Committee
 - ❖ (2.1) With consent of the Party concerned
 - ❖ (2.1) Without need for consent in case of non-compliance
- Overall purpose of the plan
 - Facilitative
 - A roadmap developed in collaboration with the Party concerned to assist the Party with implementation or compliance with the PA

- Advisory
- Possible elements of the plan:
 - Description of implementation challenges/causes of non-compliance
 - Description of measures the Party intends to take to improve implementation/achieve compliance
 - Timelines
 - Follow-up arrangements (including information to Committee about progress)
- Development of the plan
 - With Committee's assistance, if requested by the Party concerned
 - In a way that is respectful of the nationally determined nature of the NDCs

Recommendations and suggestions (to the Party concerned)

Information and advice

Facilitating access to finance, technology and capacity-building support ↔

- Information on accessing support, e.g. types of support available promote compliance
 - Safeguards to avoid creating perverse incentive to be considered
 - Possible requirements to exhaust efforts under other arrangements
 - No requirement to exhaust efforts or placing the burden on the Party. Party shall be able to initiate the facilitation by the Committee without prejudice to any other efforts
- Referring to appropriate bodies for finance, technology and capacity-building support ↔
- Access to/refer to/send technical experts to assist Party concerned
 - Recommendations/referral to relevant bodies related to support; focus on gaps in the provision of technology, finance and capacity-building

3. Follow-up by the Committee

- *Should be facilitative in nature*
- *Discretion would be needed to allow Committee to decide on its working methods*
 - *Additional guidelines would be necessary with some further steps and measures for the Committee*
- *May depend on measures taken*
- *Initiation of a follow-up may/shall require consent by the Party concerned*

For Option B of initiation (Other means of initiation in addition to self-referral)

In selecting any of the following measures, taking into account:

- Causes, degree, nature and frequency of non-compliance

Early warning / Notification to the Party concerned:

Statements of concern / Cautionary statements:

Confidential letter

Declarations/Findings/Communications in relation to compliance:

- Would not be consistent with facilitative and non-punitive nature
- Factual findings related to compliance without an affirmative statement of non-compliance
- Any measures related with Art 6 PA:

Views:

- Possible elements reflecting any linkages to Article 6 (could be further explored)
- No linkages to Article 6

G. Identification of systemic Issues

Systemic issues include:

Option A: General problems / common source of difficulty for implementation and compliance, faced by a number of Parties in relation to any provisions of the Paris Agreement

Option B: Also recurrent, repetitive and systemic issues of implementation by of a Party or group of Parties in relation to any provisions of the Paris Agreement

Consideration of a systemic issue may be initiated by:

Option A: By the CMA

Option B: By the Committee

Option 1: based on systemic challenges identified in the course of its work

Option 2: for certain areas for which it has mandate from the CMA

Option 3: upon decision of its bureau

Option C: At a request of a group of Parties

Process and outputs:

- Gather information from relevant sources (*see list of sources in Section H below*)
- With respect to consideration initiated by the CMA or the Committee, the Committee prepares conclusions and recommendations to be included in a report to the CMA
- With respect to consideration initiated at the request by a group of Parties, the Committee makes recommendation to groups of Parties concerned
- *Could serve as background information for Global Stocktake ↔*
- *Could inform support arrangements ↔*
- *Could take into account the impact of response measures and other relevant factors*

H. Sources of information

Drawing on additional expertise

Safeguards for confidential information

- In particular, for how to engage with Party concerned, and specific facilitative measures

Possible sources of information

- Information provided by the Party/Parties concerned
- Registries under the Paris Agreement ↔
- NDCs; Parties' communications ↔
- Information from the transparency framework, e.g. from the technical expert teams ↔
- Information subsidiary and constituted bodies and other bodies and arrangements under the Paris Agreement ↔

Modalities and procedures could identify information required at the initiation stage. For other information, certain degree of discretion could be given to the Committee.

I. Relationship with the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement

- Committee under the guidance of CMA
- Reports annually to CMA (Art 15.3)
- Content of reporting (*views not necessarily mutually exclusive*):
 - Views:*
 - (1) Reports on its work
 - *Not individualizing*
 - (2) Reporting on findings/measures in individual cases:
 - (2.1) Reports on all to CMA
 - (2.2) Informs CMA only if requested by the Party concerned
 - (3) A summary of its activities and actions taken
 - (4) Reports to flag systemic issues
 - (4.1) Systemic issues involving a number of Parties
 - (4.2) Recurring implementation/compliance issues of a Party
- Recommendations to the CMA (*views not necessarily mutually exclusive*):
 - (1) If Committee considers the measures implicate important issues under the PA or the authority of other PA bodies
 - (2) In case of non-compliance of Party concerned: to provide technical assistance; capacity-building
 - (3) In cases of repeated non-compliance
 - (4) In cases of systemic issues regarding implementation and compliance
 - (5) On overcoming systemic barriers to implementation and compliance
 - (6) Only at the request of the Party concerned; and the CMA is not required to take any decision
- CMA to take note of (*views*):
 - Committee's findings in individual cases
 - Taking note of Committee's findings in individual cases is inconsistent with the nature of the Article 15 Committee

J. Review of the modalities and procedures

Views

- Built-in review based on the experience with the Article 15 Committee and other relevant arrangements
- Periodic review of the modalities and procedures by CMA
- Review by the Committee itself, with recommendations subject to approval by the CMA

K. Secretariat

- Secretariat support