

DRAFT TEXT

on

APA 1.7 agenda item 7

Modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement

Version 05/12/2018 00:10

Draft text

First iteration

The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement,

Recalling Article 15 of the Paris Agreement, and decision 1/CP.21, paragraphs 102 and 103,

1. *Adopts* the modalities and procedures for the effective operation of the committee referred to in Article 15, paragraph 2, of the Paris Agreement, as contained below;
2. *Decides* to undertake, at the seventh session of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (2024), a review of the modalities and procedures referred to in paragraph 1 above on the basis of the experience gained with their implementation and taking into account any recommendations of the committee referred to in paragraph 1 above on facilitating the implementation of and promoting compliance with the Paris Agreement;
3. *Takes note of* the estimated budgetary implications of the activities to be undertaken by the secretariat pursuant to the provisions contained in the annex.
4. *Requests* that the actions of the secretariat called for in this decision be undertaken subject to the availability of financial resources.

Modalities and procedures for the effective operation of the committee referred to in Article 15, paragraph 2, of the Paris Agreement

A. Purpose, principles, nature, functions and scope

[Option A :

1. The mechanism to facilitate implementation of and promote compliance with the provisions of the Paris Agreement established under Article 15 of the Agreement consists of a committee.
2. The Committee under Article 15 of the Agreement (hereinafter ‘the Committee’) shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The Committee shall pay particular attention to the respective national capabilities and circumstances of Parties.
3. The Committee shall operate under the modalities and procedures adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement (CMA) at its first session as well as any additional guidance that may be provided by the CMA and report annually to the CMA.
4. [The Committee’s work shall also reflect equity and the principles of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.
5. In carrying out its work, the Committee shall strive to avoid duplication of effort, shall neither function as an enforcement or dispute settlement mechanism, nor impose penalties or sanctions, and shall respect national sovereignty.]

Option B

Purpose

1. The Committee shall facilitate the implementation of and promote compliance with the provisions of the Paris Agreement in line with the provisions of the Paris Agreement [and taking into consideration Articles 4, 7 and 9 of the Agreement].

Principles

2. The Committee being guided, in particular, by the Articles 2 and 3 of the Paris Agreement should aim to facilitate the implementation of and promote compliance with the provisions of the Agreement in line with the respective obligations of Parties.

Scope

3. The Committee shall facilitate implementation of and promote compliance with the provisions of the Paris Agreement and decisions by the CMA.]

B. Institutional arrangements

6. The Committee shall consist of 12 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 2 members each from the five regional groups of the United Nations and 1 member each from the small island developing States and the least developed countries, taking into account the goal of gender balance.
7. The CMA shall elect members of the Committee [as well as an alternate for each member], taking into account the expert-based nature of the Committee and striving to reflect the diversity of expertise referred to in paragraph 6 above.
8. Members [and alternate members] shall be elected to the Committee to serve for a period of three years and for a maximum of two consecutive terms.
9. Six members [and six alternate members] shall be elected to the Committee at CMA 2 (2019) for an initial term of two years and six members [and six alternate members] for a term of three years. Thereafter, the CMA shall elect at its relevant regular sessions six members [and six alternate members for a term of three years]. The members [and alternate members] shall remain in office until their successors are elected.
10. If a member of the Committee resigns or is otherwise unable to complete the assigned term or to perform the functions in the Committee, an expert from the same Party shall be named by that Party to replace said member for the remainder of the unexpired term.
11. Members [and alternate members] of the Committee shall serve in their individual expert capacity.
12. The Committee shall elect from among its members two Co-Chairs for a period of three years, one from a developed country Party or other developed Parties and one from a developing country Party. The Co-Chairs shall perform the functions to be elaborated in the rules of procedure of the Committee referred to in paragraphs 21 and 22 below.
13. Unless otherwise decided, the Committee shall meet twice a year, beginning in 2020. In scheduling its meetings, the Committee should take into account the desirability of holding its meetings in conjunction with sessions of the subsidiary bodies serving the Paris Agreement, as appropriate.
14. Meetings of the Committee shall be held in public, unless the Committee, either of its own accord or at the request of the Party concerned, decides that a part or all of the meeting is to be held in private. Only members [and alternate members] of the Committee and secretariat officials shall be present during the elaboration and adoption of a decision of the Committee.
15. The Committee, any Party or others involved in the process of the consideration by the Committee shall protect the confidentiality of information received in confidence.
16. The adoption of decisions by the Committee shall require a quorum of at least three quarters of the members to be present.
17. The Committee shall 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 decision may be adopted by at least three quarters of the members present and voting.
18. The Committee may conduct its work, including elaboration and adoption of decisions, using electronic means of communication, subject to the provisions of these modalities and procedures with respect to the participation of the Party concerned. Such decisions shall be deemed taken at the headquarters of the secretariat.

19. Any decisions of the Committee concerning the facilitation of the implementation of and promotion of compliance by Parties shall be made in writing and supported by reasoning.
20. Members [and alternate members] shall disclose any interest in any matter under discussion before the Committee that might constitute a conflict of interest or be incompatible with the requirements of independence and impartiality expected of a member [or alternate member] of the Committee, and shall recuse themselves from participating in the work of the Committee in relation to the matter.
21. **Option A:** The Committee shall develop its rules of procedure for consideration and adoption by CMA 4 (2021), informed by the principles of transparency, facilitation, the non-adversarial and non-punitive function, and taking into account national capabilities and circumstances of Parties.
Option B: The CMA shall develop and adopt the rules of procedure of the Committee.
22. The rules of procedure referred to in paragraph 21 above should address any matters necessary for the proper and effective functioning of the Committee, including the role of the Committee's Co-Chairs, oath of service, conflict of interest, any additional timelines related to the Committee's work, procedures for electronic decision-making, information to be included in submission under paragraph 24 below, procedural stages and timelines for the Committee's consideration of implementation and compliance, reasoning in decisions of the Committee, confidentiality of information received in confidence, sources of information to inform the Committee's work, and working language.

C. Initiation and process

23. In exercising its functions referred to in paragraphs 24 and 28 below, and subject to these modalities and procedures, the Committee shall apply the relevant rules of procedure to be developed pursuant to paragraphs 21 and 22 above and shall be guided by the following:
 - (a) Nothing in the work of the Committee may change the legal character of the provisions of the Paris Agreement;
 - (b) In considering how to facilitate implementation and promote compliance, the Committee shall endeavour to constructively engage with and consult the Party concerned at all stages of the process, including by inviting written submissions and providing opportunities to comment;
 - (c) The Committee shall take the national capabilities and circumstances of the Party concerned into account at all stages of the process, in accordance with the provisions of the Paris Agreement, including in determining how to consult with the Party concerned, what assistance can be provided to the Party concerned to support its engagement with the Committee, and what measures are appropriate to facilitate implementation and promote compliance in each situation;
 - (d) The Committee should take into account the work being undertaken by other bodies and under other arrangements as well as through forums serving or established under the Paris Agreement with a view to avoiding duplication of mandated work;
 - (e) [The Committee may consider a wide range of publicly available information, including official documents prepared under the Convention and the Paris Agreement;]
 - (f) [The Committee should take into account, in accordance with the relevant provisions of the Paris Agreement, the flexibility to be provided to developing country Parties that need it in the light of their capacities to implement the Paris Agreement, and considerations related to the impacts of response measures].
24. The Committee may consider issues related to, as appropriate, a Party's implementation of or compliance with the provisions of the Paris Agreement on the basis of a written submission from that Party with respect to its own implementation of or compliance with any provision of the Paris Agreement.
25. Any submission from a Party as referred to in paragraph 24 above shall be addressed in writing to the Committee and transmitted through the secretariat.
26. The Committee shall undertake a preliminary examination of the submission with a view to verifying that it contains sufficient information, whether the matter relates to the implementation of or compliance with a provision of the Paris Agreement, and whether the submission is not de minimis or ill founded.
27. The Party concerned shall provide responses to any questions of the Committee in the course of the preliminary examination within the timelines to be elaborated in the rules of procedure referred to in paragraphs 21 and 22 above.

28. The Committee may initiate the consideration of issues related to, as appropriate, a Party's [or a group of Parties'] implementation of and compliance with

Option 1: mandatory provisions of the Paris Agreement;

Option 2: legally binding, individual, objectively assessable obligations set out in the provisions of the Paris Agreement, on the basis of factual information from the publicly available sources under the processes and arrangements under the Paris Agreement[, including reports by the secretariat on the status of:

- (a) The communication of nationally determined contributions, on the basis of the information contained in the public registry referred to in Article 4, paragraph 12, of the Paris Agreement;
- (b) The submission of biennial transparency reports and other submissions from Parties under the enhanced transparency framework referred to in Article 13 of the Paris Agreement;
- (c) The communication of information pursuant to Article 9, paragraph 5, of the Paris Agreement, on the basis of the information contained in the [placeholder for a cross reference to source of information of Art.9.5]];

Option 3: the obligation to communicate its nationally determined contribution (NDC), to provide mandatory information or to submit a mandatory report [under Articles 4, 6, 7, 9 and 13 of the Paris Agreement] within the timelines established by the CMA, or to participate in the facilitative, multilateral consideration of progress.

Option 4: [and/or] a situation where significant or recurring inconsistencies have been identified in technical expert review reports under Article 13, paragraphs 11 and 12, of the Paris Agreement [, giving rise to questions of compliance with Article 13].

29. Where the Committee decides to initiate a consideration as referred to in paragraph 28 above, it shall notify the Party concerned and request it to provide the necessary information on the matter.

30. [The Committee shall seek the consent of the Party concerned to proceed with the consideration of the matter as referred to in paragraph 28 above.]

31. Further to the provisions of paragraphs 25–27 above and taking into account the relevant timelines set out therein or otherwise defined in the rules of procedure of the Committee, the Party concerned may present responses and comments at any stage of the process described in these modalities and procedures.

32. Subject to paragraph 14 above, the Party concerned may participate in the discussions of the Committee.

33. If so requested in writing by the Party concerned, the Committee shall hold a consultation during the meeting at which the matter with respect to that Party is to be considered.

34. Subject to the availability of financial resources, assistance should be provided, upon request, to developing country Parties concerned to enable their necessary participation in the relevant meetings of the Committee.

35. In the course of its consideration, the Committee may obtain additional information as referred to in section F below or, as appropriate and in consultation with the Party concerned, invite representatives of relevant bodies and arrangements under or serving the Paris Agreement to participate in its relevant meetings.

36. The Committee shall send a copy of its draft findings, draft measures and any draft recommendations to the Party concerned and shall take into account in finalizing those findings, measures and recommendations any comments made by the Party.

D. Measures and outputs

37. In identifying the appropriate measures, findings or recommendations, the Committee, in addition to the comments received from the Party concerned, shall take into account the national capabilities and circumstances of the Party concerned [and the provisions of the Paris Agreement].

38. [The Committee [shall][should] also take into account the following:

- (a) The legal nature of the provision or provisions concerned;
- (b) Whether the Party concerned is a developed or a developing country;
- (c) The special circumstances of least developed countries and small island developing states;
- (d) Other relevant national circumstances, including force majeure;
- (e) To what extent the lack of capacities contributed to the implementation [and][or] compliance challenges;

- (f) With respect to a developing country Party, the specific financial, capacity-building and technology needs and challenges that the Party concerned may have;
- (g) With respect to developed country Parties, the obligations related to the provision support in accordance with the provisions of the Paris Agreement;
- (h) With respect to developing country Parties, whether they received appropriate support for the implementation of the provision under consideration;
- (i) Type degree and frequency of the failure to implement [and][or] comply with the provisions of the Paris Agreement;
- (j) The impact of response measures.]

{The measures listed are not mutually exclusive or consecutive};

39. With a view to facilitating implementation and promoting compliance the Committee may:

- (a) Facilitate the sharing of information, experience and lessons learned with the Party concerned;
- (b) [Establish a dialogue with the Party concerned, with the participation of other bodies or arrangements under or serving the Paris Agreement];
- (c) Assist in the identification of challenges faced by the Party concerned;
- (d) Make recommendations to the Party concerned;
- (e) Provide information to the Party concerned;
- (f) Facilitate dialogue and exchange of information and views between the Party concerned and the appropriate support arrangements, in order to identify possible challenges;
- (g) Initiate the development of an implementation [and][or] compliance action plan [[upon request][with the consent] of the Party concerned], which shall:
 - i. Serve as a roadmap to assist the Party with implementation [and][or] compliance, as appropriate, with the Paris Agreement, to be facilitative and advisory in nature and respectful of the nationally determined nature of the NDCs;
 - ii. Contain [a description of the implementation challenges or causes of non-compliance], [a description of measures that the Party intends to take with respect to its implementation [and][or] compliance], [timelines for the measures intended to be taken], [follow-up arrangements, including regular information to be provided by the Party concerned to the Committee about the progress made in implementing the measures];
 - iii. Be developed by the Party concerned [in consultation with the Committee][with the assistance of the Committee if so requested by the Party concerned].

40. [Furthermore, the Committee may:

- (a) **Option 1:** Provide information on accessing support, for example, on the types of support available
Option 2: Facilitate access to finance, technology and capacity-building support

[to be read with either Option 1 or 2 above];

Option (a): in a manner that does not create an incentive for Parties not to implement [and][or] comply with the provisions of the Paris Agreement.

Option (b): subject to efforts made by the Party concerned to make use of the existing arrangements and mechanisms under the Paris Agreement to facilitate its implementation and promote compliance with the provisions in question.]

- (b) Refer the [Party concerned][matter] to appropriate bodies or arrangements for finance, technology and capacity-building support [for developing country Parties];
- (c) Subject to the availability of resources, [provide access to][refer to][send] technical experts to assist the Party concerned;
- (d) Make recommendations to relevant bodies or arrangements [related to support][to provide finance, technology and capacity-building support to developing country Parties].]

41. [The Committee may also issue a [statement][declaration][finding] of non-compliance.]

42. [**Option 1:** Where consideration of the matter is initiated by means other than by a submission by the Party concerned[, if, having made use of measures referred to in paragraphs 39–40 above the Committee considers it necessary to propose further measures],

Option 2: Where the issue relates to a legally binding provision of the Agreement, the Committee may choose to apply any of the following measures, taking into account the causes, degree, nature and frequency of non-compliance *{subparagraphs (a) to (h) below can be read together with any of the above options}*:

- (a) [Notify the Party concerned where it identifies the potential to provide assistance;]
 - (b) [Issue [statements of concern][cautionary statements] addressed to the Party concerned;]
 - (c) [Report to the CMA on individual cases of non-compliance for situations where the Party concerned fails to implement the action plan referred to in paragraph 43(g) above;]
 - (d) [Report to the CMA on individual cases of non-compliance;]
 - (e) [Send a confidential letter to the Party concerned;]
 - (f) [Issue a [declaration][finding][communication] in relation to compliance;]
 - (g) Issue findings of fact in relation to compliance with provisions of the Paris Agreement;
 - (h) [Take measures related with Article 6 of the Paris Agreement].]
43. [The Committee shall follow up on the progress made by the Party concerned in its implementation [and][or] compliance in a manner that is facilitative in nature [and subject to the consent of the Party concerned.] [To this end, the Committee shall develop working arrangements for follow-up on the progress made by the Parties concerned.]

E. Consideration of systemic issues

[Option 1:

44. The Committee may examine [systemic][general] issues of implementation and compliance including recurrent issues and common sources of difficulties for implementation and compliance [in regard to the provisions of the Agreement] faced by a number of Parties [that it may identify in the course of its work] [on the basis of information referred to in section F] [and][or] [upon the request of the CMA].
45. The Committee, upon the consideration of the issue, shall report back to the CMA [and where appropriate make recommendations][, including that this report may serve as an input into the global stocktake].
46. In considering such issues, the Committee should aim to avoid duplication of effort and take into account mandates of other constituted bodies and arrangements under or serving the Paris Agreement.

Option 2:

47. The Committee may examine systemic issues of implementation and compliance including with obligations set out in Articles 4, 7, 9 and 13 of the Paris Agreement by a number of Parties identified by the secretariat or upon the request of the CMA. The Committee upon the consideration of the issue shall report back to the CMA and, where appropriate, make recommendations.

Option 3:

48. At the request of the CMA, the Committee may consider systemic issues of implementation and compliance.]

F. Information

49. In the course of its work, the Committee may seek expert advice and receive information from processes, bodies, arrangements and forums under or serving the Paris Agreement.

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

50. Pursuant to Article 15 of the Paris Agreement, the Committee shall report annually to the CMA. The CMA can refer to the Committee any matter related to the implementation of and compliance with the Paris Agreement.

H. Secretariat

51. The secretariat referred to in Article 17 of the Paris Agreement shall serve as the secretariat of the Committee.