

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 07/12/2018 10:22

Draft text

Draft text produced under the APA Co-Chairs' responsibility

Co-Chairs note: Parties need to continue working intensively, in particular on the paragraphs where options or brackets remain in sections C and D, today (7 December 2018). We will forward a clean version, taking on board improvements developed today, to the COP President by Friday evening (7 December 2018).

Second 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), the first 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, and to consider conducting further reviews on a regular basis;
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

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 (hereinafter referred to as the Committee).
2. The Committee shall facilitate implementation of and promote compliance with the provisions of the Paris Agreement and decisions by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA), while being guided by the provisions of the Paris Agreement including its Articles 2 and 3.
3. 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.

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4. 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.

B. Institutional arrangements

5. 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.
6. 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 5 above.
7. 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.
8. Six members and six alternate members shall be elected to the Committee for an initial term of two years at [CMA 1 (December 2018)][2 (November 2019)] and six members and six alternate members at [CMA 1][2] 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.
9. 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.
10. Members and alternate members of the Committee shall serve in their individual expert capacity.
11. The Committee shall elect from among its members two Co-Chairs by consensus for a period of three years. The Co-Chairs shall perform the functions to be elaborated in the rules of procedure of the Committee referred to in paragraphs 17 and 18 below.
12. Unless otherwise decided, the Committee shall meet at least twice a year, beginning in [2019][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.
13. 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.
14. 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.
15. The adoption of decisions by the Committee shall require a quorum of ten of the members to be present.
16. 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.
17. The Committee shall develop rules of procedure with a view to recommending them to the CMA for consideration and adoption at CMA 3 (November 2020), informed by the principles of transparency, facilitation, the non-adversarial and non-punitive function, and taking into account the respective national capabilities and circumstances of Parties.
18. The rules of procedure referred to in paragraph 17 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 the submissions referred to in paragraph 20 below, procedures for the preliminary examination referred to in paragraph 21 below, procedural stages and timelines for the Committee's work, reasoning in decisions of the Committee, confidentiality of information received in confidence, content for the action plan, steps to provide for a follow-up with the Party concerned, sources of information to inform the Committee's work and working language.

C. Initiation and process

19. In exercising its functions referred to in paragraphs 20 and 22 below, and subject to these modalities and procedures, the Committee shall apply the relevant rules of procedure to be developed pursuant to paragraphs 17 and 18 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 pay particular attention to the respective national capabilities and circumstances of Parties, recognizing the special circumstances of the least developed countries and small island developing States, 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, whether flexibility needs to be afforded to the Party concerned in relation to timelines, 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 should take into account considerations related to the impacts of response measures.
20. The Committee should 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 and/or compliance with any provision of the Paris Agreement.
21. The Committee shall undertake a preliminary examination of the submission within the timeline to be elaborated in the rules of procedure referred to in paragraphs 17 and 18 above, with a view to verifying that the submission contains sufficient information, including on whether the matter relates to the Party's own implementation of or compliance with a provision of the Paris Agreement, and that the submission is not de minimis or ill founded.
22. **Option 1:** The Committee, on the basis of factual information from the publicly available sources under the processes and arrangements under or serving the Paris Agreement compiled by the secretariat, may initiate the consideration of issues related to a Party's [or a group of Parties'] implementation of and compliance with mandatory provisions of the Paris Agreement;

Option 2:

The Committee

- (a) [Shall] [Will] initiate the consideration of issues in cases where a Party has not:
 - i. Communicated, in a timely manner, or maintained its nationally determined contribution in accordance with Article 4 of the Paris Agreement, based on the most up-to-date status of communication in the public registry referred to in Article 4, paragraph 12, of the Paris Agreement;
 - ii. Submitted, in a timely manner, mandatory information or reports under Article 13 of the Paris Agreement, based on information provided by the secretariat;
 - iii. Participated in the facilitative, multilateral consideration of progress, based on information provided by the secretariat;
 - iv. [Communicated, in a timely manner and where relevant, mandatory information in accordance with Article 6 of the Paris Agreement;] and
- (b) May [engage with a Party] [initiate consideration of issues] in cases of significant and persistent inconsistencies of the information submitted by a Party pursuant to Article 13, paragraphs 7 and 9, of the Paris Agreement with the modalities, procedures and guidelines referred to in Article 13, paragraph 13, of the Paris Agreement. This consideration will be based on the final technical expert review reports referred to in Article 13, paragraphs 11 and 12, of the Agreement, together with any written comments by the Party that is being reviewed.

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23. Where the Committee decides to initiate a consideration as referred to in paragraph 22 above, it shall notify the Party concerned and request it to provide the necessary information on the matter.
24. [The Committee shall seek the consent of the Party concerned to proceed with the consideration of the matter as referred to in paragraph 22 above. Should the Party not consent to the consideration of the matter, this information shall be included by the Committee in its annual report to the CMA.]
25. With respect to the consideration by the Committee of matters initiated in accordance with the provisions of paragraphs 20 or 22 above:
- (a) The Party concerned may participate in the discussions of the Committee, except during the Committee's elaboration and adoption of a decision;
 - (b) 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;
 - (c) 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;
 - (d) 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.
26. 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.

D. Measures and outputs

27. In identifying the appropriate measures, findings or recommendations, the Committee shall be informed by the legal nature of the relevant provisions of the Paris Agreement, shall take into account the comments received from the Party concerned and shall pay particular attention to the national capabilities and circumstances of the Party concerned. Special circumstances of small island developing States and least developed countries should also be recognized, where relevant.
28. The Party concerned may provide to the Committee information on particular capacity constraints or any challenges, including in relation to means of implementation, for the Committee's consideration in its identification of appropriate measures, findings or recommendations.
29. With a view to facilitating implementation and promoting compliance, the Committee shall take appropriate measures, in a progressive manner. These may include the following:
- (a) Engage in a dialogue with the Party concerned with the purpose of identifying challenges and sharing information, including in relation to accessing finance, technology and capacity-building support, as appropriate;
 - (b) Make recommendations to the Party concerned;
 - (c) Facilitate a dialogue between the Party concerned and the appropriate finance, technology and capacity-building bodies or arrangements under or serving the Paris Agreement, in order to identify possible challenges and solutions;
 - (d) Initiate the development of an action plan and work with the Party concerned in developing the plan, if so requested;
 - (e) Bring to the attention of the appropriate bodies or arrangements under or serving the Paris Agreement the challenges in relation to finance, technology or capacity-building, as appropriate;
 - (f) Where the issue relates to a matter initiated in accordance with paragraph 22 above and as a matter of last resort, also:
 - i. [Issue statements of concern addressed to the Party concerned;
 - ii. Report to the CMA where the Party concerned fails to implement the action plan referred to in sub-paragraph (d) above;
 - iii. Issue [findings of fact][a statement] in relation to implementation and compliance with the provision of the Paris Agreement.]

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30. The Party concerned is encouraged to provide information to the Committee on the progress made in implementing the action plan referred to in paragraph 29(d) above and on the effectiveness of the Committee's recommendations.

E. Consideration of systemic issues

31. The Committee may identify issues of a systemic nature with respect to the implementation of and compliance with the provisions of the Paris Agreement faced by a number of Parties and bring such issues and, as appropriate, any recommendations to the attention of the CMA for its consideration.
32. The CMA may, at any time, request the Committee to examine issues of a systemic nature. Following its consideration of the issue, the Committee shall report back to the CMA and, where appropriate, make recommendations.
33. In addressing systemic issues, the Committee shall not address matters that relate to the implementation of and compliance with the provisions of the Paris Agreement by an individual Party.

F. Information

34. In the course of its work, the Committee may seek expert advice, and seek 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

35. Pursuant to Article 15 of the Paris Agreement, the Committee shall report annually to the CMA.

H. Secretariat

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