

The 'Article 15 Committee' to Facilitate Implementation and Promote Compliance

Paris Agreement Policy Brief

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This policy brief outlines the modalities and procedures for the operation of the 'Article 15 committee', as set up by Article 15 of the Paris Agreement, Decision 1/CP.21, paragraphs 102 and 103, and Decision 20/CMA.1.

1. Nature of the Article 15 Committee

Article 15, paragraph 1, of the Paris Agreement establishes a mechanism to facilitate implementation of and promote compliance with the provisions of the Agreement. This mechanism consists of a committee.

The Article 15 Committee is expected to enhance the effective functioning of the Paris Agreement both by encouraging parties to implement the Agreement and by holding them accountable for aspects of their performance. This should build confidence and trust among the parties.¹

The committee is to be facilitative in nature, transparent, non-adversarial, non-punitive (Art. 15.2). It shall strive to avoid duplication of effort, shall not function as enforcement or dispute settlement mechanism, not impose sanctions or penalties, and shall respect national sovereignty (Decision 20/CMA.1, Annex, para 4).

The Article 15 committee will express its facilitative nature through its operation, both in terms of which issues get before the committee, how it deals with them and what outcomes and measures it can adopt. Decision 20/CMA.1 has put in place the modalities and procedures to safeguard the effective functioning of the committee in line with the general guidance set out in Art. 15 of the Paris Agreement.

In doing so, the Article 15 Committee has been tailored to fit the unique characteristics of the regime it serves.

2. Composition, Competence and Decision-making

The Committee is a standing, expert body under the Paris Agreement, with a mandate to address situations related to the performance of individual parties. It will consist of twelve members, plus twelve alternates.

¹ Christina Voigt, 'The Compliance and Implementation Mechanism of the Paris Agreement', 25(2) *RECIEL* 1 (2016).

The first members will be elected by CMA 2, in December 2019. It will be composed on the basis of equitable geographical representation, with two members each from the five regional groups of the United Nations and one members each from SIDS and LDCs, while taking into account gender balance. (Decision 1/CP.21, para 102) Members will serve for a term of three years and can be re-elected once.

Box 1: Size and composition of the Article 15 Committee.

African Group	2
Asia Pacific Group	2
Eastern European Group	2
Group of Latin American and Caribbean Countries	2
Western European and Others Group	2
Small Island Developing States	1
Least Developed Countries	1

The Committee's composition will include a broad range of relevant scientific, technical, socioeconomic and legal expertise. Members will serve in their individual expert capacity based on recognized competence in those fields. The considerable size of the Committee compared, for example with the ad hoc Technical Expert Review (TER) Teams under the Enhanced Transparency Framework, ensures that a wide range of expertise is made available to a party. The Committee should thus be well-positioned to address the wide spectrum of implementation or compliance issues that could come before it.²

The committee will have two co-chairs based on equitable geographical representation and meet at least twice a year, desirably in conjunction with the SBs sessions.

The Committee shall make every effort to make decisions by consensus. However, if all efforts are exhausted, the decision may be adopted by a majority vote (3/4 of the members present and voting).

² For a detailed account of the article 15 committee, see: Gu Zihua, Christina Voigt and Jacob Werksman (2019) "Facilitating Implementation and Promoting Compliance with the Paris Agreement: Conceptual Challenges and Pragmatic Choices," *Climate Law* 9, pages 65-100.

3. How will issues come before the Committee?

The modes of initiation of committee proceedings reflect the different legal nature of the provisions in the Agreement.³

Box 2: Three modes of initiation

1. Self-referral by a party on all provisions of the PA (20/CMA.1, paragraph 20)
2. “Automatic” initiation of the committee in cases of a violation of specified legally binding provisions of the Agreement, in accordance with paragraph 22(a)
3. Discretionary initiation, with consent of Party, in cases of *significant and persistent inconsistencies* of the information submitted under Art. 13.7 and 13.9 with MPGs, based on recommendations in TER Report (paragraph 22(b))

First, for provisions that set out a *legally binding, individual obligation* for Parties, the committee will start proceedings automatically if a Party has failed to comply. In those cases, no consent of the Party concerned is required.

This applies specifically to cases where a Party has not:⁴

- Communicated or maintained a nationally determined contribution under 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;
- Submitted a mandatory report or communication of information under Article 13, paragraphs 7 and 9, or Article 9, paragraph 7, of the Paris Agreement;
- Participated in the facilitative, multilateral consideration of progress, based on information provided by the secretariat;
- Submitted a mandatory communication of information under Article 9, paragraph 5, of the Paris Agreement.

³ See, e.g., Daniel Bodansky, ‘The Legal Character of the Paris Agreement’, 25(2) *RECIEL* 142 (2016); and Lavanya Rajamani, ‘The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations’, 28(2) *Journal of Environmental Law* 337 (2016).

⁴ Decision 20/CMA.1, Annex, paragraph 22 (a)

These issues are not addressed by the Transparency Framework and, accordingly, are not subject to review by the TERs.

The Committee will base its consideration on publicly available information, published through the information channels established under the Paris Agreement: public registries, the online portal for Biennial Transparency Reports (BTRs), information by the secretariat and the online portal for posting and recording biennial communications under Article 9.5.

Second, proceedings with respect to *other provisions* can only commence if the Party concerned has requested the committee to act or has given its consent.

This applies in particular to situations where the TER report has communicated recommendations in the areas of improvement, but was not able to resolve the issues.

These are cases of significant and persistent inconsistencies of information submitted in the BTR with the modalities, procedures and guidelines for the Enhanced Transparency Framework. Here, the committee may start proceedings only if the Party concerned consented to it. In these cases, the considerations will be based on the recommendations included in the TER Reports, together with any written comment by that Party. (Decision 20/CMA.1, Annex, paragraph 22(b)).

In any case, a party can always bring a matter concerning its own implementation and/or compliance to the attention of the committee. (Decision 20/CMA.1, paragraph 20).

Third, the committee may also address *systemic issues* which it identified during the course of its work. Systemic issues are those that are experienced by several parties and point to a shortcoming in the system itself, as opposed to individual performance of parties. It may bring such issues to the attention of the CMA and provide recommendations. At the same time, the CMA could ask the committee to examine systemic challenges.

It is worth noting that, with the exception on paragraph 22 (b), the Committee will not address the content of NDCs or of other communications or reports. Neither will the work of the committee change the legal character of the provisions of the Paris Agreement.

The Committee is required to pay particular attention to the respective national capabilities and circumstances of Parties, recognizing the special circumstances of LDCs and SIDS, at all stages of the process.

4. What will the Committee do?

In the situations outlined above, the Committee is tasked to take appropriate measures to facilitate implementation and promote compliance.

Decision 20/CMA.1 provides the following, non-exhaustive catalogue of measures:

1. Engaging in a dialogue with the Party to share info, identify challenges and recommend solutions (paragraph 30 a)
2. Assist the Party in engaging with support arrangements and make recommendations to the Party (and communicate those to the support arrangements) (paragraphs 30 b and c)
3. Recommend development of an action plan (paragraph 30 d)
4. Issue findings of fact in relation to matters listed in paragraph 22 a (paragraph 30 e).

Importantly, these measures are designed in such way as not to impede, but complement and add value to other processes under the Paris Agreement.

It is worth noting that issuing finding of fact only applies only to those matters listed in paragraph 22(a), as a consequence of their legally binding character. However, those matters can be brought to the committee by the Party itself (self-referral according to paragraph 20) or through automatic initiation (paragraph 22(a)).

The committee shall annually report to the CMA.

5. Further Steps

The Modalities and Procedures for the effective operation of the Article 15 Committee foresee that the Committee develops its rules of procedure for adoption by CMA3 in 2020. The rules of procedures will cover more specific details on, for example, timelines, conflict of interest, role of the co-chairs and reasoning in the decisions of the committee.

Moreover, negotiations on the rules and guidelines for cooperative approaches under Article 6 of the Paris Agreement continue throughout 2020 with the view of reaching agreement at CMA2. In this context, the role of the committee could be further elaborated and refined.⁵

⁵ See Christina Voigt, 'Policy Brief on the Interlinkages between Cooperative Approaches, Transparency and Compliance (Articles 6, 13 and 15 of the Paris Agreement)', 2019.