

Informal information note by the secretariat on recent and current compliance cases

What the Compliance Committee does

- 1) The Compliance Committee is an independent body, and the enforcement branch is made up of legal experts from developed and developing countries. It was set up to facilitate, promote and where necessary, enforce compliance with the rules of the Kyoto Protocol.
- 2) The rules relevant to recent and current cases include for example, that a national system is required to produce a reliable accounting of greenhouse gas (GHG) activity so that a country can demonstrate compliance with its 2012 emissions target; and, that a country must have a national registry to account for its emissions credits.
- 3) Cases come to the Committee in the form of questions of implementation from a Kyoto country or an expert review team (made up of independent experts from different countries).
- 4) In all cases of non-compliance, the enforcement branch of the Compliance Committee makes a public declaration of non-compliance and of the consequences applied.
- 5) Any country in non-compliance must submit a compliance action plan, within 3 months, that is subject to review and assessment by the enforcement branch (the time frame for the review and assessment is case specific, with no specific limits).
- 6) Countries that are found not to meet the core eligibility criteria for the Kyoto mechanisms (Emissions Trading, Clean Development Mechanism and Joint Implementation) are suspended from trading in the official Kyoto carbon market set up by these mechanisms.
- 7) Non-compliance with emissions targets is not an issue that can come before the enforcement branch until after the end of the commitment period in 2012.
 - a. A country in non-compliance with its 2012 target has 100 days after the expert review of its final emissions inventory to make up any shortfall (i.e., to buy credits).
 - b. If such a country still misses its target, it must make up the difference, plus 30%, in the second commitment period after 2012. It is also suspended from selling emissions credits in the emissions trading mechanism; and within 3 months, it must submit a plan on the action it will take to meet its target in the second commitment period.
- 8) There are no financial penalties under the Kyoto Protocol, nor is there any consequence which involves loss of credits (although there is a loss of access to the carbon market).
- 9) Any country found in non-compliance can appeal against a decision of the enforcement branch, but only for issues relating to its 2012 target. (So an appeal related to a national registry or national system issue may not be accepted.)

Recent meetings of the enforcement branch of the Compliance Committee

- 10) On 16-17 April the enforcement branch held its fourth meeting. The main question before the branch was whether to confirm its preliminary finding of non-compliance with respect to Greece (adopted at its third meeting on 4-6 March).
- 11) Greece made a further written submission on 8 April 2008.

- 12) At its fourth meeting the enforcement branch adopted a final decision to confirm its preliminary finding. This is the first time that any country has been officially found in non-compliance with any Kyoto Protocol obligation.
- 13) Greece was found to be in non-compliance with national system requirements for countries with 2012 targets (Annex B Parties). The national system is required for a country to account for its emissions and demonstrate compliance. (This is not directly related to whether Greece is in compliance with its 2012 emissions target.)
- 14) The consequences applied by the branch, which take effect forthwith, are that Greece is:
- a. Declared to be in non-compliance;
 - b. Required to submit a plan to address its non-compliance within three months (see also paragraph 5 above);
 - c. Not eligible to participate in the market mechanisms (Article 17, Emissions Trading; Article 12, Clean Development Mechanism; and Article 6, Joint Implementation).
 - i. This means that Greece cannot sell and transfer credits (unless they are verified under a special track II. Joint Implementation procedure), and cannot acquire any credits except those forwarded by a host developing country.
 - ii. The preliminary finding, and by extension the final decision, note that the branch received expert advice that identified the need for an in-country review on the basis of an annual inventory report generated by the new national system in order for the enforcement branch to assess compliance.
 - iii. Greece submitted an annual inventory report in April 2008. No in-country review by an expert review team has yet been scheduled.
- 15) Canada: a question of implementation was raised in the initial review report for Canada. The branch did not take any decision on the question, and now has until 2 May to complete its preliminary examination.
- a. The question with respect to Canada was sent to the Compliance Committee by an international team of experts. No decision has been taken by the enforcement branch with respect to Canada (as of 23 April).
 - b. The question relates to Canada's national registry (not to accounting). A national registry is like a bank for greenhouse gas credits. Countries with 2012 emissions targets are required to have a registry that meets certain standards.
 - c. The following consequences apply to a country found in non-compliance with registry requirements:
 - i. Declared to be in non-compliance;
 - ii. Required to submit a plan to address its non-compliance within 3 months;

- iii. Not eligible to participate in the market mechanisms (Article 17, Emissions Trading; Article 12, Clean Development Mechanism; and Article 6, Joint Implementation) and is not eligible for .JI track II..

16) No other enforcement branch meetings are currently scheduled (procedures are only scheduled once an expert review team or a country makes a submission).

Further information

All decisions of the Compliance Committee, and other key documents including a table on eligibility of countries, are available here:

http://unfccc.int/kyoto_protocol/compliance/items/2875.php. Enforcement branch documents are here: (http://unfccc.int/kyoto_protocol/compliance/enforcement_branch/items/3785.php, recent cases are near the bottom).

Disclaimer

This note should not be relied upon for any legal interpretation. It has been prepared with limited use of technical terms and references. This note was published on 24 April 2008.