



Background information on the evidence from a Party which may indicate a conflict of interest

1. At its twelfth session, the Conference of the Parties to the Convention adopted decision 7/CP.12, Level of emissions for the base year of Croatia. Paragraph 2 of decision 7/CP.12 allows Croatia:

to add 3.5 Mt CO₂ equivalent to its 1990 level of greenhouse gas emissions not controlled by the Montreal Protocol for purposes of establishing the level of emissions for the base year for implementation of its commitments under Article 4, paragraph 2, of the Convention.

2. Draft decision 7/CP.12 was considered by Subsidiary Body for Implementation (SBI) at its twenty-fifth session and annexed to conclusions adopted by SBI 25.

3. The effect of decision 7/CP.12 is at issue in the questions of implementation contained the report of the review of the initial report of Croatia.¹ In its preliminary finding, the enforcement branch concluded, inter alia, that:

[i]n the absence of a decision of the CMP on Croatia's specific circumstances, decision 7/CP.12 taken under the Convention does not provide a basis under the Kyoto Protocol for Croatia to add 3.5 Mt CO₂ eq to its level of emissions for the base year for implementation of its commitments under Article 3 of the Kyoto Protocol.²

4. As a consequence of this conclusion, the enforcement branch further concluded that the addition by Croatia of 3.5 Mt CO₂ eq to its level of emissions for its base year following decision 7/CP.12 is not in compliance with Article 3, paragraphs 7 and 8, of the Kyoto Protocol and the modalities for the accounting of assigned amounts.³ The branch also concluded that Croatia's calculation of its commitment period reserve, which was based on the calculation of its assigned amount following decision 7/CP.12, was likewise not in compliance with relevant CMP decisions.⁴

5. At the eighth meeting of the branch, the final decision finding Croatia in non-compliance with Article 3, paragraphs 7 and 8, of the Kyoto Protocol and the modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol (decision 13/CMP.1) was considered and elaborated. This decision was adopted on 26 November 2009 after the completion of a vote by electronic means. In adopting its final decision, the enforcement branch confirmed its preliminary finding in its entirety. The branch took note of the conclusions of SBI 25 in relation to decision 7/CP.12 and noted that:

[t]he application of decision 7/CP.12 under the Kyoto Protocol does not follow from any of the provisions of the Kyoto Protocol or from CMP decisions. Since the COP

¹ FCCC/IRR/2008/HRV. This document was forwarded to the Compliance committee under the following cover note: CC/ERT/IRR/2009/2.

² CC-2009-1-6/Croatia/EB. See paragraph 21 (a).

³ *Id.*, paragraph 21 (b).

⁴ *Id.*, paragraph 21 (c).



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and the CMP are two distinct decision-making bodies, the fact that Parties to the Kyoto Protocol are also Parties to the United Nations Framework Convention on Climate Change does not provide a sufficient basis for establishing the application of COP decisions under the Kyoto Protocol.⁵

6. When the SBI adopted the conclusions that recommended the adoption by the COP of decision 7/CP.12, the Party representing the European Community and its member States stated that this decision does not affect the base year level of emissions for Croatia for the implementation of its commitments under Article 3 of the Kyoto Protocol for the commitment period.⁶ This statement is reflected in the Report of SBI 25, which was referred to by the enforcement branch in its final decision.

7. At COP 12 and SBI 25, Finland held the Presidency of the European Union. Mr. Tuomas Kuokkanen, an alternate member of the enforcement branch of the Compliance Committee, was a member of the Finnish delegation.⁷

8. Mr. Kuokkanen participated in the following steps in the consideration of the questions of implementation with respect to Croatia:

(a) He participated in the consideration and elaboration of the decision on preliminary examination, through which the enforcement branch decided to proceed with the consideration of the questions of implementation with respect to Croatia;⁸

(b) He participated in the consideration and elaboration of the preliminary finding,⁹ which took place at the seventh meeting of the enforcement branch held in Bangkok, Thailand from 11 to 13 October 2009.

9. Mr. Kuokkanen was not present at the eighth meeting of the enforcement branch held from 23 to 24 November 2009 in Bonn, Germany, which considered and elaborated the final decision. Mr. Kuokkanen did not cast a vote by electronic means.

10. In comments from Croatia on the final decision,¹⁰ Croatia alleges, among other matters, that the final decision is not in line with rule 4 of the "Rules of procedure of the Compliance Committee of the Kyoto Protocol" contained in the annex to decision 4/CMP.2, as amended by decision 4/CMP.4 (rules of procedure), citing the case of Mr. Kuokkanen:

⁵ Paragraph 3 (c), Final decision, CC-2009-1-1/Croatia/EB, 26 November 2009.

⁶ Paragraph 131, Report of the Subsidiary Body for Implementation at its twenty-fifth session, FCCC/SBI/2006/28.

⁷ See the list of participants for COP 12, FCCC/CP/2006/INF.1.

⁸ CC-2009-1-2/Croatia/EB, 8 September 2009. Mr. Kuokkanen did not participate in the adoption of the decision on preliminary examination, as Mr. Sebastian Oberthür, the member whom Mr. Kuokkanen is an alternate for, voted in favor of the adoption of the decision, which was adopted by electronic means.

⁹ CC-2009-1-6/Croatia/EB, 13 October 2009. Just as in the case of the decision on preliminary examination, Mr. Kuokkanen is not listed as participating in the adoption of the preliminary finding, since Mr. Oberthür voted in favor of the preliminary finding.

¹⁰ CC-2009-1-9/Croatia/EB, 4 January 2010.



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alternate EBCC member, who participated in the consideration and elaboration of the upheld preliminary finding with respect to Croatia, was also a member of the EU delegation at COP 12 in Nairobi which had expressed its reservation regarding the application of flexibility under decision 7/CP.12 for Croatia to the Kyoto Protocol. The involvement of Mr. Kuokkanen is an evident conflict of interest in which rule 4 of the rules of procedure is entirely applicable.¹¹

11. On 14 January 2010, Croatia submitted an appeal to CMP. In its appeal, Croatia reiterates this point in its appeal against the final decision of the enforcement branch,¹² adding that:

the same individual who advocated the flexibility for Croatia, as provided by decision 7/CP.12, could not be applied for the purpose of implementation of the Kyoto Protocol, was the same person who was directly involved in the consideration and elaboration of the upheld preliminary finding of Croatia.

The involvement of Mr. Kuokkanen is an evident conflict of interest, and a grave violation of the principle of independence and impartiality, as well as an infringement of the oath of service sworn by the members of the Compliance Committee. . .

12. On 26 January 2010, a note by the Executive Secretary entitled “Evidence from a Party which may indicate a conflict of interest” was sent to the three members of the previous bureau of the Compliance Committee,¹³ together with a letter dated 25 January 2010 from Mr. Kuokkanen, which was also received on the same date. The chairperson of the enforcement branch, Mr. Oberthür, suggested that the new bureau, whose members were scheduled to take office on 3 February 2010, consider the matter.

13. On 4 February 2010, the note and letter dated 25 January 2010 were sent to the members of the new bureau.

14. The bureau requested the secretariat to write to Mr. Kuokkanen to, inter alia, seek his reactions, if any, to the note by the Executive Secretary, including any further thoughts he may have as regards his participation in the work of the Committee in relation to the matter to which the evidence relates and whether he intended to make any representations in the case the evidence of the conflict of interest is submitted to the plenary.

15. Mr. Kuokkanen responded on 16 March 2010, stating that he has not acted against the rules of procedure and therefore he sees no need to refrain from participating in the work of the committee in relation to matter to which the allegation of Croatia relates.

16. Therefore, in accordance with rule 4, paragraph 4, of the rules of procedure, the bureau has requested the secretariat to submit to the plenary the evidence of a possible conflict of interest, as contained in the comments from Croatia on the final decision. The

¹¹ See point 11 of the comments from Croatia on the final decision.

¹² FCCC/KP/CMP/2010/2, 19 February 2010. See point 15 on p. 21.

¹³ Mr. Ismail El Gizouli, formerly a member of the facilitative branch, ceased to become a member of the bureau on 1 January 2010. His term of office as a member of the facilitative branch ended on 31 December 2009.



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secretariat forwarded the note on 'Evidence from a Party which may indicate a conflict of interest' dated 26 March 2010 to members and alternate members of the Committee on 26 March 2010 (reference CC-2009-1/Croatia/EB).
