

PRELIMINARY FINDING

Party concerned: Ukraine

In accordance with the “Procedures and mechanisms relating to compliance under the Kyoto Protocol” contained in the annex to decision 27/CMP.1 and adopted under Article 18 of the Kyoto Protocol and the “Rules of procedure of the Compliance Committee” (the rules of procedure),¹ the enforcement branch adopts the following preliminary finding:

BACKGROUND

1. On 3 June 2011, the secretariat received a question of implementation from an expert review team (the ERT), indicated in the report of the review of the annual submission of Ukraine submitted in 2010 (2010 ARR) and contained in document FCCC/ARR/2010/UKR. In accordance with paragraph 1 of section VI² and paragraph 2 of rule 10 of the rules of procedure, the question of implementation was deemed received by the Compliance Committee on 6 June 2011. The 2010 ARR results from a centralized review of Ukraine’s annual submission submitted in 2010 (hereinafter referred to as the “2010 annual submission”) which was conducted from 30 August to 4 September 2010 in accordance with the “Guidelines for review under Article 8 of the Kyoto Protocol” (annex to decision 22/CMP.1; hereinafter referred to as the “guidelines for review”).
2. The bureau of the Compliance Committee allocated the question of implementation to the enforcement branch on 13 June 2011 under paragraph 1 of section VII, in accordance with paragraphs 4 (b) and (c) of section V and paragraph 1 of rule 19 of the rules of procedure.
3. On 14 June 2011, the secretariat notified the members and alternate members of the enforcement branch of the question of implementation, in accordance with paragraph 2 of rule 19 of the rules of procedure, and of its allocation to the enforcement branch.
4. On 29 June 2011, the enforcement branch decided, in accordance with paragraph 2 of section VII and paragraph 1 (a) of section X, to proceed with the question of implementation (CC-2011-2-2/Ukraine/EB).
5. The question of implementation relates to compliance with the “Guidelines for national systems for the estimation of anthropogenic greenhouse gas emissions by sources and removals by sinks under Article 5, paragraph 1, of the Kyoto Protocol” (annex to decision 19/CMP.1; hereinafter referred to as the “guidelines for national systems”). In particular, the ERT found that the national system of Ukraine failed to perform some of the general and specific functions required by the guidelines for national systems and that the national system did not ensure that Ukraine’s 2010 annual submission was sufficiently transparent, consistent, comparable, complete and accurate, as required by the guidelines for national systems, the “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol” (annex to decision 15/CMP.1), the UNFCCC reporting guidelines,³ the Intergovernmental Panel on Climate Change (IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories (hereinafter referred to as the

¹ All references to the rules of procedure in this document refer to the rules contained in the annex to decision 4/CMP.2 as amended by decision 4/CMP.4.

² All section references in this document refer to the “Procedures and mechanisms relating to compliance under the Kyoto Protocol” contained in the annex to decision 27/CMP.1.

³ “Guidelines for the preparation of national communications by Parties included in Annex I to the Convention, Part I: UNFCCC reporting guidelines on annual inventories” contained in FCCC/SBSTA/2006/9.

“IPCC good practice guidance”),⁴ and the IPCC Good Practice Guidance for Land Use, Land-Use Change and Forestry (LULUCF; hereinafter referred to as the “IPCC good practice guidance for LULUCF”).⁵ The ERT also found that the national system is not able to ensure that areas of land subject to LULUCF activities under Article 3, paragraphs 3 and 4, of the Kyoto Protocol (hereinafter referred to as “KP-LULUCF activities”) are identifiable in accordance with paragraph 20 of the “Definitions, modalities, rules and guidelines relating to land use, land-use change and forestry activities under the Kyoto Protocol” (annex to decision 16/CMP.1).⁶

6. The question of implementation is related to the eligibility requirement referred to in paragraph 31 (c), annex to decision 3/CMP.1, paragraph 21 (c), annex to decision 9/CMP.1, and paragraph 2 (c), annex to decision 11/CMP.1. Consequently, the expedited procedures as contained in section X apply.

7. On 6 July 2011, the enforcement branch agreed to invite four experts drawn from the UNFCCC roster of experts to provide advice to the branch (CC-2011-2-3/Ukraine/EB). Two of these experts were part of the ERT that reviewed Ukraine’s 2010 annual submission.

8. On 19 July 2011, the enforcement branch received a request for a hearing from Ukraine (CC-2011-2-4/Ukraine/EB), which also indicated that Ukraine intended to make a written submission under paragraph 1 (b) of section X.

9. On 3 August 2011, the enforcement branch received a written submission (CC-2011-2-5/Ukraine/EB) in accordance with paragraph 1 of section IX, paragraph 1 (b) of section X, and rule 17 of the rules of procedure.

10. On 24 August 2011, the enforcement branch held a hearing in accordance with paragraph 2 of section IX and paragraph 1 (c) of section X. The hearing formed part of the meeting of the enforcement branch that was held from 22 to 27 August 2011, inter alia, to consider the adoption of a preliminary finding or a decision not to proceed further. During the hearing, Ukraine made a presentation. The enforcement branch received advice from the four invited experts during the meeting.

11. In its deliberations, the enforcement branch considered the 2010 ARR, the written submission of Ukraine contained in document CC-2011-2-5/Ukraine/EB, information presented by Ukraine during the hearing, both orally and in writing, and advice from the experts invited by the branch. No competent intergovernmental or non-governmental organization provided any information under paragraph 4 of section VIII.

CONCLUSIONS AND REASONS

12. In the 2010 ARR, the ERT found that the national system of Ukraine did not ensure that its annual submission was sufficiently transparent, consistent, comparable, complete and accurate as required by the guidelines for national systems (annex to decision 19/CMP.1), the “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol” (annex to decision 15/CMP.1), the UNFCCC reporting guidelines, the Revised 1996 IPCC Guidelines for National Greenhouse Gas Inventories (hereinafter referred to as the “revised 1996 IPCC guidelines”),⁷ the IPCC good practice guidance, and the IPCC good practice guidance for LULUCF.

⁴ Available at <<http://www.ipcc-nggip.iges.or.jp/public/gp/english/>>.

⁵ Available at <<http://www.ipcc-nggip.iges.or.jp/public/gpglulucf/gpglulucf.htm>>.

⁶ See paragraphs 184–186, 188 and 191 of the report of the expert review team contained in FCCC/ARR/2010/UKR.

⁷ Available at <<http://www.ipcc-nggip.iges.or.jp/public/gl/invs1.htm>>.

13. During the course of its technical review, the ERT found that the national system of Ukraine did not perform some of the general and specific functions required by the guidelines for national systems. In particular, it failed to:

- (a) Ensure sufficient capacity for data collection for estimating anthropogenic greenhouse gas emissions by sources and removals by sinks (paragraph 10 (b) of the guidelines for national systems);
- (b) Prepare national annual inventories and supplementary information in a timely manner in accordance with Article 5 and Article 7, paragraphs 1 and 2, and relevant decisions of the Conference of the Parties to the Convention (COP) and/or the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) (paragraph 10 (d) of the guidelines for national systems);
- (c) Prepare estimates in accordance with the methods described in the revised 1996 IPCC guidelines, as elaborated by the IPCC good practice guidance and IPCC good practice for LULUCF, and ensure that appropriate methods are used to estimate emissions from key categories (paragraph 14 (b) of the guidelines for national systems);
- (d) Collect sufficient activity data, process information and emission factors as are necessary to support the methods selected for estimating anthropogenic greenhouse gas emissions by sources and removals by sinks (paragraph 14 (c) of the guidelines for national systems);
- (e) Provide expert review teams under Article 8 with access to all archived information used by the Party to prepare the inventory, in accordance with relevant decisions of the COP and/or CMP (paragraph 16 (b) of the guidelines for national systems); and
- (f) Respond to requests for clarifying inventory information resulting from the different stages of the review process of the inventory information in accordance with Article 8 (paragraph 16 (c) of the guidelines for national systems).

14. In addition, the ERT found many gaps in the reporting of KP-LULUCF activities. Specifically, the ERT found that the national system of Ukraine was not able to:

- (a) Ensure consistent land representation in accordance with the IPCC good practice guidance for LULUCF;
- (b) Ensure that areas of land subject to KP-LULUCF activities are identifiable in accordance with the annex to decision 15/CMP.1, in particular paragraph 6 (b), and paragraph 20 of the annex to decision 16/CMP.1; and
- (c) Account for all carbon stock changes in certain mandatory carbon pools or provide transparent and verifiable information demonstrating that these unaccounted pools were not net sources of emissions in accordance with mandatory reporting requirements set out in the annex to decision 15/CMP.1, in particular paragraph 6 (b) and (e), and paragraph 21 of the annex to decision 16/CMP.1.

15. Advice received from the invited experts during the meeting indicated that the major unresolved problems found in the review of the 2010 annual submission relate to the capacity of Ukraine's national system to collect sufficient data for estimating anthropogenic greenhouse gas emissions by sources and removals by sinks and to prepare estimates in accordance with the IPCC methodologies. These unresolved problems had resulted in a lack of completeness and transparency of inventory information in the energy and industrial processes sectors as well as, most centrally, in a lack of accuracy, completeness and transparency of inventory information in the LULUCF sector. In

particular, the invited experts highlighted the significant challenge that the national system of Ukraine has been facing in generating accurate and consistent information with respect to land representation and the identification of areas of land subject to KP-LULUCF activities as well as in generating necessary information on carbon pools. Invited experts that had participated in the ERT that reviewed Ukraine's 2010 annual submission also pointed to a lack of action on previous review recommendations, as also noted in the 2010 ARR.

16. In its written submission and during the hearing, Ukraine presented updated information on its national system, including a description of its current legal and institutional framework, staffing, data providers and new inventory data archiving system, as well as information on its efforts with respect to reporting of KP-LULUCF activities. It acknowledged a delay in the availability of funding to undertake research activities aimed at supporting the national inventory system that was due to economic crisis and limited public financing, but pointed out that financial security for the functioning of the national system had now been achieved. Ukraine noted that the high number of categories of emissions reported as "NE" ("not estimated") in Ukraine's 2010 annual submission reflected the country's prioritization of other inventory reporting categories for purposes of resource efficiency. Ukraine emphasized improvements implemented in recent years and especially in the annual submission submitted in 2011 (hereinafter referred to as the "2011 annual submission") in which the number of emission categories not estimated is reduced significantly. In the course of the hearing, Ukraine also presented additional information on four ongoing fully-funded research initiatives scheduled to be completed in 2011 -- one addressing greenhouse gas emissions from mobile sources, one addressing emissions of fluorinated greenhouse gases, and two addressing the LULUCF sector. It indicated that delays in the provision of confidential information in response to ERT requests had resulted from miscommunications rather than any intention not to provide information in a timely fashion. Ukraine raised concerns about the delay experienced in the review process and requested the enforcement branch to limit the consideration of the question of implementation to issues understood by Ukraine to have been specifically identified by the ERT in the list of problems referred to in paragraph 73 of the guidelines for review (annex to decision 22/CMP.1). Ukraine further requested that the enforcement branch decide not to proceed further or alternatively defer a decision until the initial feedback from the in-country review of the 2011 annual submission scheduled for 10 to 15 October 2011 in accordance with paragraph 11 of section IX or alternatively refer the question of implementation to the facilitative branch in accordance with paragraph 12 of section IX.

17. Following the presentation of information by Ukraine at the hearing, the experts highlighted that the resolution of the unresolved problems might be achieved in a relatively short timeframe, e.g., in the 2011 or the 2012 annual submission. The main area of concern identified was the capacity of the national system to continuously generate accurate, complete and transparent information on LULUCF in accordance with paragraph 20 of the annex to decision 16/CMP.1 and paragraph 6 (b) of the annex to decision 15/CMP.1. They further noted that an assessment of whether sufficient improvements have been implemented to ensure that Ukraine's national system is operating fully in accordance with the guidelines for national systems requires a review of an annual submission.

18. After considering the 2010 ARR, the written submission of Ukraine, the presentations by Ukraine at the hearing and the presentations and advice received from the invited experts, the enforcement branch was encouraged by the willingness and commitment shown by Ukraine to address unresolved problems with respect to the specific and general functions of the national system. However, the enforcement branch noted that questions remained regarding the development and implementation of measures to ensure the operation of the national system of Ukraine in accordance with the guidelines for national systems. The branch further noted a lack of action on specific recommendations that earlier expert review teams had repeatedly made, in particular with respect to the energy, industrial processes and LULUCF sectors.⁸

⁸ See the report of the review of the initial report of Ukraine (FCCC/IRR/2007/UKR), the report of the individual review of the greenhouse gas inventories of Ukraine submitted in 2007 and 2008 (FCCC/ARR/2008/UKR) and the report of the individual review of the annual submission of Ukraine submitted in 2009 (FCCC/ARR/2009/UKR).

19. In response to Ukraine's request to limit the consideration of issues and its concerns about the delay experienced in the review process referred to in paragraph 16 above, the enforcement branch notes that it considers questions of implementation as received by the Compliance Committee in accordance with paragraph 1 of section VI and allocated to the branch in accordance with paragraph 1 of section VII. The "Procedures and mechanisms relating to compliance under the Kyoto Protocol" contained in the annex to decision 27/CMP.1 and the rules of procedure address due process in the consideration of these questions of implementation by the branch. The question of whether the guidelines for review were properly followed during the review process, as regards the request and concerns referred to in paragraph 16, is not within the mandate of the enforcement branch.

20. The enforcement branch concludes, based on the information submitted and presented, that unresolved problems referred to in paragraphs 12 to 14 above resulted in non-compliance with the guidelines for national systems at the time of finalization of the 2010 ARR.

21. While Ukraine has submitted and presented information on positive steps it has undertaken since the finalization of the 2010 ARR, this information has not enabled the enforcement branch to conclude that the question of implementation has been resolved. The enforcement branch concludes that:

- (a) Ukraine needs to make further progress in the development and implementation of measures to ensure that the national system performs all the general and specific functions described in the guidelines for national systems;
- (b) An in-country review of Ukraine's national system, in conjunction with a review of an annual inventory report that is generated by this system and reflects substantial progress, in particular in the reporting on KP-LULUCF activities, is required for the enforcement branch to assess compliance with the guidelines for national systems.

22. Furthermore, the enforcement branch concludes that:

- (a) The circumstances of the present case referred to by Ukraine do not warrant deferral of the adoption of a preliminary finding under paragraph 11 of section IX;
- (b) As long as there are unresolved problems pertaining to language of a mandatory nature relating to Ukraine's national system it is not appropriate to consider referral of the question of implementation to the facilitative branch under paragraph 12 of section IX.

FINDING AND CONSEQUENCES

23. The enforcement branch determines that Ukraine is not in compliance with the "Guidelines for national systems for the estimation of anthropogenic greenhouse gas emissions by sources and removals by sinks under Article 5, paragraph 1, of the Kyoto Protocol" (annex to decision 19/CMP.1). Hence, Ukraine does not meet the eligibility requirements under Articles 6, 12 and 17 of the Kyoto Protocol to have in place a national system in accordance with Article 5, paragraph 1, of the Kyoto Protocol and the requirements and guidelines decided thereunder.

24. In accordance with section XV, the enforcement branch applies the following consequences:

- (a) Ukraine is declared to be in non-compliance.
- (b) Ukraine shall develop a plan referred to in paragraph 1 of section XV, in accordance with the substantive requirements of paragraph 2 of section XV and paragraph 1 of rule 25 bis of the rules of procedure, submit it within three months to the enforcement

branch in accordance with paragraph 2 of section XV, and report on the progress of its implementation in accordance with paragraph 3 of section XV.

- (c) Ukraine's eligibility to participate in the mechanisms is suspended in accordance with the relevant provisions under Articles 6, 12 and 17 of the Kyoto Protocol pending the resolution of the question of implementation.

25. These findings and consequences take effect upon confirmation by a final decision of the enforcement branch.

Members and alternate members participating in the consideration and elaboration of the preliminary finding: Mohammad ALAM, Joseph AMOUGOU, Raúl ESTRADA-OYUELA, René LEFEBER, Mary Jane MACE, Stephan MICHEL, Sebastian OBERTHÜR, Ilhomjon RAJABOV, Oleg SHAMANOV, Mohamed SHAREEF.

Members participating in the adoption of the preliminary finding: Mohammad ALAM (alternate member serving as member), Joseph AMOUGOU (alternate member serving as member), Raúl ESTRADA-OYUELA, René LEFEBER, Stephan MICHEL, Sebastian OBERTHÜR, Ilhomjon RAJABOV, Oleg SHAMANOV, Mohamed SHAREEF.

This decision was adopted by consensus in Bonn on 25 August 2011.