



DER BOTSCHAFTER DER UKRAINE
IN DER BUNDESREPUBLIK DEUTSCHLAND

Berlin, 5 December 2016
61212/21-190-1304

Ms. Marianna Bolshakova

**Secretary to the Compliance Committee
UNFCCC Secretariat**

Dear Ms. Bolshakova,

With reference to the Compliance Committee notification of 8 September 2016 Ukraine (CC-2016-1/Ukraine/EB) on the final decision, please find attached the Plan of Ukraine under section XV, paragraph 1, of the annex to decision 27/CMP.1.

The Ukrainian plan is submitted in accordance with paragraph 32 (b) of preliminary finding (CC-2016-1-4/Ukraine/EB), confirmed by the final decision of the Enforcement Branch concerning Ukraine (CC-2016-1-6/Ukraine/EB) and in accordance with the substantive requirements of section XV, paragraph 2, of the procedures and mechanisms relating to compliance under the Kyoto Protocol and paragraph 1 of rule 25 bis of the Rules of procedure of the Compliance Committee of the Kyoto Protocol.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Andriy Melnyk'.

Andriy Melnyk

PLAN

Submitted in accordance with paragraph 32 (b) of preliminary finding (CC-2016-1-4/Ukraine/EB), confirmed by the final decision of the Enforcement Branch concerning Ukraine (CC-2016-1-6/Ukraine/EB) and 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 of the Compliance Committee of the Kyoto Protocol

December 2, 2016
Kyiv, Ukraine

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PREFACE

1. Ukraine is pleased to present this Plan to the Enforcement Branch of the Compliance Committee under Section XV, paragraph 2 of the “Procedures and mechanisms relating to compliance under the Kyoto Protocol” (annex to decision 27/CMP.1) (the “Procedures and mechanisms”) in response to the preliminary finding of the Enforcement Branch of the Compliance Committee (CC-2016-1-4/Ukraine/EB) confirmed by the final decision of the Enforcement Branch of the Compliance Committee concerning Ukraine (CC-2016-1-6/Ukraine/EB).
2. The question of implementation relates to Ukraine’s non-compliance with Article 7, paragraph 1, in conjunction with paragraph 4, and the mandatory requirements set out in the “Modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol” (annex to decision 13/CMP.1) and the “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol” (annex to decision 15/CMP.1).
3. As a result of Ukraine's non-compliance with Article 7, paragraph 1, in conjunction with paragraph 4 the quantity of ERUs, CERs, tCERs, AAUs and RMUs in the retirement account of Ukraine for the first commitment period is zero. Ukraine has therefore not been able to formally demonstrate its compliance with its commitment under Article 3, paragraph 1, of the Kyoto Protocol in accordance with the relevant procedures set out in decision 13/CMP.1.
4. However, the Enforcement Branch cannot, as a matter of substance, determine, on the basis of all the information it has available to it whether Ukraine is not in compliance with its quantified emission limitation or reduction commitment under Article 3, paragraph 1, as set out in section V, paragraph 4.

I. BACKGROUND

5. On 11 April 2016, the Compliance Committee received from the United Nations Framework Convention on Climate Change (UNFCCC) Secretariat the report of the Expert Review Team (ERT) of the individual review of the report upon expiration of the additional period for fulfilling commitments (true-up period) for the first commitment period of the Kyoto Protocol of Ukraine contained in the document FCCC/KP/CMP/2016/TPR/UKR, in which questions of implementation were indicated.
6. On 18 April 2016, the bureau of the Compliance Committee allocated the questions of implementation to the Enforcement Branch under paragraph 1 of section VII, in accordance with paragraphs 4 and 6 of section V and paragraph 1 of rule 19 of the rules of procedure.
7. On 19 April 2016, the secretariat notified the members and alternate members of the branch of the questions of implementation, in accordance with paragraph 2 of rule 19 of the rules of procedure, and of their allocation to the branch.
8. On 3 May 2016, the Enforcement Branch of the Compliance Committee decided, in accordance with paragraph 2 of section VII and paragraph 1 (a) of section X, to proceed with the questions of implementation (CC-2016-1-2/Ukraine/EB).
9. On May 30 2016, the Enforcement Branch of the Compliance Committee agreed to invite three experts drawn from the UNFCCC roster of experts to provide advice to the Enforcement Branch (CC-2016-1-3/Ukraine/EB). Two of these experts were part of the ERT which conducted the true-up period review of Ukraine.
10. From 20 to 21 June 2016, the Enforcement Branch of the Compliance Committee held its twenty-eighth meeting in Bonn to consider the questions of implementation with respect to Ukraine. The branch received advice from two of the invited experts during the meeting.
11. In its deliberations, the Enforcement Branch of the Compliance Committee considered the TPR, the true-up period report referred in paragraph 5 above, the correspondence dated 9 March 2016 from Ukraine sent in response to the communication by the secretariat of the draft TPR including the correspondence between Ukraine and the secretariat in relation to the national registry of Ukraine referred to therein, the 2014 annual submission of Ukraine and corresponding standard electronic format tables (SEF tables) and their review contained in the report on the individual review of the annual submission of Ukraine submitted in 2014 (FCCC/ARR/2014/UKR) (2014 ARR), information as of 25 November 2015 published by the secretariat pursuant to decision 3/CMP.10, and advice from the experts invited by the branch.

12. On 21 June 2016, the Enforcement Branch of the Compliance Committee adopted its preliminary finding of non-compliance with respect to Ukraine.
13. On 22 June 2016, Ukraine received a notice that the Enforcement Branch of the Compliance Committee had adopted its preliminary finding of non-compliance with respect to Ukraine as contained in the document CC-2016-1-4/Ukraine/EB. In this notice Ukraine was invited to make a written submission within four weeks from the date of receipt of the notification.
14. On 20 July 2017, in response to the decision CC-2016-1-4/Ukraine/EB of the Enforcement Branch of the Compliance Committee Ukraine provided its written submission in accordance with paragraph 1 (e) of section X and rule 17 of the rules of procedure, where the issues underlying the questions of implementation raised were demonstrated.
15. On 22 July 2016, the Enforcement Branch of the Compliance Committee received a written submission from Ukraine as contained in document the CC-2016-1-5/Ukraine/EB.
16. On 31 August 2016, the Enforcement Branch of the Compliance Committee received a letter from Ukraine containing additional information.
17. The Enforcement Branch of the Compliance Committee considered the information provided by Ukraine as referred to in paragraphs 14 and 16 above in elaborating a final decision at its twenty-ninth meeting held in Bonn on 7 September 2016.
18. On 7 September 2016, the Enforcement Branch of the Compliance Committee adopted the final decision of non-compliance with respect to Ukraine (CC-2016-1-6/Ukraine/EB). The Enforcement Branch of the Compliance Committee confirmed, in accordance with paragraph 1(f) of section X, and rule 22 of the rules of procedure, the preliminary finding with respect to non-compliance with Article 7, paragraph 1, in conjunction with paragraph 4, of the Kyoto Protocol and the guidelines adopted thereunder, as set out in paragraph 27 of the preliminary finding. The Enforcement Branch of the Compliance Committee decided to apply the consequences outlined in paragraph 32, subparagraphs (a) and (b), of the preliminary finding (CC-2016-1-4/Ukraine/EB).
19. In accordance with paragraph 32 (b) of preliminary finding (CC-2016-1-4/Ukraine/EB) 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 of the Compliance Committee in accordance with paragraph 2 of section XV.
20. Ukraine is pleased to present this Plan to the Enforcement Branch of the Compliance Committee according to requirements in paragraph 19 above.

II. ANALYSIS OF THE CAUSES OF NON-COMPLIANCE

21. The key fundamental cause underlying Ukraine's non-compliance referred to in paragraph 2 above and subsequent consequences referred to in paragraphs 3 and 4 above arises from exceptional circumstances concerning, inter alia, the disconnection of Ukraine's National Electronic Registry of Anthropogenic Emissions and Absorption of Greenhouse Gases of Ukraine (the Registry) from the ITL and the fact that external transfer and retirement transactions for the purpose of the first commitment period of the Kyoto protocol cannot be carried out in the ITL after the end of true-up period due to absence of relevant CMP decisions and/or provisions at the time of adoption of the final decision of the Enforcement Branch of the Compliance Committee (CC-2016-1-6/Ukraine/EB) that would allow Ukraine to demonstrate its formal compliance with Article 3, paragraph 1, for the first commitment period of the Kyoto protocol.

22. The fact of disconnection of the Registry from the ITL in August 2015 being at the heart of the problem that resulted in Ukraine's non-compliance has also been recognized and indicated by the expert advice during 28th meeting of the Enforcement Branch of the Compliance Committee, as referred to in paragraph 8 of the report on the meeting (CC/EB/28/2016/2), and noted by the Enforcement Branch of the Compliance Committee in its preliminary finding, as referred to in paragraph 22 (CC-2016-1-4/Ukraine/EB).

23. The circumstances surrounding disconnection of the Registry from the ITL essentially arose from a number of reasons, in particular those related to governmental restructuring of the national central executive bodies system which entailed amongst other measures the liquidation of a number of state bodies, including the State Environmental Investments Agency of Ukraine (SEIA), which, inter alia, was initially designated to populate and manage the Registry, as described in paragraphs 1, 3 and 5 of the written submission of Ukraine (CC-2016-1-5/Ukraine/EB), with further transfer of its functions to the Ministry of Ecology and Natural Resources of Ukraine (MENR), as described in paragraph 8 of the written submission of Ukraine.

24. In the view of short-comings in national legislation system on the transfer of functions from one central executive body to another central executive body through liquidation procedure, in this case from the SEIA to the MENR as referred to in paragraph 8 of the written submission of Ukraine, the fundamental issues arose, which are briefly indicated in paragraph 25 below and in more detail described in the written submission of Ukraine. This has resulted in the MENR acquiring full mandate to act as the Registry administration starting from 12 August 2015, as referred to in paragraphs 10 and 11 of the written submission of Ukraine, that was after the date of the Registry disconnection from the ITL (3 August 2015).

25. After acquiring the mandate, as referred to in paragraph 24 above, further measures were required in order to re-establish the Registry connection with the ITL

and perform necessary transactions. These required numerous concurrences from relevant state bodies on each measure listed below, as been described in more detail in the written submission of Ukraine:

- on ensuring institutional capacity within the MENR as per Cabinet of Ministers of Ukraine (CMU) Decree dated 18 March 2015 No 119 “On issues of activities of the MENR”, including amendments this Decree introduced to the Annex 1 of the CMU Decree dated 5 April 2014 No 85 “On some issues of approval of the limit of the number of employees of the central offices and territorial offices of the central executive bodies and other state bodies”, and measures referred to in paragraph 13 of the written submission of Ukraine;
- on transferring the property rights for the Registry software and hardware, which were under ownership of the SEIA during its liquidation process, as referred to in paragraph 14 of the written submission of Ukraine, in accordance with relevant procedure referred to in paragraph 18 of the written submission of Ukraine;
- on ensuring funding of the Registry functioning, including Registry Technical Administrator services, as described in paragraph 22 of the written submission of Ukraine, caused by ambiguity referred to in paragraph 12 of the written submission of Ukraine.

26. In the view of complexity of national legislation and parallel restructuring process within a number of the state bodies in Ukraine, all of the measures listed in paragraph 25 above were completed on 2 July 2016, as referred to in paragraph 18 of the written submission of Ukraine, and within one month time the Registry connection to the ITL was re-established, specifically on 3 August 2016, as referred to in the letter of Ukraine containing additional information submitted to the Enforcement Branch of the Compliance Committee on 30 August 2016.

27. In the meantime, Ukraine was also exploring other possibilities to ensure timely fulfillment of the commitments of the Kyoto Protocol despite the Registry disconnection from the ITL, including an inquiry to the UNFCCC Secretariat as referred to in paragraph 20 of the written submission of Ukraine.

28. Despite all the measures and actions described in paragraphs 23-27 above and with respect to unresolved issue with continued disconnection of the Registry from the ITL, the transactions, referred to in paragraph 20 of the written submission of Ukraine, were not performed upon expiration of the additional period for fulfilling commitments (True-up Period) under Kyoto Protocol.

29. In the view of absence of formal procedure on performing transactions, as well as on re-submission of the True-up Period Report, after the end of the True-up Period itself and notwithstanding having sufficient amount of Kyoto Protocol units in the holding account of the Registry to fulfill commitments under the first commitment period of the Kyoto protocol, which can be confirmed, inter alia, by information provided in the final decision as contained in the document CC-2016-1-

6/Ukraine/EB, Ukraine was not able to carry out the transactions and therefore comply with Article 7, paragraph 1, in conjunction with paragraph 4, and the mandatory requirements set out in the “Modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol” (annex to decision 13/CMP.1) and the “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol” (annex to decision 15/CMP.1).

III. MEASURES THAT UKRAINE INTENDS TO IMPLEMENT AND/OR HAS IMPLEMENTED IN ORDER TO REMEDY NON-COMPLIANCE

MEASURES IMPLEMENTED

30. Being authorized to act as the Registry Administrator starting from 12 August 2015, the MENR initiated the process to carry out respective measures which were completed on 2 July 2016, as referred to in paragraphs 24, 25 and 26 above.

31. In accordance with relevant provisions of national legislation, referred to in paragraph 1 of the written submission of Ukraine, the CMU adopted a Resolution No. 20-p “On Retirement of Assigned Amount Units” on 20 January 2016, as referred to in paragraph 19 of the written submission of Ukraine, that enabled Ukraine to submit its True-up Period Report on 9 March 2016 with the list of transactions that should be performed, as described in paragraphs 25 and 26 of the written submission of Ukraine.

32. Intensified efforts and technical measures performed starting from 2 July 2016 as per paragraph 30 above, enabled re-establishment of the Registry connection to the ITL within one month starting from 3 August 2016 and successful completion of reconciliation and time synchronization on 23 August 2016, as referred to in the letter of Ukraine containing additional information submitted to the Enforcement Branch of the Compliance Committee on 30 August 2016.

33. Currently the Registry is operational with “reconciliation only” status set upon request of the ITL Administrator and is technically fully ready to perform all necessary transactions referred to in paragraph 20 of the written submission of Ukraine.

MEASURES TO BE IMPLEMENTED

34. Ukraine will perform all required transactions, listed in paragraph 20 of the written submission of Ukraine, once all necessary arrangements are made by the UNFCCC Secretariat, as per report of the Compliance Committee adopted by Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at its twelfth session (CMP12), and the ITL technically enables the Registry to do so.

35. Ukraine will re-submit its True-up Period Report after the actions, referred in paragraph 34 above, are completed. In doing so, Ukraine will strive to meet the

requirements with UNFCCC reporting guidelines on annual inventories for Parties included in Annex I to the Convention.

36. Completion of all measures, referred to in paragraphs 34 and 35 above, will enable Ukraine to comply with Article 7, paragraph 1, in conjunction with paragraph 4, and the mandatory requirements set out in the “Modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol” (annex to decision 13/CMP.1) and the “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol” (annex to decision 15/CMP.1), as well as enable Ukraine to formally demonstrate its compliance with its commitment under Article 3, paragraph 1, of the Kyoto Protocol in accordance with the relevant procedures set out in decision 13/CMP.1.

IV. TIMETABLE FOR IMPLEMENTING MEASURES

37. The table below presents the timeframe for implementing actions, including status of their implementation, which are aimed to enable Ukraine to comply with Article 7, paragraph 1, in conjunction with paragraph 4, and the requirements of the relevant guidelines adopted thereunder. The actions are scheduled for implementation during 2016-2017.

No	ACTIONS TO BE IMPLEMENTED	SCHEDULED TIMEFRAME	STATUS OF IMPLEMENTATION
1.	Reconnection of the Registry to the ITL	By 12 August 2016 (as per written submission of Ukraine)	Completed on 3 August 2016
2.	Performance of reconciliation of all data	By 19 August 2016 (as per written submission of Ukraine)	Completed on 23 August 2016
3.	Submission of a plan in accordance with section XV, paragraph 2, of the annex to decision 27/CMP.1	By 7 December 2016 (as per section XV, paragraph 2, of the annex to decision 27/CMP.1)	Completed 2 December 2016
4.	Performance of all transactions, as referred to in paragraph 34 above	Option 1: within 5 working days after all necessary arrangements are made by the UNFCCC Secretariat and Registry technically enabled by the ITL the to do so, in case if actions are performed by end 2016 Option 2: within 120* days after all necessary arrangements are made by the UNFCCC Secretariat and Registry technically enabled by the ITL the to do so, in case if actions are not performed by end 2016	Pending
5.	Re-submission of the True-up period report, as referred to in paragraph 35 above	Within 15 days after completion of all transactions	Pending

* Time required for conducting and finalizing state procurement process of the Registry Technical Administration services in the view of state budget legislation that allows only annual fiscal budgeting and planning, as referred to in paragraph 5 of the written submission of Ukraine.

CONCLUSIONS

38. As a country undergoing the process of transition to a market economy, Ukraine has faced certain technical, institutional and organizational challenges in recent years. These challenges characterize the national circumstances and conditions of Ukraine. Various provisions of the Convention and its Kyoto Protocol, decisions of the COP and the CMP, recognize the different national circumstances of all Parties and provide for flexibility on how to accommodate for them.

39. Ukraine has analyzed the key causes underlying Ukraine's non-compliance with Article 7, paragraph 1, in conjunction with paragraph 4, and the requirements of the relevant guidelines adopted thereunder and subsequent consequences, as well as the circumstance surrounding the key causes which were identified.

40. Ukraine herewith presents measures it has implemented and plans to implement in order to remedy its non-compliance with a tentative timeframe covering the period of 2016 - 2017.

41. Ukraine emphasizes that as of today it stands technically ready to comply with Article 7, paragraph 1, in conjunction with paragraph 4, requirements set out in decisions 13/CMP.1 and 15/CMP.1, and to formally demonstrate its compliance with its commitment under Article 3, paragraph 1, of the Kyoto Protocol in accordance with the relevant procedures set out in decision 13/CMP.1.