

INFORMAL INFORMATION NOTE BY THE SECRETARIAT

The compliance procedure with respect to Ukraine:

- 1) After the first commitment period of the Kyoto Protocol (CP1) ended on 31 December 2012, each Party to the Protocol with an emissions reduction target was given until 18 November 2015 to transfer and acquire Kyoto Protocol units from CP1 to ensure that it would meet its target. The report pertaining to these transactions (the 'true-up period' report) was due on 2 January 2016.
- 2) In finalizing its report on the review of Ukraine's true-up period report (document FCCC/KP/CMP/2016/TPR/UKR), the expert review team that reviewed Ukraine's report (ERT) listed two questions of implementation which triggered the compliance mechanism of the Kyoto Protocol.
- 3) The first question of implementation relates to the late submission by Ukraine of its true-up period report and inconsistencies between information submitted by it and the international transaction log (ITL) maintained by the secretariat. Ukraine submitted its true-up period report after the deadline of 2 January 2016 and after the centralized review of all true-up period reports, which took place in Bonn from 8 to 12 February 2016. The ERT was unable to determine the accuracy of information submitted by Ukraine since its national registry, i.e., the electronic database maintained by it for the transfer and tracking of Kyoto Protocol units in accordance with the rules adopted by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP), had not been connected to the ITL since August 2015.
- 4) The second question of implementation relates to Ukraine's emission reduction target for CP1. The ERT determined that Ukraine did not retire sufficient Kyoto Protocol units to cover its total greenhouse gas emissions for CP1, as required by the rules on accounting for Kyoto Protocol units adopted by the CMP.
- 5) Ukraine was given official notification of the questions of implementation on 11 April 2016. The questions were allocated to the enforcement branch on 18 April 2016. On 3 May 2016 the branch decided to proceed with its consideration of these questions.
- 6) On 30 May 2016, the branch adopted a decision in accordance with paragraph 5 of section VIII of the annex to decision 27/CMP.1 and rule 21 of the rules of procedure to seek expert advice during its meeting scheduled for 20-21 June 2006.
- 7) No request for a hearing was made by Ukraine under paragraph 1(c) of section X and no written submission was made by Ukraine under paragraph 1 of section IX and paragraph 1(b), of section X of decision 27/CMP.1 and rule 17 of the rules of procedure.
- 8) The enforcement branch considered the questions of implementation with regard to Ukraine at its 28th meeting on 20-21 June 2016.
- 9) At that meeting, the branch adopted a preliminary finding of non-compliance with respect to Ukraine, stating that: Ukraine is not in compliance with Article 7, paragraph 1, in conjunction with paragraph 4, and the mandatory requirements set out in the guidelines adopted through decisions 13/CMP.1 and 15/CMP1; and Ukraine does not have in place a national registry in accordance with Article 7, paragraph 4 of the Kyoto Protocol and therefore does not meet the eligibility requirements to participate in the mechanisms under Article 6, 12 and 17 of the Protocol. In addition, the branch stated that as a result of Ukraine's non-compliance with the reporting requirements and the requirements for the national registry, the quantity of the Kyoto Protocol units in the retirement account of Ukraine is zero. It also stated that Ukraine therefore has not been able to formally demonstrate its compliance with the commitment under Article 3, paragraph 1, of the Protocol, however, the branch could not, 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 this commitment.

- 10) The following consequences would apply to Ukraine *if* the preliminary finding is confirmed by the final decision:
 - a. Declaration of non-compliance;
 - b. Requirement to submit a plan to address its non-compliance within three months;
 - c. Suspension from participation in the market-based mechanisms, save as may otherwise be provided in relevant decisions of the CMP.
- 11) On 21 July 2016, the secretariat received a written submission made by Ukraine in accordance with paragraph 1(e), section X, of the annex to decision 27/CMP.1.
- 12) After considering the further written submission and additional information provided by Ukraine, on 7 September 2016 the branch adopted a final decision.
- 13) In the final decision, the branch confirmed its preliminary finding that Ukraine was not in compliance with Article 7, paragraph 1, in conjunction with paragraph 4, of the Kyoto Protocol and the guidelines adopted thereunder. The branch reversed its preliminary finding with respect to compliance with the registry requirements. The branch also confirmed that it could not, as a matter of substance, determine, on the basis of all the information it had available to it, whether Ukraine was in non-compliance with its qualified emission limitation or reduction commitment under Article 3, paragraph 1, as set out in section V, paragraph 4. It noted that there is no current procedure envisaged in the relevant CMP decisions that would allow Ukraine to demonstrate its formal compliance with Article 3, paragraph 1, for the first commitment period. In this regard, the branch noted that the CMP may wish to consider encouraging the efforts of Ukraine to formally demonstrate its compliance with the commitment under Article 3, paragraph 1, of the Kyoto Protocol, and providing it with the opportunity to complete the necessary steps.
- 14) As a result of the final decision, the following consequences were applied with immediate effect to Ukraine:
 - a) Declared to be in non-compliance;
 - b) Required to submit a plan to address its non-compliance within three months.
- 15) On 5 December 2016, Ukraine submitted a plan to address its non-compliance. The enforcement branch reviewed and assessed the plan submitted by Ukraine and concluded that it meets the relevant requirements. In adopting the decision, the branch noted that the scope of its consideration of the plan was informed by the scope of the findings in its final decision, i.e. issues of compliance with the reporting requirements under Article 7, paragraph 1, in conjunction with paragraph 4, of the Kyoto Protocol and the guidelines adopted thereunder. The branch also concluded that full implementation by Ukraine of the measures set out in the plan will be required for it to consider whether the question of implementation has been resolved, and that such consideration might also be facilitated by information in the report on the review of the 2016 annual submission of Ukraine. The branch invited Ukraine to provide periodic reports on the implementation of the plan at least every three months.

What the Compliance Committee does and the rules it follows:

- 16) The Compliance Committee is an independent body set up to facilitate, promote and, where necessary, enforce compliance with the rules of the Kyoto Protocol. The Committee is composed of two branches: the enforcement branch, which is made up of legal experts from developed and developing countries; and the facilitative branch, which is made up of experts from developed and developing countries with competence related to climate change and in relevant fields.
- 17) The members and alternate members of the Compliance Committee take an oath, which included a commitment to be impartial and conscientious as well as an undertaking on confidentiality, which

means that they cannot comment on closed discussions of the branch. The branch speaks through its written decisions.

- 18) The rules relevant to past cases include, for example, that a national system is required to produce a reliable accounting of greenhouse gas activity so that a country can demonstrate compliance with its emissions reduction target and that a country must have a national registry to account for its Kyoto Protocol units.
- 19) Cases come to the Committee in the form of ‘questions of implementation’ from a Party to the Kyoto Protocol or an expert review team (of independent experts from different countries). So far, most of the questions of implementation have been allocated to the enforcement branch, in accordance with its mandate. The branch may and has sought expert advice, in particular it asked members of the expert review team to present their report and advice, and also asked other independent experts for their advice. The Party concerned may also make written submissions and present its views during a hearing.
- 20) 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.
- 21) 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).
- 22) Any country found in non-compliance can appeal to the CMP against a decision of the enforcement branch, but only for issues relating to its emissions reduction target and only in the case of denial of due process.

Further information:

Further information on the compliance mechanism under the Kyoto Protocol is available here: http://unfccc.int/kyoto_protocol/compliance/items/2875.php.

Documents relating to the consideration by the enforcement branch of the question of implementation with respect to Ukraine are available here:

http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/9575.php

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 first posted on 6 May 2016 and last updated on 21 December 2016.
