

Informal information note by the secretariat

The compliance procedure with respect to Bulgaria

- 1) Bulgaria submitted its 2009 annual inventory submission to the secretariat on 13 April 2009. The report is intended to provide information to enable Bulgaria to maintain its eligibility to participate in the market mechanisms (Article 17, Emissions Trading; Article 12, Clean Development Mechanism; and Article 6, Joint Implementation). Bulgaria first became eligible to participate in the mechanisms on 25 November 2008.
- 2) On 9 March 2010, an international team of experts (expert review team) finalized its report of the individual review of the 2009 annual submission of Bulgaria. The individual review report contains a question which triggers the compliance mechanism of the Protocol.
- 3) The question relates to the national system of Bulgaria. A national system includes the institutional, legal and procedural arrangements for estimating emissions and sinks covered by the Protocol, and for reporting and archiving this information.
- 4) Bulgaria was given an official notification of the question of implementation on 9 March 2010. The question was allocated to the enforcement branch on 16 March 2010 and the branch decided to proceed with the question on 31 March 2010.
- 5) A written submission was made by Bulgaria on 5 May 2010, and at its request, the enforcement branch held a hearing during its ninth meeting from 10 to 12 May 2010. The ninth meeting of the enforcement branch resulted in a preliminary finding of non-compliance with respect to Bulgaria.
- 6) Bulgaria made a further written submission on 15 June 2010. On 28 June 2010 the enforcement branch held its tenth meeting. After considering the further written submission by Bulgaria the branch adopted a final decision to confirm its preliminary finding.
- 7) Bulgaria 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 Bulgaria is in compliance with its 2012 emissions target.
- 8) The consequences applied by the branch are that Bulgaria was forthwith:
 - a. Declared to be in non-compliance;
 - b. Required to submit a plan to address its non-compliance within three months;
 - 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 Bulgaria 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 of Bulgaria's national system in conjunction with a review of an annual inventory report generated by this system, in order for the enforcement branch to assess compliance.
- 9) The next step is for the Bulgaria to submit a plan, within three months, to address its non-compliance.

What the Compliance Committee does and the rules it follows

- 10) 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 enforcement branch of the Committee is made up of legal experts from developed and developing countries.
- 11) The members and alternate members of the Compliance Committee take an oath, including a commitment to be impartial and conscientious as well as an undertaking on confidentiality, which would mean that they cannot comment on closed discussions of the branch. The branch is like a court in that it speaks through written decisions.
- 12) 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.
- 13) Cases come to the Committee in the form of ‘questions of implementation’ from a Kyoto Party or an expert review team (of independent experts from different countries). The branch may and has sought expert advice. In its cases so far, it asked members of the expert review team to present its report and advice, and also asked other independent experts for their advice. The Party concerned may also make a written submission and present its views during a hearing.
- 14) 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.
- 15) Any country in non-compliance must submit a plan within three months, which is subject to review and assessment by the enforcement branch (the timing of the review and assessment is case specific, which the branch is expected to complete within four weeks).
- 16) 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.
- 17) 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 three months, it must submit a plan on the action it will take to meet its target for the second commitment period.
- 18) 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).
- 19) Any country found in non-compliance can appeal to the Parties (CMP) against a decision of the enforcement branch, but only for issues relating to its 2012 target.

Further information

Further information on the compliance mechanism under the Kyoto Protocol, including a table on eligibility of countries, 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 Bulgaria are available here:

http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/5538.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 updated on 29 June 2010.

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