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Report of the Compliance Committee

**Annual report of the Compliance Committee to the
Conference of the Parties serving as the meeting of
the Parties to the Kyoto Protocol**

Summary

The eleventh annual report of the Compliance Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol covers activities undertaken from 8 September 2015 to 9 September 2016. The report provides a summary of the continued consideration by the facilitative branch of its role in providing advice and facilitation, the consideration by the enforcement branch of questions of implementation with regard to compliance by Ukraine and the discussions of the plenary of the Compliance Committee.

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I. Introduction

A. Mandate

1. In accordance with section III, paragraph 2(a), of the “Procedures and mechanisms relating to compliance under the Kyoto Protocol” (annex to decision 27/CMP.1; hereinafter referred to as the procedures and mechanisms), the plenary of the Compliance Committee (hereinafter referred to as the plenary) is to report on the activities of the Compliance Committee (hereinafter referred to as the Committee) to each ordinary session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP).

B. Scope of the report

2. The eleventh annual report of the Committee covers the period from 8 September 2015 to 9 September 2016. It summarizes the work of and matters addressed by the Committee during that period.

C. Possible action to be taken by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol

3. In accordance with section XII of the procedures and mechanisms, the CMP is to consider the annual report of the Committee.

4. The CMP may also wish:

(a) To invite the President of the CMP to undertake consultations on the nomination of members and alternate members of the Committee, as necessary (see paras. 11 and 12 below);

(b) To consider ways to encourage the efforts of Ukraine to formally demonstrate its compliance with the commitment under Article 3, paragraph 1, of the Kyoto Protocol for the first commitment period by requesting the secretariat to make the necessary arrangements on an exceptional basis (see paras. 27–32 below);

(c) To invite Parties to make contributions to the Trust Fund for Supplementary Activities in order to support the work of the Committee in the biennium 2016–2017 and to express its thanks to the Parties that made contributions during the reporting period (see para. 36 below).

II. Organizational matters

5. The eighteenth meeting of the plenary was held on 8 and 9 September 2016 in Bonn, Germany.

6. The facilitative branch met once in Bonn (on 7 September 2016) and the enforcement branch met twice, also in Bonn (on 20 and 21 June and on 7 September 2016).

7. In addition to those meetings, the bureau, with the support of the secretariat, organized an event to mark the 10th anniversary of the Committee. The event was held in Bonn on 8 September 2016 back-to-back with the meetings of the branches and the plenary. It aimed, in particular, to acknowledge the work of the Committee and deepen the

understanding of compliance issues through the sharing of experiences with experts from other compliance/implementation regimes. The plenary noted the event and welcomed the opportunity for experience sharing. The plenary extended its thanks to the members and alternate members that had served on the Committee for the first 10 years of its existence and who had made a valuable contribution to its success.

8. The agenda and annotations, documentation supporting agenda items and the chairpersons' report for each meeting of the plenary and of the facilitative and enforcement branches are available on the UNFCCC website.¹

A. Election of the chairpersons and vice-chairpersons of the enforcement and facilitative branches of the Compliance Committee

9. In accordance with section II, paragraph 4, of the procedures and mechanisms,² on 22 March 2016, relying on decision-making by electronic means, the facilitative branch elected Mr. Ladislaus Kyaruzi as chairperson and Ms. Emanuela Sardellitti as vice-chairperson. On the same date, the enforcement branch elected Mr. Gerhard Loibl as chairperson and Mr. Mohamed Ibrahim Nasr as vice-chairperson. These chairpersons and vice-chairpersons constitute the new bureau of the Committee.

10. The plenary and the branches expressed their appreciation for the work of the members of the previous bureau, namely Mr. Delano Ruben Verwey, outgoing chairperson of the facilitative branch, and Ms. Rueanna Haynes, outgoing chairperson of the enforcement branch.

B. Membership of the Compliance Committee

11. The plenary wants to draw the attention of the CMP to the remaining three vacancies in the membership of the Committee. It requests the CMP, at its next session, to fill the remaining vacancies by electing a member and an alternate member to the facilitative branch from Parties not included in Annex I and an alternate member to the enforcement branch from the small island developing States for the remainder of their respective terms until 31 December 2019.

12. The plenary expressed its hope that Parties will keep in mind the issue of gender balance when making nominations for membership of the Committee.

C. Transparency, communication and information

13. In accordance with rule 9, paragraph 1, of the "Rules of procedure of the Compliance Committee of the Kyoto Protocol" (annex to decision 4/CMP.2, as amended by decisions 4/CMP.4 and 8/CMP.9; hereinafter referred to as the rules of procedure), meetings of the plenary and of the facilitative and enforcement branches held in the reporting period were recorded and broadcast on the Internet via the UNFCCC website, with the exception of the parts of those meetings that were held in private, in accordance with the same rule.

¹ <http://unfccc.int/kyoto_protocol/compliance/items/2875.php>.

² The reference to "procedures and mechanisms" hereinafter refers to the procedures and mechanisms relating to compliance under the Kyoto Protocol contained in the annex to decision 27/CMP.1.

14. In accordance with rule 12, paragraph 2, of the rules of procedure, all documents of the plenary and of the enforcement and facilitative branches have been made available to the public on the UNFCCC website.³

D. Use of electronic means of decision-making

15. Pursuant to rule 11, paragraph 2, of the rules of procedure, the Committee may elaborate and take decisions using electronic means. During the reporting period, the Committee relied on electronic means to elect its bureau, as set out in paragraph 9 above. In addition, the bureau of the Committee used electronic means to take a decision on the allocation of the questions of implementation with respect to Ukraine. The enforcement branch also used electronic means to take decisions on two occasions, in relation to a preliminary examination with respect to Ukraine and expert advice with respect to Ukraine.

III. Work undertaken in the reporting period

A. Reports of expert review teams under Article 8 of the Kyoto Protocol and other information received by the plenary of the Compliance Committee

16. In accordance with section VI, paragraph 3, of the procedures and mechanisms, the secretariat forwarded to the Committee the report of the technical review of the fifth national communication submitted in 2013 by Turkey.

17. Furthermore, in accordance with section VI, paragraph 3, of the procedures and mechanisms, the secretariat forwarded to the Committee reports of the individual reviews of reports upon expiration of the additional period for fulfilling commitments (true-up period) for the first commitment period of the Kyoto Protocol of the following Parties: Australia, Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, European Union, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and United Kingdom of Great Britain and Northern Ireland.

18. In accordance with decision 13/CMP.1, paragraph 4, the secretariat forwarded to the Committee the annual compilation and accounting report for Parties to the Convention with commitments inscribed in Annex B to the Kyoto Protocol for 2015 and the addendum thereto.⁴

19. In accordance with decision 13/CMP.1, annex, paragraph 62, and with section VI, paragraph 3, of the procedures and mechanisms, the secretariat also forwarded to the Committee the final compilation and accounting report for the first commitment period of the Kyoto Protocol for the following Parties: Australia, Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, European Union, Finland, France, Germany, Greece,

³ Documents relating to the plenary are available at <http://unfccc.int/kyoto_protocol/compliance/plenary/items/3788.php>; documents relating to the facilitative branch are available at <http://unfccc.int/kyoto_protocol/compliance/facilitative_branch/items/3786.php>; and documents relating to the enforcement branch are available at <http://unfccc.int/kyoto_protocol/compliance/enforcement_branch/items/3785.php>.

⁴ Compliance Committee document CC/2015/1.

Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom of Great Britain and Northern Ireland.

20. At its eighteenth meeting, the plenary noted the information provided to it by the secretariat on the status of submission and review of reports under the Kyoto Protocol.

B. Consideration by the enforcement branch of questions of implementation with respect to Ukraine

21. On 11 April 2016, the Committee received questions of implementation as indicated in 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.⁵ The bureau of the Committee, using electronic means, allocated the questions of implementation to the enforcement branch on 18 April 2016. On 3 May 2016, the enforcement branch, using electronic means, decided to proceed with the questions of implementation (CC-2016-1-2/Ukraine/EB).

22. The first question of implementation relates to compliance with 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). In particular, the ERT noted that Ukraine had not submitted its true-up period report either by the deadline of 2 January 2016 or by the time of the centralized review of the true-up period reports for all Parties with commitments inscribed in Annex B to the Kyoto Protocol. In addition, the ERT noted that the information submitted by Ukraine in its true-up period report and accompanying documents is not consistent with the information provided in the international transaction log. The ERT also indicated that it was unable to assess the accuracy of certain information provided in Ukraine’s true-up period report because the national registry of Ukraine has been disconnected from the international transaction log since August 2015.

23. The second question of implementation relates to compliance with Article 3, paragraph 1, of the Kyoto Protocol. In particular, the ERT concluded that the aggregate anthropogenic greenhouse gas emissions of Ukraine for the first commitment period exceed the quantities of emission reduction units, certified emission reductions, temporary certified emission reductions, long-term certified emission reductions, assigned amount units and removal units in the retirement account of Ukraine for the first commitment period.

24. On 30 May 2016, the enforcement branch, using electronic means, adopted a decision on expert advice (CC-2016-1-3/Ukraine/EB) in relation to issues involved in any decision of the branch with regard to the indicated questions of implementation.

25. No written submission under paragraph 1 of section IX and paragraph 1(b) of section X of the procedures and mechanisms and rule 17 of the rules of procedure or request for a hearing under paragraph 2 of section IX and paragraph 1(c) of section X of the procedures and mechanisms was made by Ukraine.

26. On 21 June 2016, the enforcement branch, during its twenty-eighth meeting, adopted a preliminary finding containing several findings with respect to compliance by Ukraine (CC-2016-1-4/Ukraine/EB).

⁵ FCCC/KP/CMP/2016/TPR/UKR.

27. After receiving a written submission from Ukraine under paragraph 1(e) of section X of the procedures and mechanisms on 22 July 2016 and additional information contained in a letter received on 31 August 2016,⁶ the enforcement branch adopted a final decision on 7 September 2016, in which it confirmed its preliminary finding of non-compliance with Article 7, paragraph 1, in conjunction with paragraph 4, of the Kyoto Protocol and the mandatory requirements of the modalities and guidelines thereunder. As a consequence, it requested Ukraine to submit a plan in accordance with section XV, paragraphs 1–3, and rule 25 bis of the rules of procedure. Having considered the above-mentioned information provided to it by the Party concerned, the branch agreed that its preliminary finding with regard to non-compliance with the requirements of the national registry under Article 7, paragraph 4, no longer stood.

28. The enforcement branch reiterated its conclusions made in the preliminary finding that, as a result of Ukraine's non-compliance with Article 7, paragraph 1, in conjunction with paragraph 4, the quantity of emission reduction units, certified emission reductions, temporary certified emission reductions, assigned amount units and removal units 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.

29. The enforcement branch also reiterated the conclusion made in its preliminary finding that it 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, of the Kyoto Protocol as set out in section V, paragraph 4, of the procedures and mechanisms.

30. Moreover, the enforcement branch noted that, for Ukraine to be able to formally demonstrate compliance with Article 3, paragraph 1, of the Kyoto Protocol for the first commitment period, it would need to undertake the retirement of units as well as resubmit its true-up period report, which needs to be reviewed by an ERT, and its review report submitted for consideration to the Committee.

31. With regard to the steps outlined in paragraph 30 above, the enforcement branch noted that there is no current procedure envisaged in relevant CMP decisions that would allow Ukraine to demonstrate its formal compliance with Article 3, paragraph 1, of the Kyoto Protocol for the first commitment period, even if its registry becomes fully functional. 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, and providing it with the opportunity to complete the steps outlined in paragraph 30 above. The branch recommended that the plenary may wish to bring the matter to the attention of the CMP in its annual report.

32. On the basis of the above recommendation, the plenary agreed to bring the matter to the attention of the CMP (see para. 4(b) above).

33. In accordance with section III, paragraph 2(a), of the procedures and mechanisms, the decisions taken by the enforcement branch with respect to Ukraine during the reporting period are listed in the annex.

C. Activities of the facilitative branch

34. At its nineteenth meeting, the facilitative branch continued its consideration of how it can provide advice and facilitation to Parties. In this regard, it considered questions in

⁶ See <http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/9575.php>.

relation to how to provide timely facilitation to Parties, strengthen the non-confrontational part of the compliance regime and make the facilitative role more visible and attractive to Parties. The branch had a productive discussion and began to identify possible ways to address these issues, such as through a toolbox of measures to assist Parties.

35. The facilitative branch noted that it has a rich body of experience to share in relation to the provision of advice and facilitation. Therefore, it decided to request the secretariat to prepare, in consultation with the Chair and Vice-Chair of the facilitative branch and the members and alternate members of the branch, a document that captures the past experience of the facilitative branch in providing advice and facilitation to Parties in implementing the Kyoto Protocol, for consideration at the branch's next meeting.

D. Budget for the work of the Compliance Committee

36. For the biennium 2016–2017, an estimated EUR 974,495 from the overall Legal Affairs programme core budget has been allocated for activities related to the Committee.⁷ In addition, EUR 505,901 was approved under the item “Support to the Compliance Committee” of the resource requirements of the Trust Fund for Supplementary Activities. As at 31 July 2016, contributions of EUR 5,943 had been received for the biennium. The CMP may wish to express its thanks to Belgium and the Netherlands for making contributions to the Trust Fund for Supplementary Activities in order to support the work of the Committee in the biennium 2014–2015.

⁷ This amount does not include secretariat-wide operating costs, programme support costs (overheads) or working capital reserve, as defined in decision 27/CP.19.

Annex

Decisions taken by the enforcement branch of the Compliance Committee during the reporting period

Ukraine (CC-2016-1/Ukraine/EB)

<i>Title</i>	<i>Document number^a</i>	<i>Date</i>
Decision on preliminary examination	CC-2016-1-2/Ukraine/EB	3 May 2016
Decision on expert advice	CC-2016-1-3/Ukraine/EB	30 May 2016
Decision on preliminary finding	CC-2016-1-4/Ukraine/EB	21 June 2016
Final decision	CC-2016-1-6/Ukraine/EB	7 September 2016

^a Decisions taken during the reporting period with respect to Ukraine are available at http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/9575.php.