

E. Conflict of interest in relation to the work of the Compliance Committee

49. At its seventh meeting, the plenary of the Compliance Committee conducted an initial discussion on issues relating to conflict of interest in the context of the work of the Compliance Committee. At its eighth meeting, the plenary of the Committee continued its discussions on the basis of a series of questions prepared by the co-chairs (document CC/8/2010/2). In considering these questions, the plenary of the Committee came to an understanding on a number of issues.

50. The plenary of the Committee agreed that being a member of a delegation to meetings under the Convention or its Kyoto Protocol and a member or alternate member of the Compliance Committee does not constitute in or of itself a conflict of interest or incompatibility with the requirements of independence and impartiality. However, the plenary of the Committee recognized that there may be circumstances in which this situation could result in a conflict of interest or incompatibility with the requirements of independence and impartiality. Members and alternate members of the Committee should exercise due diligence in such circumstances.

51. The plenary of the Committee agreed that rule 4, paragraph 4, of the rules of procedure allows the bureau to engage in informal discussions with the member or alternate member in relation to whom evidence of a possible conflict of interest has been received in accordance with this rule. The Compliance Committee will continue to develop its practice in this regard in conformity with rule 4, paragraph 4.

52. The plenary of the Committee noted that issues relating to potential conflicts of interest or incompatibility with the requirements of independence and impartiality should be raised in a timely manner. Such issues should be brought to the Committee's attention at the earliest possible time in the proceedings, when the information on the facts giving rise to a potential conflict of interest is available to the Party concerned, and not later than the hearing.

F. Possible conflict of interest with respect to an alternate member of the Compliance Committee

53. As noted in paragraph 30 above, the enforcement branch took a final decision with respect to Croatia on 26 November 2009. On 24 December 2009, among its comments on the final decision, Croatia raised, for the first time, an "evident conflict of interest" in the participation by Mr. Tuomas Kuokkanen, an alternate member of the Committee elected to serve in the enforcement branch, in the consideration and elaboration of the preliminary finding with respect to Croatia. In the view of Croatia, the conflict of interest arose from the fact that Mr. Kuokkanen "was also a member of the EU delegation at COP 12 in Nairobi which had expressed its reservation regarding the applicability of the flexibility under decision 7/CP.12 for Croatia to the Kyoto Protocol".¹¹ Croatia reiterated this point in its appeal against the final decision of the enforcement branch.

54. The plenary of the Compliance Committee recalled that appeals to the CMP under the procedures and mechanisms are available on the basis of due process only and recognized that issues of conflict of interest may raise such due process concerns.

55. On 26 January 2010, a note by the Executive Secretary entitled "Evidence from a Party which may indicate a conflict of interest" was sent to Mr. Oberthür, Ms. De Wet and

¹¹ See document CC-2009-1-9/Croatia/EB contained in annex II to this report. The reservation referred to by Croatia is contained in document FCCC/SBI/2006/28, paragraph 134.