Evidence from a Party which may indicate a conflict of interest

Note by the secretariat

1. On 28 December 2009, Croatia submitted comments, contained in document CC-2009-1-9/Croatia/EB,[1] on the final decision of the enforcement branch of the Compliance Committee in relation to the questions of implementation with respect to Croatia (document CC-2009-1-8/Croatia/EB). These comments include evidence which may indicate a conflict of interest with respect to Mr. Tuomas Kuokkanen, an alternate member of the Compliance Committee elected to serve in the enforcement branch. Similar comments on a possible conflict of interest relating to Mr. Kuokkanen were made by Croatia in its appeal against the final decision of the enforcement branch, a copy of which was sent to members and alternate members of the enforcement branch on 15 January 2010.[2]

2. The attached note by the Executive Secretary dated 25 January 2010 summarizes the comments made by Croatia with respect to the possible conflict of interest. Copies of a letter from the Secretary to the Compliance Committee dated 8 March 2010 and letters from Mr. Tuomas Kuokkanen dated 25 January 2010 and 16 March 2010 are also attached.

3. In accordance with rule 4, paragraph 4, of the "Rules of procedure of the Compliance Committee of the Kyoto Protocol" contained in the annex to decision 4/CMP.2, as amended by decision 4/CMP.4, the bureau of the Compliance Committee has requested the secretariat to submit to the plenary the evidence of a possible conflict of interest, as contained in the comments from Croatia on the final decision referred to in paragraph 1 above. A copy of document CC-2009-1-9/Croatia/EB is attached.

[1] Documents of the enforcement branch of the Compliance Committee are available at <http://unfccc.int/kyoto_protocol/compliance/enforcement_branch/items/3785.php>.

[2] This appeal will be made available to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol as document FCCC/KP/CMP/2010/2. See point 15 of document FCCC/KP/CMP/2010/2 on page 21.

COMMENTS FROM CROATIA ON THE FINAL DECISION (CC-2009-1-8/Croatia/EB)

REPUBLIC OF CROATIA
MINISTRY OF ENVIRONMENTAL PROTECTION, PHYSICAL PLANNING AND CONSTRUCTION
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Class: 018-04/09-02/8
Reg. No.: 531-13-1-2-09-27
Zagreb, 28 December 2009

Mr. Feng Gao
Secretary to the Compliance Committee
Climate Change Secretariat
United Nations Framework Convention on Climate Change
D-53153 Bonn
GERMANY

Subject: Submission of comments related to the Final Decision

Dear Mr. Gao,

Please find enclosed Croatia's comments relating to the Final decision, in accordance with rule 22 (2) of the Rules of procedure of the Compliance Committee of the Kyoto Protocol contained in the annex to decision 4/CMP.2.

Yours sincerely,

State Secretary

Dr. Nikola Ružinski

REPUBLIC OF CROATIA

MINISTRY OF ENVIRONMENTAL PROTECTION,

PHYSICAL PLANNING AND CONSTRUCTION

COMPLIANCE COMMITTEE

Secretariat

Enforcement Branch

COMMENTS OF CROATIA

on

Final decision CC-2009-1-8/Croatia/EB

Zagreb, 24 December 2009

In accordance with section VIII, paragraph 8 of the Procedures and mechanisms relating to compliance contained in the annex to decision 27/CMP.1 and rule 22, paragraph 2, of the Rules of procedure of the Compliance Committee contained in the annex to decision 4/CMP.2 as amended by decision 4/CMP.4, the Republic of Croatia hereby provides its comments on the final decision CC-2009-1-8/Croatia/EB of the enforcement branch of the Compliance Committee adopted on 26 November 2009, as follows hereinafter.

Croatia hereby expresses a profound disappointment and disbelief with regard to the final decision CC-2009-1-8/Croatia/EB (the final decision) upholding the preliminary finding CC-2009-1-6/Croatia/EB in its entirety. Croatia believes that the respective final decision is groundless, inequitable, as well as unbalanced, and, as it currently stands, extremely damaging for Croatia, particularly bearing in mind that the enforcement branch of the Compliance Committee (EBCC) assumed the standpoint of not being competent to consider any of the arguments in favour of Croatia that are crucial for resolving this matter, especially the violation of the equal treatment principle.

Since the EBCC's final decision omitted to elaborate in detail crucial arguments provided by Croatia, Croatia hereby once again refers to the Statement of position of Croatia CC-2009-1-7/Croatia/EB of 12 November 2009. The comments hereof shall be read together with and in furtherance of the Statement of position of Croatia CC-2009-1-7/Croatia/EB, enclosed hereto as an annex.

COMMENTS

1. In deciding the Croatian case, the EBCC on the account of alleged non-competency, disregarded all arguments provided by Croatia, thus adopting an inappropriate and inequitable decision.

2. The final decision is not in line with Article 31, paragraphs 1 and 2 of the Vienna Convention on the Law of Treaties which calls for a treaty to be interpreted in good faith and in the light of its object and purpose, and that for the purpose of interpretation, both the annex and the preamble of the treaty should be taken into consideration.

Contrary to the above, when interpreting provisions of the Kyoto Protocol, the EBCC failed to take into consideration the preamble of the Kyoto Protocol, which recalls the United Nations Framework Convention on Climate Change (the Convention), in particular with respect of pursuing its ultimate objective (Article 2) and guiding principles (Article 3) striving for 'equitable approach in accordance with common but differentiated responsibilities and respective capabilities', as well as the Berlin Mandate. Accordingly, pursuant to the preamble of the Kyoto Protocol and international legal standards, the EBCC was under an obligation to interpret the Kyoto Protocol as an extension of the Convention and in light of its objective and purpose, as opposed to treating it as an entirely separate treaty. Had the EBCC followed this course of action, an equitable decision would be one that would respect Croatia's particular circumstances and capabilities as previously recognized under the Convention pursuant to decision 7/CP.12.

Hence, the EBCC's restrictive interpretation clearly contradicts the fact that the Kyoto Protocol was adopted in furtherance of and based on the Berlin Mandate, as laid out in decision 1/CP.1 of the Conference of the Parties, following the review of Article 4, paragraphs 2(a) and (b,) of the Convention and the subsequent conclusion that the aforementioned paragraphs were inadequate. Indeed, the Berlin Mandate opted for strengthening the commitments of the Parties under Article 4, paragraph 2(a) and (b) in order to ensure effective achievement of the Convention's goals. This initiative resulted in the adoption of the Kyoto Protocol. As the Kyoto Protocol derived from Article

4, paragraph 2 of the Convention, it should obviously be read in light of the Convention's objective and purpose. It is important to note here that Croatia was granted flexibility for the implementation of its commitments under, no other but, Article 4, paragraph 2, of the Convention and consequently its amendments or elaborations.

In calling for a treaty to be interpreted in good faith and in light of its object and purpose, the Vienna Convention on the Law of Treaties therefore fully endorses and favours a teleological interpretation of treaties over a grammatical one. A position Croatia strongly advocates and calls for to be fully respected and adhered to.

3. The final decision is not in line with Article 31, paragraph 3, subparagraph (b), of the Vienna Convention on the Law of Treaties, which stipulates that any subsequent practice in the application of the treaty shall be taken into account regarding its interpretation.

Contrary to the above, the EBCC failed to take into consideration the flexibility allowed under the Convention for application of the Kyoto Protocol in the comparable cases of Bulgaria, Hungary, Poland, Romania, Slovenia and Iceland. In these cases, flexibility was allowed without ever requiring confirmation of the Conference of the Parties serving as meeting of the Parties to the Protocol (CMP) or any other additional confirmation, hence setting transparent and consistent practice (precedents) for recognition of flexibility to Croatia under decision 7/CP.12 with respect of the Kyoto protocol, as already done in all aforementioned cases. This fact alone represents a clear violation of the equal treatment principle.

4. The final decision is not in line with Article 32 of the Vienna Convention on the Law of Treaties, which stipulates that when the interpretation of the treaty *"a) leaves the meaning ambiguous or obscure; or b) leads to a result which is manifestly absurd or unreasonable"*, supplementary means of interpretation including the preparatory work of the treaty and the circumstances of its conclusion should be taken into account.

As pointed out by Croatia during the entire procedure before the Compliance Committee, EBCC's final decision of non-compliance denying flexibility to Croatia under decision 7/CP.12 is obviously absurd and unreasonable from several different aspects:

(a) Denying previously approved flexibility for Croatia's particularities would setback the country's economy by forty years, to energy demands in 1974. It should be recalled here that in 1990 only 27% of consumed electricity was generated in fossil-fuelled power plants on Croatian territory.

(b) Full consideration should have been taken that decision 7/CP.12 was adopted in 2006 when the Kyoto Protocol was already in force, therefore at the point when Croatia was no longer in position of intervening into text of the Kyoto protocol, and that this decision was a crucial precondition set by Croatia with regard to its ratification, so as to ensure Croatia's compliance with the Kyoto Protocol.

(c) If the decision 7/CP.12 is not to be applied to Croatia during the first commitment period, then it brings into question the whole purpose of several years of negotiations, as well as the ultimate unanimous decision 7/CP.12 taken at COP 12 in Nairobi, Kenya. Denying the applicability of the decision 7/CP.12 would prevent Croatia enjoying the envisaged flexibilities prescribed therein, to enable full compliance and in turn, would give rise to a critical economic situation to Croatia.

(d) The consequence of ignoring decision 7/CP.12 is that Croatia was and still is in non-compliance of the greenhouse gases emissions target under both the Convention and the Kyoto Protocol from 2005

onwards. This is the exact reason why flexibility was requested by and subsequently granted to Croatia pursuant to decision 7/CP.12.

The EBCC failed to take into consideration the consequences for Croatia arising from the dissolution of former Yugoslavia which were explicitly recognized under decision 7/CP.12 of the Conference of the Parties (COP) whereby, pursuant to Article 4, paragraph 6, of the Convention, Croatia was allowed to add 3.5 Mt CO2 equivalent to its 1990 level of greenhouse gas emissions not controlled by the Montreal Protocol, for the purpose of establishing the level of emissions for the base year for implementation of its commitments under Article 4, paragraph 2, of the Convention.

The EBCC further failed to take into consideration that Croatia and the Parties to the Convention were well aware of Croatia's historical circumstances and its inability of meeting the 2012 Kyoto Protocol target and duly acknowledged this fact by adopting COP decision 7/CP.12. In doing so the parties to the Convention ensured that Croatia would have a fair chance of meeting the required target, which otherwise would undisputedly prove impossible for Croatia to achieve.

The EBCC failed to take into account that decision 7/CP.12 was a vital precondition for Croatia to ratify the Kyoto Protocol.

The EBCC failed to take into consideration the official List of Annex I Parties to the Convention, published on the Convention's official internet site, whereby Croatia is recognized as a "** *Party for which there is a specific COP and/or CMP decision*" – the relevant decisions being decision 4/CP.3, decision 10/CP.11 and decision 7/CP.12.

Together these substantial omissions on the part of the EBCC have rendered its final decision unreasonable and without grounds, especially when taking into account Croatia's historical circumstances and particularities leading to Croatia's ratification of the Kyoto Protocol.

5. The final decision is not in line with Article 7, paragraph 1, of the Kyoto Protocol, which prescribes obligations for each Party included in Annex I to provide its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, in accordance with relevant decisions of the Conference of the Parties (including decision 7/CP.12).

6. The final decision is not in line with Article 8, paragraph 1 of the Kyoto Protocol, which prescribes that any information submitted under Article 7 by each Party included in Annex I shall be reviewed by expert review teams pursuant to the relevant decisions of the Conference of the Parties (including decision 7/CP.12).

7. The final decision is not in line with paragraph 7(a) of the annex to decision 13/CMP.1, which prescribes that part one of the report referred to in paragraph 6 shall, among other, contain complete inventories of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for all years from 1990, or another approved base year or period under Article 3, paragraph 5, to the most recent year available, prepared in accordance with Article 5, paragraph 2, and relevant decisions of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP), taking into account any relevant decisions of the Conference of the Parties (including decision 7/CP.12).

8. The final decision is not in line with section II, paragraph 11, of the Procedures and mechanisms relating to compliance contained in the annex to decision 27/CMP.1, which obligates the

Compliance Committee to take into account Article 4, paragraph 6, of the Convention and any degree of flexibility allowed to the Parties included in Annex I undergoing the process of transition to a market economy (including decision 7/CP.12).

9. The EBCC omitted to apply its authority under decision 27/CMP.1, annex, section V, paragraph 5, to adjust inventories and correct the compilation and accounting database for the accounting of assigned amounts in the event of a disagreement between an expert review team (ERT) and the party concerned. Since the ERT disregarded its obligation under Article 8, paragraph 1 of the Kyoto Protocol to perform an expert review of Croatia's inventory data pursuant to the relevant decisions of the Conference of the Parties (decisions 9/CP.2 and 7/CP.12), the EBCC should have exercised its authority under decision 27/CMP.1, annex, section V, paragraph 5, by applying the respective flexibility allowed to Croatia and adjusting the ERT disputed data. Furthermore it should be taken into account that the application of COP decisions on flexibility falls outside the ERT mandate, as explicitly stated in paragraph 159 of the Report of the review of the initial report of Croatia FCCC/IRR/2008/HRV.

10. The final decision is not in line with section VIII, paragraph 6, of the Procedures and mechanisms relating to compliance contained in the annex to decision 27/CMP.1, which stipulates that any information considered by the relevant branch shall be made available to the party concerned and that branch shall indicate to the party which parts of this information it has considered, and consequently that the party shall be given an opportunity to comment in writing on such information.

At the Eighth meeting of the EBCC held on 23 and 24 November 2009 in Bonn, Germany, as well as on several previous occasions, the EBCC made reference to the EU delegation's remark expressed at COP 12 held in Nairobi, Kenya, that Croatia could not apply decision 7/CP.12 for the purposes of its compliance with the Kyoto Protocol target. However, it is important to point out here, that the EU delegation voted in favour of decision 7/CP.12, which was adopted by acclamation, and only afterwards made an oral remark which does not create a legal precedent. As the EU delegation remark from COP 12 was undisputedly an important element in initiating the EBCC procedure against Croatia, as well as in its final outcome, the EBCC was under a clear obligation to provide an explanation of the EU delegation's remark and its implications for Croatia's case, both in its preliminary finding and in its final decision. Furthermore, the EBCC was obliged to provide Croatia with an opportunity to respond to the EBCC's standpoint in writing. Omission by the EBCC to this end represents a clear procedural violation on the part of the EBCC.

11. The final decision is not in line with rule 4 of the Rules of procedure of the Compliance Committee contained in the annex to decision 4/CMP.2 as amended by decision 4/CMP.4, which prescribes that each member and alternate member shall serve in its individual capacity and act in an independent and impartial manner and avoid any real or apparent conflicts of interest.

Contrary to the above, it should be stressed that Mr. Tuomas Kuokkanen, alternate EBCC member, who participated in the consideration and elaboration of the upheld preliminary finding with respect to Croatia, was also a member of the EU delegation at COP 12 in Nairobi which had expressed its reservation regarding the application of flexibility under decision 7/CP.12 for Croatia to the Kyoto Protocol. The involvement by Mr. Kuokkanen is an evident conflict of interest in which rule 4 of the Rules of Procedure of the Compliance Committee is entirely applicable.

* * * *

The Croatia hereby kindly requests translation of these comments with annex to Spanish language pursuant to section VIII, paragraph 9, of the Procedures and mechanisms relating to compliance contained in the annex to decision 27/CMP.1.

The arguments set out above and in the course of the entire process shall be further elaborated in Croatia's appeal against the final decision CC-2009-1-8/Croatia/EB of the enforcement branch of the Compliance Committee, adopted on 26 November 2009 pursuant to section XI of the Procedures and mechanisms relating to compliance contained in the annex to decision 27/CMP.1.

The final decision shall stand pending the CMP decision on appeal.

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Mr. Feng Gao
Secretary of the Compliance Committee
Climate Change Secretariat
United Nations Framework Convention on Climate Change

25 January 2010

Dear Mr. Gao,

Referring to paragraph 11 of the comments from Croatia dated 4 January 2010 and to paragraph 15 of the appeal of Croatia dated 14 January 2010 relating to the final decision CC-2009-1-8/Croatia/EB, I would like to state the following.

First, I would like to say for the record that I participated in the meeting of the enforcement branch held in Bangkok from 11 to 13 October 2009 in my individual capacity, and that I acted in an independent and impartial manner and avoided real or apparent conflicts of interests.

Second, I would like to note that before the branch made its preliminary finding, I informed the secretariat and the chairperson of the enforcement branch of my role at the twelfth session of the Conference of the Parties held in Nairobi in November 2006. I mentioned that I served as a member of the delegation of Finland, which held the presidency of the European Union during that Conference. I asked for advice as to whether that might be seen as constituting a conflict of interest in relation to the question of implementation concerning Croatia. I understood that my question was discussed at the bureau meeting held on 12 October 2009, and that the bureau, after having received advice from the secretariat, was of the view that the issue did not amount to a conflict of interest. Thereafter, I continued to participate in the meeting of the enforcement branch in Bangkok. In light of the above, I would like to request confirmation of the outcome of the bureau discussion and of the advice given on this matter in Bangkok.

Tuomas Kuokkanen
Alternate member of the enforcement branch

Evidence from a Party which may indicate a conflict of interest

Note by the Executive Secretary

1. On 28 December 2009, Croatia submitted comments, contained in document CC-2009-1-9/Croatia/EB, on the final decision of the enforcement branch of the Compliance Committee with respect to questions of implementation in relation to Croatia (document CC-2009-1-8/Croatia/EB).

2. The comments referred to above include a statement with respect to a possible conflict of interest involving an alternate member of the enforcement branch, Mr. Tuomas Kuokkanen. In particular, the comments note that Mr. Kuokkanen "who participated in the consideration and elaboration of the upheld preliminary finding with respect to Croatia, was also a member of the EU delegation at COP 12 in Nairobi which had expressed its reservation regarding the application of flexibility under decision 7/CP.12 for Croatia to the Kyoto Protocol". The effect of decision 7/CP.12 is at issue in the questions of implementation contained in document CC-2009-1-1/Croatia/EB.[1]

3. Rule 4 of the rules of procedure[2] applies to conflict of interest. In particular, paragraph 4 of this rule provides that:

> 'Where the Executive Secretary of the United Nations Framework Convention on Climate Change receives evidence from a Party on circumstances which may indicate a conflict of interest or which might be incompatible with the requirements of independence and impartiality expected of a member or alternate member of the Committee, he or she shall forthwith notify the bureau as well as the member or alternate member concerned. The evidence shall be submitted to the plenary for its consideration, unless the member or alternate member informs the bureau that he or she will refrain from participating in the work of the Committee in relation to the matter to which the evidence relates. The bureau shall inform the plenary that the member or alternate member will refrain from participating in the work of the Committee in relation to the matter that is the subject of the disclosure. Otherwise, the plenary may decide to excuse the member or alternate member from consideration of one or more questions of implementation and the elaboration and adoption of a decision of a branch, after having provided a reasonable opportunity for the member or alternate member to be heard.'

[1] See the decisions and reports on the meetings of the enforcement branch contained in documents CC-2009-1-6/Croatia/EB, CC-2009-1-8/Croatia/EB, CC/EB/7/2009/2 and CC/EB/8/2009/2, as well as paragraphs 132–134 of the report of the Subsidiary Body for Implementation (SBI) on its twenty-fifth session, contained in document FCCC/SBI/2006/28, and the list of participants at that session of the SBI contained in document FCCC/CP/2006/INF.1.

[2] All references to the rules of procedure in this document refer to the rules of procedure of the Compliance Committee of the Kyoto Protocol, contained in the annex to decision 4/CMP.2 and as amended by decision 4/CMP.4.

4. During the Compliance Committee meetings held from 11–13 October 2009, questions were raised about participation of members and alternate members of the Committee as delegates in UNFCCC negotiations on delegations with positions related to the questions of implementation with respect to Croatia (contained in document CC-2009-1-1/Croatia/EB). These issues were informally brought to the attention of the secretariat and the bureau by Mr. Tuomas Kuokkanen, among others, and discussed by the bureau during the Compliance Committee meetings held from 11–13 October 2009. No formal disclosure was made under rule 4, and consequently no action was taken under paragraph 3 of this rule. The bureau conclusions, which were supported by informal advice from the secretariat, were that participation in the UNFCCC negotiation process as a delegate with a position related to a matter before the Committee should not be considered a conflict of interest; and that no further action was required in the matter.

5. However, the comments from Croatia must be considered evidence in terms of rule 4, paragraph 4. Therefore, in accordance with rule 4, the present notification is being provided to the bureau and to the alternate member concerned.

6. On 14 January 2009, Croatia lodged an appeal under section XI of the procedures and mechanisms relating to compliance,[3] against the final decision cited in paragraph 1 above, and therefore the matter may be referred again to the enforcement branch.

7. In the event that the evidence referred to in paragraph 5 above is submitted to the plenary pursuant to rule 4, the plenary may wish to consider whether to take action with respect to the evidence in relation to Mr. Kuokannen, and any other relevant member or alternate member of the enforcement branch, including making a decision pursuant to either or both paragraphs 4 and 5 of rule 4.

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[3] All section references in this document refer to the procedures and mechanisms relating to compliance contained in the annex to decision 27/CMP.1.

UNITED NATIONS
NATIONS UNIES

FRAMEWORK CONVENTION ON CLIMATE CHANGE - Secretariat
CONVENTION - CADRE SUR LES CHANGEMENTS CLIMATIQUES - Secrétariat

Date: 8 March 2010
Reference: FG/DBO/MSM/eps
Direct line: +49 228 815-1446

Mr. Tuomas Kuokkanen
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Finland

E-mail: tuomas.kuokkanen@ymparisto.fi
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Dear Mr. Kuokkanen,

I refer to the note by the Executive Secretary entitled "Evidence from a Party which may indicate a conflict of interest" dated 25 January 2010 (Ref: CC-2009-1/Croatia/EB) that was sent to you on 26 January 2010. In particular, I would like to draw your attention to paragraph 2 of the said note, which summarizes the comments made by Croatia with respect to a possible conflict of interest. Similar comments were made by Croatia in its appeal against the final decision of the enforcement branch, a copy of which was sent to members and alternate members of the enforcement branch on 15 January 2010.[1]

In accordance with rule 4, paragraph 4, of the "Rules of procedure of the Compliance Committee of the Kyoto Protocol" contained in the annex to decision 4/CMP.2, as amended by decision 4/CMP.4 (the rules of procedure), a copy of the note referred to above was sent to the members of the bureau of the Compliance Committee (the bureau) on 26 January 2010. Your letter dated 25 January 2010, which we received on the same date, was likewise forwarded to the bureau. On 4 February 2010, these two documents were sent to the members of the bureau who had taken office on 3 February 2010.

As part of the bureau's consideration of the evidence of conflict of interest described above, the bureau is considering the submission of the evidence to the plenary of the Committee in accordance with rule 4, paragraph 4, of the rules of procedure. In that regard, the secretariat has been requested by the bureau to seek your reactions, if any, to the note by the Executive Secretary, including any further thoughts you may have as regards your participation in the work of the Committee in relation to the matter to which the evidence relates. Furthermore, the bureau would be grateful if you could indicate whether you intend to make any representations, including being present at the meeting of the plenary, in case the evidence of conflict of interest is submitted to the plenary.

Mailing Address: CLIMATE CHANGE SECRETARIAT (UNFCCC), P.O. Box 260 124, 53153 Bonn, Germany
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We would be grateful for your response no later than one week from receipt of this letter. Please do not hesitate to contact us should you have any questions.

Thank you.

Yours sincerely,

Feng Gao
Secretary to the Compliance Committee

[1] This appeal will be made available to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol as document FCCC/KP/CMP/2010/2. See point 15 on p. 21.

Mr. Feng Gao
Secretary of the Compliance Committee
Climate Change Secretariat
United Nations Framework Convention on Climate Change

16 March 2010

Dear Mr. Gao,

Referring to your letter dated 8 March 2010 (FG/DBO/MSM/eps) and to the note by the Executive Secretary dated 25 January 2010, I would like to state the following.

At the outset, I would like to repeat my earlier statement of 25 January 2010 in which I stated that I participated in the meeting of the enforcement branch held in Bangkok from 11 to 13 October 2009 in my individual capacity, and that I acted in an independent and impartial manner and avoided real or apparent conflicts of interest.

In addition, I would like to state that I participated in the twelfth session of the Conference of the Parties held in Nairobi in November 2006 not in my individual capacity but as a member of the delegation of Finland, which held the presidency of the European Union during that Conference. As representatives of the presidency of the European Union, the delegation of Finland presented common positions agreed in the EU coordination. At the Nairobi conference, I did not personally participate in the informal consultations by the Subsidiary Body of Implementation on the level of emissions for the base year of Croatia. Nor was I involved in the elaboration of the EU legal opinion on the matter, as that opinion was concluded already in the tenth session of the Conference of the Parties held in Buenos Aires in December 2004, and I did not even participate in that conference.

As I have not, in my view, acted against the Rules of procedure of the Compliance Committee, I do not see the need to refrain from participating in the work of the Committee in relation to the matter to which the allegation by Croatia relates.

In case the matter is submitted to the plenary and the plenary is not using electronic means in its decision-making, I would like to make representations to the plenary and answer any questions that may arise.

Tuomas Kuokkanen
Alternate member of the enforcement branch