

Informal information note by the secretariat

The compliance procedure with respect to Bulgaria

- 1) On 4 February 2011, after considering the most recent expert review team report with respect to Bulgaria, and the revised plan submitted by Bulgaria on 1 October 2010, the enforcement branch decided that there no longer continues to be a question of implementation with respect to Bulgaria's eligibility, and that Bulgaria is now fully eligible to participate in the mechanisms under Articles 6, 12 and 17 of the Kyoto Protocol. This decision was adopted at the twelfth meeting of the branch, which was held from 3 to 4 February 2011.
- 2) Bulgaria submitted its 2009 annual inventory submission to the secretariat on 13 April 2009. The report was 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.
- 3) On 9 March 2010, an international team of experts (an expert review team) finalized its report of the individual review of the 2009 annual submission of Bulgaria. The individual review report contains a question of implementation which triggered the compliance mechanism of the Kyoto Protocol.
- 4) The question of implementation relates to the national system of Bulgaria. A national system includes the institutional, legal and procedural arrangements for estimating emissions and removals of greenhouse gases covered by the Protocol, and for reporting and archiving this information.
- 5) Bulgaria was given an official notification of the question of implementation on 9 March 2010. The question was allocated to the branch on 16 March 2010 and the branch decided to proceed with the question on 31 March 2010.
- 6) 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.
- 7) 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.
- 8) 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.
- 9) The consequences applied by the branch were 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.
 - i. This means that Bulgaria could not sell and transfer credits (unless they are verified under a special track II Joint Implementation procedure), and could not acquire any credits except those forwarded by a host developing country.
 - ii. The preliminary finding, and by extension the final decision, noted 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.

- 10) On 12 August 2010, Bulgaria submitted a plan to address its non-compliance. At its eleventh meeting on 16 September 2010, the enforcement branch noted that the plan does not fully meet the requirements set out in the procedures and mechanisms relating to compliance, the rules of procedure of the Compliance Committee and the preliminary finding with respect to Bulgaria. In particular, the branch pointed out that the plan does not include an analysis of the causes of non-compliance. The branch encouraged Bulgaria to submit a complete plan no later than 1 October 2010, after which time the branch would continue its review and assessment of the plan as required by the Committee's rules of procedure.
- 11) On 1 October 2010, Bulgaria submitted a revised plan. On 25 October 2010, the enforcement branch decided to defer the completion of the review and assessment of the revised plan until after the publication of the expert review team's report of the review of the 2010 annual submission of Bulgaria, noting that an in-country review of this annual submission was conducted from 4 to 9 October 2010 and that information in the expert review team's report could contribute to a more effective review and assessment of Bulgaria's revised plan.
- 12) On 29 November 2010, the expert review team's report of the review of the 2010 annual submission of Bulgaria was published. On 2 December 2010, Bulgaria submitted a request for the reinstatement of its eligibility. On 27 January 2011, Bulgaria submitted a progress report on the implementation of its revised plan.

What the Compliance Committee does and the rules it follows

- 13) 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.
- 14) 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.
- 15) 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.
- 16) 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.
- 17) 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.
- 18) 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).
- 19) 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.

- 20) 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.
- 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 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 14 February 2011.
