

DECISION UNDER PARAGRAPH 2 OF SECTION X

Party concerned: Bulgaria

In accordance with the “Procedures and mechanisms relating to compliance under the Kyoto Protocol” contained in the annex to decision 27/CMP.1 and adopted under Article 18 of the Kyoto Protocol and the “Rules of procedure of the Compliance Committee of the Kyoto Protocol” (the rules of procedure),¹ the enforcement branch adopts the following decision:

BACKGROUND

1. The final decision of the enforcement branch taken on 28 June 2010 (CC-2010-1-8/Bulgaria/EB) gave effect to the consequences contained in paragraph 20 of the preliminary finding of the branch, as confirmed by and annexed to the final decision. According to subparagraph (a) of that paragraph, Bulgaria was declared to be in non-compliance; according to subparagraph (b), Bulgaria was required to develop a plan referred to in paragraph 1 of section XV,² in accordance with paragraphs 2 and 3 of section XV and paragraph 1 of rule 25 bis; and according to subparagraph (c), Bulgaria’s eligibility to participate in the mechanisms under Articles 6, 12 and 17 of the Kyoto Protocol was suspended in accordance with the relevant provisions under those Articles pending the resolution of the question of implementation.

2. On 12 August 2010, Bulgaria submitted a document entitled “Updated Improvement Plan for ensuring the effective and timely functioning of Bulgarian National Inventory System in accordance with the requirements of Article 5.1 of the Kyoto Protocol and Decision 19/CMP.1, as well as the relevant requirements of EU” (CC-2010-1-11/Bulgaria/EB; hereinafter referred to as the “updated improvement plan”). At its eleventh meeting, held on 16 September 2010, the enforcement branch noted that Bulgaria’s updated improvement plan did not fully meet the requirements set out in paragraph 2 of section XV, paragraph 1 of rule 25 bis, and paragraph 20 (b) of the branch’s preliminary finding.

3. On 1 October 2010, Bulgaria submitted a document entitled “Compliance Action Plan submitted in accordance with paragraph 20 (b) of the preliminary finding (CC-2010-1-6/Bulgaria/EB), confirmed by the final decision of the Enforcement Branch concerning Bulgaria (CC-2010-1-8/Bulgaria/EB) and in accordance with section XV, paragraph 1 and paragraph 2 and rule 25 bis of the Rules of procedures of the Compliance Committee” (CC-2010-1-12/Bulgaria/EB; hereinafter referred to as the “revised plan”). On 25 October 2010, the enforcement branch adopted a decision (CC-2010-1-13/Bulgaria/EB) to defer the completion of the review and assessment of the revised plan until after the publication of the expert review team’s (ERT) report of the review of the 2010 annual submission of Bulgaria, noting that information in this report could contribute to a more effective review and assessment of the revised plan.

4. Following an in-country review (4 to 9 October 2010), the report of the individual review of the annual submission of Bulgaria submitted in 2010 contained in document FCCC/ARR/2010/BGR was published on 29 November 2010 (2010 ARR). On the same date the secretariat forwarded the 2010

¹ All references to the rules of procedure in this document refer to the rules contained in the annex to decision 4/CMP.2 as amended by decision 4/CMP.4.

² All section references in this document refer to the “Procedures and mechanisms relating to compliance under the Kyoto Protocol” contained in the annex to decision 27/CMP.1.

ARR to the Compliance Committee, including the members and alternate members of the enforcement branch, in accordance with paragraph 3 of section VI.

5. On 2 December 2010, Bulgaria submitted a request for the enforcement branch to reinstate its eligibility to participate in the mechanisms under Articles 6, 12 and 17 of the Kyoto Protocol, in accordance with paragraph 2 of section X (document CC-2010-1-14/Bulgaria/EB). In accordance with paragraph 2 of rule 10, the request was deemed received by the enforcement branch on 3 December 2010. Due to the concerns raised by members on the contents of the 2010 ARR and the nature of the issues raised in it, a meeting was convened to clarify the relationship between the specific observations, recommendations and conclusions set out in the 2010 ARR and the conclusions of the ERT in relation to Bulgaria's national system.

6. On 28 January 2011, Bulgaria submitted a "Progress Report on the implementation of the Compliance Action Plan for ensuring the effective and timely functioning of Bulgarian National Inventory System in accordance with the requirements of Article 5.1 of the Kyoto Protocol and Decision 19/CMP.1, as well as relevant requirements of EU" (CC-2010-1-15/Bulgaria/EB; hereinafter referred to as the "progress report").

7. On 31 January 2011, the enforcement branch decided to invite two experts drawn from the UNFCCC roster of experts to provide advice to the branch (CC-2010-1-16/Bulgaria/EB) in accordance with paragraph 5 of section VIII and rule 21. These experts were the lead reviewers of the ERT that reviewed Bulgaria's 2010 annual submission.

8. On 3 and 4 February 2011, the enforcement branch held its twelfth meeting to consider the request to reinstate Bulgaria's eligibility and to elaborate and adopt a decision under paragraph 2 of section X with respect to Bulgaria. During the meeting, Bulgaria made a presentation. The enforcement branch received advice from the two invited experts during the meeting. It was only at that meeting, when additional information was received from the invited experts and from Bulgaria, that the branch was in a position to proceed with the consideration of the request for reinstatement.

REASONS AND CONCLUSIONS

9. The branch notes that, according to the information contained in the 2010 ARR, the ERT concluded that the national system of Bulgaria is now performing its required general and specific functions, as set out in the annex to decision 19/CMP.1 with respect to the institutional, legal and procedural arrangements to perform these functions. The ERT further concluded that the institutional, legal and procedural arrangements established and formalized by the "Ordinance on the way and order of organization of the national inventories of hazardous substances from greenhouse gases in the ambient air" (ordinance number 215) that entered into force on 21 September 2010 are fully operational and that Bulgaria has in place the institutional arrangements and the capacity, including the arrangements for the technical competence of staff involved in the national system, to plan, prepare and manage inventories on an annual basis. No questions of implementation were identified by the ERT during the review.

10. At the meeting, concerns were raised regarding the capacity of Bulgaria's national system for timely performance of its functions in view of the significant number of resubmissions made of portions of the annual submission after the deadline for submission of the 2010 annual submission and before, during and after the in-country review as reflected in the 2010 ARR. Concerns were also raised regarding the large number of recalculations requested by the ERT during the in-country review, the inconsistencies between the national inventory report and the common reporting format tables as a result of these numerous and ongoing recalculations, and the absence of rationales provided for these recalculations. The experts explained that these numerous recalculations reflected continuous improvements in the methodologies and data sources used by Bulgaria, and hence resulted in a more reliable inventory, and that the rationale for recalculations had been discussed during the in-country review, but had not yet been reflected in writing. Furthermore, the experts advised that in

their view the resubmissions and recalculations made by Bulgaria in response to issues raised by the ERT demonstrated the system's improved capacity for timely performance.

11. Concerns were also raised regarding the sustainability of the institutional arrangements of the national system which relies to a large extent on short-term contractual arrangements. The experts advised that in their view the contractual arrangements were capable of delivering necessary support to the national system, if continued. Bulgaria confirmed that it is committed to contracting the same consultants for a further period of two years.

12. The branch notes that Bulgaria's revised plan meets the requirements set out in paragraph 2 of section XV, paragraph 1 of rule 25 bis and paragraph 20 (b) of the branch's preliminary finding. While the branch is encouraged by the improvements in Bulgaria's national system, as reflected in Bulgaria's 2010 annual submission and the planned improvements in the preparation of subsequent annual submissions, as set out in the revised plan and the progress report, the branch notes that not all of the measures described in this revised plan have yet been fully implemented. The branch urges Bulgaria to carry out all of the measures contained in the revised plan in order to fully implement the recommendations of the ERT and to include a progress report on implementation of this revised plan in its 2011 annual submission.

13. The branch concludes that the information now available is sufficient to conclude that the question of implementation put before the branch³ has now been resolved.

14. During its deliberations, the branch noted with concern the lack of clarity in the 2010 ARR, which does not clearly explain why unresolved problems did not result in the listing of questions of implementation pursuant to paragraph 8 of the annex to decision 22/CMP.1. In particular, differing interpretations of this provision may lead to different conclusions as to whether an unresolved problem is required to be listed as a question of implementation. This reveals more systemic issues that concern the review process under Article 8 of the Kyoto Protocol and the compliance system as a whole, which require urgent attention.

DECISION

15. In accordance with paragraph 2 of section X, the branch decides 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.

Members and alternate members participating in the consideration and elaboration of the decision: Mohammad ALAM, Joseph AMOUGOU, Sandea JGS DE WET, Victor FODEKE, Antonio GONZALEZ NORRIS, Balisi Justice GOPOLANG, René LEFEBER, Mary Jane MACE, Sebastian OBERTHÜR, Ilhomjon RAJABOV, Iryna RUDZKO, Oleg SHAMANOV, Mohamed SHAREEF.

Members participating in the adoption of the decision: Mohammad ALAM (alternate member serving as member), Sandea JGS DE WET, Victor FODEKE, Antonio GONZALEZ NORRIS (alternate member serving as member), René LEFEBER, Sebastian OBERTHÜR, Ilhomjon RAJABOV, Oleg SHAMANOV, Mohamed SHAREEF.

This decision was adopted by consensus on 4 February 2011, 15:42:12, Greenwich Mean Time.

³ See paragraph 4 of the decision on preliminary examination (CC-2010-1-2/Bulgaria/EB).