

PRELIMINARY FINDING

Party concerned: Bulgaria

In accordance with the “Procedures and mechanisms relating to compliance” 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” (the rules of procedure),¹ the enforcement branch adopts the following preliminary finding:

BACKGROUND

1. On 9 March 2010, the secretariat received a question of implementation from an expert review team (the ERT), indicated in the report of the review of the annual submission of Bulgaria submitted in 2009 (2009 ARR) and contained in document FCCC/ARR/2009/BGR. In accordance with paragraph 1 of section VI² and paragraph 2 of rule 10 of the rules of procedure, the question of implementation was deemed received by the Compliance Committee on 10 March 2010.
2. The bureau of the Compliance Committee allocated the question of implementation to the enforcement branch on 16 March 2010, under paragraph 1 of section VII, in accordance with paragraphs 4 (b) and (c) of section V and paragraph 1 of rule 19 of the rules of procedure.
3. On 17 March 2010, the secretariat notified the members and alternate members of the enforcement branch of the question of implementation, in accordance with paragraph 2 of rule 19 of the rules of procedure, and of its allocation to the enforcement branch.
4. On 31 March 2010, the enforcement branch decided, in accordance with paragraph 2 of section VII and paragraph 1 (a) of section X, to proceed with the question of implementation (CC-2010-1-2/Bulgaria/EB).
5. The question of implementation relates to compliance with the “Guidelines for national systems for the estimation of anthropogenic greenhouse gas emissions by sources and removals by sinks under Article 5, paragraph 1, of the Kyoto Protocol” (annex to decision 19/CMP.1; hereinafter referred to as the “guidelines for national systems”). In particular, the ERT found that the specific and general functions of the national system did not ensure that the annual submission of Bulgaria submitted in 2009 (hereinafter referred to as “Bulgaria’s 2009 annual submission”) was sufficiently transparent, consistent, comparable, complete and accurate, as required by the guidelines for national systems, the UNFCCC reporting guidelines,³ the Intergovernmental Panel on Climate Change (IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories (hereinafter referred to as the “IPCC good practice guidance”)⁴ and the IPCC Good Practice Guidance for Land Use, Land-Use Change and Forestry (hereinafter referred to as the “IPCC good practice guidance for LULUCF”).⁵ The ERT also found that Bulgaria’s institutional arrangements and

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” contained in the annex to decision 27/CMP.1.

³ “Guidelines for the preparation of national communications by Parties included in Annex I to the Convention, Part I: UNFCCC reporting guidelines on annual inventories” contained in FCCC/SBSTA/2006/9.

⁴ Available at <<http://www.ipcc-nggip.iges.or.jp/public/gp/english/>>.

⁵ Available at <<http://www.ipcc-nggip.iges.or.jp/public/gp/lulucf/gp/lulucf.htm>>.

arrangements for technical competence of staff within the national system involved in the inventory development process were insufficient to enable the adequate planning, preparation and management of the Party's annual submission in accordance with the guidelines for national systems.⁶

6. This question of implementation is related to the eligibility requirements referred to in paragraph 31 (c) of the annex to decision 3/CMP.1, paragraph 21 (c) of the annex to decision 9/CMP.1 and paragraph 2 (c) of the annex to decision 11/CMP.1. Consequently, the expedited procedures as contained in section X apply.

7. On 8 April 2010, the enforcement branch received a request for a hearing from Bulgaria (CC-2010-1-3/Bulgaria/EB), which also indicated that Bulgaria intended to make a written submission under paragraph 1 (b) of section X.

8. On 15 April 2010, the enforcement branch agreed to invite three experts drawn from the UNFCCC roster of experts to provide advice to the branch (CC-2010-1-4/Bulgaria/EB). One of these experts belonged to the ERT that reviewed Bulgaria's 2009 annual submission.

9. On 5 May 2010, the enforcement branch received a written submission (CC-2010-1-5/Bulgaria/EB) in accordance with paragraph 1 of section IX, paragraph 1 (b) of section X, and rule 17 of the rules of procedure.

10. As requested by Bulgaria on 8 April 2010, a hearing was held on 10 May 2010 in accordance with paragraph 2 of section IX and paragraph 1 (c) of section X. The hearing formed part of the meeting of the enforcement branch that was held from 10 to 12 May 2010 to consider the adoption of a preliminary finding or a decision not to proceed further. During the hearing, Bulgaria made a presentation. The enforcement branch received advice from the three invited experts during the meeting.

11. In its deliberations, the enforcement branch considered the 2009 ARR, the written submission of Bulgaria contained in document CC-2010-1-5/Bulgaria/EB, information presented by Bulgaria during the hearing and advice from experts invited by the branch. No competent intergovernmental or non-governmental organization provided any information under paragraph 4 of section VIII.

CONCLUSIONS AND REASONS

12. From 28 September to 3 October 2009, the ERT conducted an in-country review of Bulgaria's 2009 annual submission in accordance with the "Guidelines for review under Article 8 of the Kyoto Protocol" (annex to decision 22/CMP.1). The ERT found that Bulgaria's 2009 annual submission was not sufficiently transparent, consistent, comparable, complete and accurate, as required by the UNFCCC reporting guidelines, the IPCC good practice guidance and the IPCC good practice guidance for LULUCF.

13. During the course of its technical review, the ERT found that a number of the general and specific functions required of national systems were lacking, and that as a result, the Bulgarian national system did not operate fully in accordance with the general and specific functions as set out in the guidelines for national systems. In particular, the ERT found that the institutional arrangements and arrangements for the technical competence of its staff within the national system involved in the inventory development process were insufficient to enable the adequate planning, preparation and management of Bulgaria's annual submission in accordance with the aforementioned guidelines.

14. During the hearing, the experts confirmed that there were unresolved problems pertaining to language of a mandatory nature with respect to implementation of the general and specific functions set out in the guidelines for national systems that resulted in Bulgaria's 2009 annual submission not

⁶ See paragraphs 194 and 200 and section II of the report of the ERT contained in FCCC/ARR/2009/BGR.

being transparent, consistent, comparable, complete and accurate. Experts noted that the implementation of Bulgaria's work plan, which outlined measures, including actions and activities to be undertaken, to address issues mentioned in paragraph 195 of the 2009 ARR could not be completed before the due date of the 2010 annual submission. It was also noted that numerous recommendations for improvements in the Bulgarian national system that had been made in earlier expert review team reports had not been addressed. Experts identified the need for the further implementation of recommendations identified in the 2009 ARR to ensure the operation of the national system of Bulgaria in accordance with the requirements of the guidelines for national systems. Experts further identified that a subsequent in-country review will be required to assess Bulgaria's national system in accordance with the guidelines for national systems. Experts advised that significant improvements in the quality of Bulgaria's annual submissions cannot be expected to become evident until the review of the 2011 annual submission.

15. During the hearing, Bulgaria acknowledged that it had faced challenges with its institutional arrangements and with the technical competence of its staff, due to a lack of financial and human resources. Bulgaria presented information on its national system and on the measures it had implemented and planned to implement to further improve that system. These included the development of the work plan to address the issues mentioned in paragraph 195 of the 2009 ARR. Bulgaria reported that it has made significant progress in implementing measures to ensure the performance of the functions described in the guidelines for national systems, in particular with respect to clarifying institutional arrangements, assigning responsibilities between the actors involved in the implementation of its national system, enhancing capacity and implementing other improvements.

16. After considering the 2009 ARR, the written submission of Bulgaria, the presentations at the hearing by Bulgaria and the presentations and advice received from the invited experts, the enforcement branch was encouraged by the progress reported and impressed by the willingness and commitment shown to resolve the problems concerning the national system. However, the enforcement branch noted that questions remained regarding the full implementation of measures to ensure the operation of the national system of Bulgaria in accordance with the guidelines for national systems. The branch further noted that earlier expert review teams had consistently indicated a need for substantial improvements in the national system of Bulgaria in reports of the review of the initial report of Bulgaria⁷ and the individual review of the greenhouse gas inventories of Bulgaria submitted in 2007 and 2008.⁸

17. The enforcement branch concludes, based on the totality of the information submitted and presented, that the unresolved problem referred to in paragraphs 12 and 13 above resulted in non-compliance with the guidelines for national systems at the time of finalization of the 2009 ARR.

18. While Bulgaria has submitted and presented information on positive steps it has undertaken since the finalization of the 2009 ARR, this information has not enabled the enforcement branch to conclude that the question of implementation has been resolved. The enforcement branch concludes that:

- (a) Bulgaria needs to make further progress in the implementation of measures to ensure the performance of the general and specific functions described in the guidelines for national systems;
- (b) A further in-country review of Bulgaria's national system, in conjunction with a review of an annual inventory report generated by this system, is required for the enforcement branch to assess compliance with the guidelines for national systems.

⁷ FCCC/IRR/2007/BGR.

⁸ FCCC/ARR/2008/BGR.

FINDING AND CONSEQUENCES

19. The enforcement branch determines that Bulgaria is not in compliance with the “Guidelines for national systems for the estimation of anthropogenic greenhouse gas emissions by sources and removals by sinks under Article 5, paragraph 1, of the Kyoto Protocol” (annex to decision 19/CMP.1). Hence, Bulgaria does not meet the eligibility requirements under Articles 6, 12 and 17 of the Kyoto Protocol to have in place a national system in accordance with Article 5, paragraph 1, of the Kyoto Protocol and the requirements and guidelines decided thereunder.

20. In accordance with section XV, the enforcement branch applies the following consequences:

- (a) Bulgaria is declared to be in non-compliance.
- (b) Bulgaria shall develop a plan referred to in paragraph 1 of section XV, in accordance with paragraph 2 of section XV and paragraph 1 of rule 25 bis of the rules of procedure, submit it within three months to the enforcement branch in accordance with paragraph 2 of section XV, and report on the progress of its implementation in accordance with paragraph 3 of section XV. In this context, Bulgaria should:
 - i. With respect to subparagraph 2 (b) of section XV, elaborate and update the work plan referred to in paragraph 15 above and identify any further measures it intends to implement to remedy the non-compliance to respond to the recommendations of the 2009 ARR; and
 - ii. With respect to subparagraph 2 (c) of section XV, seek to ensure that these measures have been fully implemented and such implementation has been regularly reported on to the enforcement branch in accordance with paragraph 3 of section XV prior to the next regularly scheduled in-country review.
- (c) Bulgaria’s eligibility to participate in the mechanisms under Articles 6, 12 and 17 of the Kyoto Protocol is suspended in accordance with the relevant provisions under those Articles pending the resolution of the question of implementation.

21. These findings and consequences take effect upon confirmation by a final decision of the enforcement branch.

Members and alternate members participating in the consideration and elaboration of the preliminary finding: Mohammad ALAM, Sandea JGS DE WET, Antonio GONZALEZ NORRIS, Kirsten JACOBSEN, René LEFEBER, Mary Jane MACE, Stephan MICHEL, Ainun NISHAT, Sebastian OBERTHÜR, Ilhomjon RAJABOV, Iryna RUDZKO, Oleg SHAMANOV, Mohamed SHAREEF.

Members participating in the adoption of the preliminary finding: Mohammad ALAM (alternate member serving as member), Sandea JGS DE WET, Antonio GONZALEZ NORRIS (alternate member serving as member), René LEFEBER, Stephan MICHEL, Ilhomjon RAJABOV, Oleg SHAMANOV, Mohamed SHAREEF.

This decision was adopted by consensus in Bonn on 12 May 2010.