

WRITTEN SUBMISSION FROM ROMANIA



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**Mr. Feng Gao
Secretary
Compliance Committee
UNFCCC – Secretariat**

Dear Mr. Feng Gao,

In respect to our notification for the Compliance Committees' Secretariat, please find enclosed Romania's written submission under Section X, paragraph 1(b) of the annex to decision 27/CMP.1, with regard to the Question of Implementation raised by the Compliance Committee, concerning the annual GHG inventory submission of Romania submitted in 2010.

Alongside the written submission, please find attached the annexes covering the issues comprised and referred in the baseline document (the written submission).

Yours sincerely,

Lazăr Comănescu

**WRITTEN SUBMISSION OF ROMANIA
UNDER SECTION X OF THE ANNEX TO DECISION 27.CMP 1**

In response to the decision of the Compliance Committee of 27 May 2007 (CC-2011-1-2/Romania/EB) we are pleased to submit the following submission on behalf of the Government of Romania.

I. REQUEST

On behalf of the Government of Romania, we **request** the **Enforcement Branch** of the **Compliance Committee**

to determine **not to proceed** further with the Questions of Implementation raised in the report of the individual review of the annual submission of Romania submitted in 2010 of 11 May 2011 (CC/ERT/ARR/2011/21);
or alternatively,
to refer the Questions of Implementation to the **facilitative branch** for consideration.

II. BACKGROUND

1. As a Party included in Annex I to the Convention which is also a Party to the Kyoto Protocol, Romania is subject to a number of reporting and review requirements established by the Articles 5, 7 and 8 of the Kyoto Protocol (KP) and corresponding decisions of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP). Among these requirements, Romania commits to have in place a national system for the estimation of greenhouse gas emissions by sources and removals by sinks (Article 5 (1) KP); further that it uses agreed methodologies, chiefly the revised 1996 Intergovernmental Panel on Climate Change (IPCC) Guidelines for National Greenhouse Gas Inventories (IPCC Guidelines 1996), along with the 2000 IPCC Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories (IPCC GPG 2000) and the 2003 IPCC Good Practice Guidance for Land Use, Land Use Change and Forestry (GPG-LULUCF), or, where these are not used, that appropriate adjustments are applied (Article 5 (2) KP); that it submits annual national greenhouse gas inventories (NGHGs) and, in regular intervals, national communications (Article 7 KP); and that the information submitted under Article 7 KP be reviewed by expert teams (Article 8 KP).

2. Romania made its 2010 annual inventory submission—covering the years 1989 up to 2008—on 15 April 2010 and provided revised documents on 13 August 2010 and, in response to questions raised by the expert review team (ERT) which reviewed the submission between 20 and 25 September 2010, on 5 November 2010.
3. The ERT issued its draft report on 25 September 2010 and its final report on 11 May 2011. The ERT found that while verification and quality assurance/quality control (QA/QC) approaches and methodologies and the use of appropriate activity data (AD) and emission factors (EFs) from several categories were accurate, methodologies and appropriate use of AD and EFs for several others allegedly were not. It concluded the final report with Questions of Implementation.
4. On 12 May 2011, the Compliance Committee, through the UNFCCC Secretariat, received the Questions of Implementation. On 27 May 2011, the Enforcement Branch of the Compliance Committee concluded its preliminary examination deciding to proceed with the Questions of Implementation and seeking expert advice on the content and basis of the ERT’s final report.

III. MANDATE OF THE ENFORCEMENT BRANCH OF THE COMPLIANCE COMMITTEE

5. Article 18 KP has mandated the CMP to approve “appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of [the] Protocol”. Consequences of non-compliance need to take into account “the cause, type, degree and frequency of non-compliance”.
6. The Compliance Committee has been adopted under Decision 27/CMP 1 with the objective “to facilitate, promote and enforce compliance” with the commitments under the Protocol. Of its two branches, the Facilitative Branch is responsible for “providing advice and facilitation to Parties in implementing the Protocol, and for promoting compliance by Parties with their commitments under the Protocol” (IV. para 4). The Enforcement Branch is responsible for “determining whether a Party included in Annex I is not in compliance” with its quantified emission limitation or reduction commitment, the methodological and reporting requirements under Article 5 (1), (2) KP and Article 7 (1), (4) KP and the eligibility requirements under Article 6. 12 and 17 KP. The Compliance Committee receives its cases through the submission of Questions of Implementation.
7. The Facilitative Branch and the Enforcement Branch shall “interact and cooperate in their functioning” (II. para 7). The Enforcement Branch may “at any time, refer a question of implementation to the facilitative branch for consideration” (IX. para 12).

8. The consequences applied by the two branches differ considerably. While the Facilitative Branch may decide to provide further advice, facilitate assistance and formulate recommendations to the Party concerned, the Enforcement Branch, where it determines that a Party is not in compliance with its reporting obligations under Article 5 (1), (2) KP and Article 7 (1), (4) KP, shall apply the following consequences, "taking into account the cause, type, degree and frequency of the non-compliance of that Party":
 - a. Declaration of non-compliance;
 - b. Development of an implementation plan to remedy the non-compliance"; and
 - c. Where the non-compliance relate to one or more eligibility criteria under Article 6, 12 or 17 KP, suspension of eligibility.
9. Parties concerned are protected by due process rights and may appeal against any final decision of the Compliance Committee to the CMP (XI para 1).
10. When assessing a Question of Implementation submitted to it, the Compliance Committee will examine whether the Expert Review in which the Question of Implementation was raised, meets the pertinent formal requirements and whether it is accurate in substance, i.e. whether the Expert Review and the ERT's decision to raise a Question of Implementation is based on facts, whether the correct assessment and evaluation criteria have been used and whether any existing margin of appreciation has been applied in accordance with the law.

IV. FORMAL REQUIREMENTS OF THE EXPERT REVIEW

11. The formal requirements for the Expert Review under Article 8 KP are laid down in Decisions 22/CMP.1 to 24/CMP.1. They include, among others, ERT staffing requirements.
12. Regarding staffing requirements, experts shall have recognized competence in the areas to be reviewed and relevant training shall be provided (Decision 22/CMP.1, para 24). Teams shall be assembled by the Secretariat in a way that the collective skills of the team address the various areas of expertise (para 31) and with a view to achieving a balance between experts from Annex I and non-Annex I Parties (para 32). To the extent possible, at least one member should be fluent in the language of the Party under review.
13. While Romania does not doubt the personal excellence and professionalism of all reviewers engaged in this review, we would respectfully request the Secretariat to clarify what measures it has taken to ensure that all staffing requirements have been met.

V. FINDINGS OF THE ERT REPORT: QUESTIONS OF IMPLEMENTATION

Questions of Implementation

14. The ERT concluded its final report raising the following questions of implementation:
- (1) Romania's national system would fail to perform several functions of inventory preparation, in particular
 - a. It would fail to prepare certain estimates for greenhouse gas emissions in accordance with the applicable rules and apply appropriate methods to estimate emissions from key categories; and
 - b. It would fail to collect sufficient AD, process information and EFs necessary to support the relevant estimation measures;
 - c. It would fail to make complete estimates for land use, land use change and forestry (LULUCF) activities, including using appropriate tier methodologies for key categories and collecting sufficient AD and EFs, in particular for forest management activities, and would not comply with the relevant good practice guidance, as Romania would not account for all carbon pools.
 - (2) Romania's institutional arrangements would be insufficient to ensure the improvement of the national system and, consequently, the completeness and accuracy of the inventory, in particular
 - a. Previous improvement plans, it is stated, had not been implemented;
 - b. Romania, it is stated, had provided insufficient information on whether funding for the studies under way or planned which aim to increase the methodological tier level of the inventory and obtain the necessary data and information is sufficient; and
 - c. Given the previous experience with the country, the scope of work planned and the short period of time available, it is stated, it would be difficult for Romania to complete the required works and implement them for its 2012 submission.
15. The Questions of Implementation raised are questionable on several grounds, factual and legal, which we will describe in the following.

Accurate Representation of Facts

16. The ERT findings concerning what the ERT regards as partially non-performing national system which would lead to a non-complete and non-accurate inventory largely reflect similar ERT findings for Romania from previous years. What differs is the account of what measures Romania has taken to improve both the completeness and accuracy of the inventory and the performance of the national system.

Proven Improvements

17. In its present findings the ERT claims that “numerous and important recommendations from previous reviews reports have not yet been implemented, the most important being: the improvement of completeness; the implementation of the improvement plan according to schedule; and the use of higher-tier methods for key categories”¹. This is an inaccurate account of facts. The incorporation of recommendations made by the ERT in its annual reviews is an on-going process to which Romania devotes considerable efforts and resources. In common with most Parties,² it is not always possible to fully implement each and every recommendation of the ERT by the time of the following year’s report. Nonetheless, Romania has made significant progress since previous reports, and has begun research and capacity-enhancing activities that will ensure that the 2012 submission goes a substantial way toward addressing the most substantive of the ERT’s recommendations (see further info on planned studies, below). It should also be noted that many reporting details which were raised as “insufficient” concern LULUCF additional information reporting under Article 3 (4) KP;³ this reporting is being undertaken for the first time (2008 being the first year of the Protocol’s first commitment period) and many Parties face difficulties in this respect (see further below). There is no question that any of the recommendations made could have been addressed through the practice of previous years.

18. Nevertheless, major improvements made in Romania’s 2010 submission include the following:

- With regard to the improvement of completeness, the number of categories reported as not estimated was reduced to 299 in the 2010 NGHGI submission, compared with 358 in the 2006 NGHGI submission. Moreover, this number has been substantially decreased to 247 in the 2011 NGHGI submission.
- With regard to the use of higher-tier methods for key categories, Romania has moved to higher tier estimations for the key categories cement production and lime production, as well as for several other categories in the industrial processes sector.

¹ Report of the individual review of the annual submission of Romania submitted in 2010 of 11 May 2011, (FCCC/ARR/2010/ROU), para 18.

² See, e.g. Report of the individual review of the annual submission of the Czech Republic submitted in 2010 of 28 March 2011 (FCCC/ARR/2010/CZE), para 36; Report of the individual review of the annual submission of Belarus submitted in 2010 of 4 January 2011 (FCCC/ARR/2010/BLR), para 27; Report of the individual review of the annual submission of Portugal submitted in 2010 of 11 April 2011 (FCCC/ARR/2010/PRT), paras 17, 30; Report of the individual review of the annual submission of Greece submitted in 2010 of 11 May 2010 (FCCC/ARR/2010/GRC), para 26.

³ Report of the individual review of the annual submission of Romania submitted in 2010 of 11 May 2011 (FCCC/ARR/2010/ROU), paras 108, 145, 176, 186.

- Elaboration of the NIR following the “Annotated outline of the National Inventory Report including reporting elements under the Kyoto Protocol” document provided by the UNFCCC Secretariat
- Update of both the QA/QC Programme and the Improvement Plan.

19. Furthermore, in the following table, we summarize the revisions made by Romania for its 2010 inventory submission in response to earlier recommendations made by the ERT. It should be noted that these revisions include several points of major relevance such as data on changes to area, carbon stock change in AGB, litter and mineral soil. Regarding this issue in particular, it should also be noted that the ERT is mistaken in assuming that Romania would continue to apply an “NE notation key”; it does not.

No.	Category and gas	Short description of the revision	Year/period affected by revision
Agriculture Sector			
1.	Enteric fermentation – CH ₄ (4.A3, 4.A8)	Default values of the EFs for developing countries have been replaced with default values for developed countries.	2008
2.	Manure management – CH ₄ (4.B(a)3, 4.B(a)4, 4.B(a)6, 4.B(a)7 and 4.B(a)9)	Default values of the EFs for developing countries have been replaced with default values for developed countries.	2008
3.	Direct soil emissions – N-fixing crops- N ₂ O (4D.1.3), Direct soil emissions-Crop residue- N ₂ O (4D.1.4)	Lucerne and clover have been characterized in both analyzed categories as N-fixing crop; for both subcategories, the default value $Frac_{NCRBF}$ used in the emissions calculation is 0.03 kg N/kg of dry biomass.	1989-2008
4.	Direct soil emission- Cultivation of histosols- N ₂ O (4D.1.5)	Emissions began to be characterized based on new data on the area of cultivated histosols and on the default EF value.	2008
Industrial Processes Sector			
5.	Carbide Production: Calcium carbide – CO ₂ (2.B.4.2)	The <i>changes in notation keys</i> related with calcium carbide production sector in 2007 and 2008 within CRF data base were made	2007 and 2008
6.	Carbide Production: Silicon carbide – CO ₂ and CH ₄ (2.B.4.1)	The <i>estimate of CH₄ emissions</i> related with silicon carbide production in 2008 within the CRF data base was made.	2008

		The <i>change in notation keys</i> related with CO ₂ emissions in 2008 was also made within CRF data base.	
Energy Sector			
7.	Energy, Public electricity and heat production, IA1a (CO ₂ , CH ₄ , N ₂ O)	A correction was made in IA1a the CRF tables.	2008
8.	Energy, Energy industries and Manufacturing industry and construction, IA1 & IA2 (CH ₄)	In the spreadsheet was a mistake of applying the formula for calculating the emission of CH ₄ (the formula was included in a row below the row with the consumption of biomass calculation). It was corrected in the CRF tables.	1989-2008
9	Energy, transport, IA3 (CO ₂ , CH ₄ , N ₂ O).	The response received from the NIS registered Solid Fuel consumption in the EB for Railways, were included in the CRF tables at 1AA3C. Biomass consumption we have introduced in a new section attached to the OTHER Fuels. The system does not allow attaching a new combustion at the Railways node.	1989-2008
10.	Energy, Other sectors, Commercial/Institutional, IA4a (CO ₂ , CH ₄ , N ₂ O).	We introduced the CRF tables - 1AA1A - REFINERY GAS consumption values for the EB - OTHER BRANCHES OF ECONOMY.	1989-2008

Changes to KP-LULUCF reporting following communications with the ERT concerning the 2010 NIR

No.	KP-LULUCF table	Short description of the estimation revision*	Year/period affected by revision
KP-LULUCF tables			
1.	NIR 1	Notation key R instead of NR for change in carbon soil for AR	2008
2.	NIR 2	Changes to area from AR to AR in land transition matrix triggered changes to of area from "Other" to "Other"	2008
3.	5(KP-I) A.1.1.	Changes to area, carbon stock change in AGB, litter and	2008

		mineral soil, the latter replacing the former NE notation key	
4.	Accounting table	Change of input data for AR activity, consequent to changes made in table 5(KP-I) A.1.1.	Accounting in 2014/2012
No.	Section in Chapter 11 NIR 2010	Short description of the estimation revision*	Year/period affected by revision
KP-LULUCF tables			
1.	11.2.1	Revision of AD (area) corresponding to the AR activity	2008
2.	11.3.1.1	Estimation of carbon stock change in soil organic carbon, on lands affected by AR activity	2008

Actions for Further Improvements

20. Furthermore, in their findings the ERT concludes that “[Romania] has not undertaken any actions to ensure that there are sufficient resources to improve the quality of future annual submissions”⁴. This is an inaccurate account of facts. Romania informed the ERT during the individual review and, specifically, as a response to the ERT’s note of 25 September 2010, on 5 November 2010—the response of 5 November 2010 being attached to this submission as **Annex 1**—that it was preparing the relevant procurement procedures for commissioning in-depth studies on substantial data collection, EFs and national system improvement regarding all major sectors including LULUCF (Annex 1, p.5)—a fact not least acknowledged in another passage of the ERT final report.⁵ Additional information and updates regarding measures taken by Romania to further improve the quality of the NGHGI were included in the submissions by Romania to the ERT on 9 February and 22 March 2011, attached as **Annex 2** and **Annex 3**, respectively, and the scope and funding of these studies have recently been scaled up to better reflect the urgency of the issues at hand. These studies will go a significant way towards improving the national system and the quality of future annual submissions
21. The first study, “Elaboration/documentation of national emission factors/other parameters relevant to NGHGI Sectors Energy, Industrial Processes, Agriculture and Waste, values to allow for the higher Tier calculation methods implementation,” is specifically designed to address data collection, the improvement of information processing and the development of EFs and will

⁴ *Ibid.*, para 19.

⁵ Report of the individual review of the annual submission of Romania submitted in 2010 of 11 May 2011 (FCCC/ARR/2010/ROU), para 24.

enable Romania to move to higher tier calculations in almost all key categories in the energy, industrial processes, agriculture and waste sectors. This study thus addresses the questions of implementation referred to in paragraphs 14 (1)(a) and 14 (1)(b), above. The tender notice for this study (no. 124404) was issued on 23 June 2011 on the specialised public procurement website (SEAP) and the tendering process will lead to the commissioning of the study on 20 July 2011. Financing is ensured from the 2011 budget of the Ministry of Environment and Forests (MEF). Draft results of this study are expected by 15 October 2011 for Energy, Industrial Processes and Agriculture and by 15 November for Waste. The final report will enable the inclusion of the results in the 2012 NGHGI, by the end of January/beginning of February 2012.

22. The second study, “NGHGI LULUCF both under the UNFCCC and KP obligations”, is designed specifically to develop national parameter values in order to support the use of higher tier calculation methods in the LULUCF sector, including for forest management, consistent representation of land matrix and estimating emissions/removals from all currently not-estimated land use/land-use change categories and carbon pools, including, carbon soil changes in the mineral soils, litter and dead wood pools in areas under forest management and in mineral soils under revegetation. This study thus comprehensively addresses the questions of implementation referred to in paragraph 14 (1) (c), above. The tender notice for this study (no. 119404) was issued on SEAP on 8 April 2011 and the tendering process led to the commissioning of the study (through contract no. 46) on 23 May 2011 to the National Institute for Forest Research and Management Planning (ICAS), which possesses very adequate expertise in this field (it currently implements the only AR JI project in the world). Financing is ensured from the MEF budget for 2011. First results of the ongoing study are expected by 30 July 2011, and these will be used for the revision of the 2011 NGHGI, by the end of August 2011. The final report is expected for 31 October 2011, which will enable the full inclusion of its results in the 2012 NGHGI, by the end of January 2012.

23. The third study, “Support for the implementation of the European Union requirements on the monitoring and reporting of the carbon dioxide (CO₂) and other greenhouse gas emissions”, will lead to the improved overall functioning of the national system (as a result of updating the institutional, legal and procedural arrangements within the relevant regulations, including Governmental Decision (GD) no. 1570/2007 regarding the national system for GHG emissions), improved knowledge of staff members in the National Environmental Protection Agency (NEPA) and at data provider level, and in programs of administrating the national EFs. The tender notice for this study has been issued on SEAP on 28 June 2011 and

the tendering process will lead to the commissioning of the study on 25 July 2011. Financing is ensured from the MEF budget for 2011. The final report is expected for 31 October 2011 enabling the amendment of GD no. 1570/2007 by February 2012, thereby addressing the questions of implementations referred to in paragraphs 14 (1)(a) and 14 (1)(b) above.

24. The fourth study/operational project, "Environmental Integrated Informational System" comprises activities optimizing the informational fluxes at the NGHGI level, including collection of data/information associated to the Public Electricity and Heat Production Subsector-Energy Sector, implementation of the key category analysis and of the uncertainty analysis, and collection of documents from different data providers (e.g. the National Inventory System and the Ministry of Agriculture and Rural Development). This study will supplement the other studies and enhance the national system as a whole by optimizing the processes through which the NGHGIs are compiled. The tender notice for this study (no. 90536) was issued on 10 November 2009 and the tendering process led to the commissioning of the study to the SC Asesoft International/SA-SC TeamNet International/SA-SC Star Storage SRL consortium through contract no. 041 of 2 September, 2010. The study, financed by MEF, is now under implementation and the final report is expected for September 2012, enabling the optimization of NGHGI informational fluxes and therefore addressing the questions of implementations referred to in paragraph 14 (1)(a), and 14 (1)(b) above.
25. The fifth study, "Development of historical data, for the period 1989-2010, for allowing to estimate direct and indirect GHG emissions from Road Transport using the COPERT 4 model associated to the Tier 2 approach", comprises activities of developing values of national EFs/other parameters to allow for the use of higher tier calculation methods within the Road transport subsector through the use of the COPERT IV model. This will supplement the other studies in addressing the questions of implementation referred to in paragraphs 14 (1)(a) and 14 (1)(b), above. The tender notice for this study will be issued in the first quarter of 2012 and the final report is expected for 15 November 2012. This study is proposed to be financed in 2011 from the Swiss Financial Cooperation budget. Alternatively, the study will be funded from the MEF budget earmarked for 2012.
26. With significant disregard to the clarifications made by Romania in its response of 5 November 2010, as supplemented by the responses of 9 February and 22 March 2011, the ERT stated that Romania had failed to name the authority responsible for ensuring that the studies in question will provide data and information compliant with reporting requirements; that Romania had failed to

name the agency responsible for the implementation of study findings; that Romania had failed to confirm that funds were available at the time for all the studies listed; and that Romania had reported that its inventory would benefit from the results of the planned studies only “one year after their completion” (See Annex 2, p.8). This statement—on which the ERT has based its decision to raise the Questions of Implementation—is incorrect on all accounts: Romania *did* address that NEPA is the authority responsible for ensuring that the studies in question will provide data and information compliant with reporting requirements as well as the agency responsible for the implementation of study findings (Annex 1, pp. 5-7, Annex 2, pp. 4-8 and Annex 3, pp. 4-12); Romania *did* confirm that sufficient funds were available at the time (and continue to be) from the Ministry of Environment and Forests’ revised budget, the Fund for the Environment, and the Swiss Financial Cooperation budget (see below); and Romania *did not* report that the results of the planned studies would only be available “one year after their completion” but “in the year after the studies’ finalization”. This is a substantial distinction: ‘One year after completion’ of the studies—completion of the relevant studies falls in the third and fourth quarter of 2011—would mean the third or fourth quarter of 2012, i.e. the results could normally not be used prior to the 2013 submission; while ‘the year after completion’ means—as is the case—that they are available early in the year and thus in time for inclusion in the 2012 submission.

27. Moreover, institutional and financial improvements have been implemented consistently. Governmental Emergency Ordinance No. 15/2010 and Law No. 167/July 2010 amending Article 13 (1) (m) of Governmental Emergency Ordinance establishing the Fund for the Environment have secured general funding for research and the commissioning of studies in the field of environmental protection and forests, including climate change. The legal document is presented attached to this submission as **Annex 4**. According to item (m) in the list, included as Annex 3 in the Governmental Decision No. 117/2011, 50 million Lei (about EUR 11.9 million) have been earmarked for studies and research in the environment field, including climate change. This legal document is attached to this submission as **Annex 5**.

28. Governmental Decision No 432/2010 on the establishment and development of Green Investment Schemes and Governmental Emergency Ordinance No. 29/2010 concerning the trade of the assigned amount surplus assigned to Romania through the Kyoto Protocol, reserves an additional 2% of all revenues to capacity building measures, including research studies in the area of climate change (art. 10 (1)(b) of GD 432/2010). While it has no implication for the studies mentioned

whether and when Romania will perform Assigned Amount Unit (AAU) transactions and while we wish to stress that all revenues from such transactions are additional to all improvements made or planned so far, it should be noted that negotiations regarding two AAU transactions to date are in an advanced stage and we expect conclusion by autumn 2011. Nevertheless, it should be stressed whether and when Romania will perform Assigned Amount Unit (AAU) transactions has no implication for the studies mentioned and that all revenues from such transactions are additional to all improvements made or planned so far. The two legal documents are presented attached to this submission as **Annex 6** and **Annex 7**, respectively.

29. These institutional and funding developments have further been supported by NEPA's recent approval of a new organizational chart within the Climate Change, Sustainable Development Directorate, which strengthens the Unit with responsibility for the administration of the National Inventory System and NGHGI and increases the number of staff members assigned to this task from 5 to 14. This is a significant step that directly addresses one of the key issues slowing Romania's progress towards a more complete and improved annual submissions. The organizational chart included in the Appendix to the proposal for Governmental Decision amending the organisation and functioning of NEPA are attached as **Annex 8** and **Annex 9** respectively. These new staff members will be trained in the context of the third study (above) and by accessing the specific expert reviewer training courses managed by the UNFCCC Secretariat and the GHG Management Institute. To accommodate the new personnel, NEPA is currently working to ensure appropriate working space and facilities and sufficient and high-performance Information Technology equipment (the latter being procured in the context of the project "Environmental Integrated Informational System", above).
30. The foregoing institutional and financial improvements comprehensively address the Questions of Implementation referred to in paragraph 14 (2), above.
31. Furthermore, Romania has been able to rely on European Union bilateral support over the course of 2010 and 2011 (sponsored by the Netherlands) to improve its reporting framework including regarding LULUCF reporting under Article 3 (4) KP.
32. Finally, Romania has implemented a wide range of further improvements since the 2010 submission, all incorporated in the 2011 submission. Among these improvements are the following:

- Refined tier 1 calculation on the basis of data/information made available in Romania, replacing default emission factor values previously used (public electricity and heat production subsector, energy sector);
- Improved completeness of the energy sector through
 - characterizing the CH₄ fugitive emissions from the natural gas transit;
 - characterizing the CH₄/CO₂ emissions from Fugitive emissions from fuels subsector-categories 1.B.2.A.2, 1.B.2A.3, 1.B.2.B.2, 1.B.2.B.3 and 1.B.2.C.1.1;
 - estimation of the CH₄ recovery amount associated to the Managed Waste Disposal on Land Subsector-Waste Sector;
- Improved accuracy through NGHGI sectors through:
 - energy sector inclusion of values from a revised version of the energy balance;
 - industrial processes sector-CO₂ emissions released from consumed electrodes (2.C.1.5) were added to the CO₂ emissions resulted from steel production (following tier 2 approach);
 - solvents and other product use-considering the new NMVOC emissions collected data;
 - agriculture sector-agriculture soils subsector
 - considering new data on annual organic soils cultivated areas;
 - solving an error pertaining to the industrial fibre crops and other industrial crops productions.
 - Waste Sector
 - considering final data on the amount of the municipal solid waste and for the percentage of the composition of waste;
 - considering new methodology on collection of data on the percentage composition of waste;
 - solving an error pertaining to the amount of hazardous waste incinerated.
- Reduction of the number of categories for which emissions were declared as not estimated; in respect to the last characterized year and considering the information in the CRF table 9(a), the number of categories decreased from 299 in the 2010 version 2 NGHGI submission to 247 in the 2011 NGHGI submission.
- As part of the 2011 NGHGI official submission, within the Annex 1 of the NIR were provided also data/information on the results of the key category analysis for 1989.

Implementation Schedule

33. The ERT has further rejected the implementation schedule with deadlines provided by Romania on the grounds that “given the scope of the work planned, the short period of time available for its completion and implementation in the 2012 submission, and the Party’s failure to implement the previous improvement plans, it may be difficult for the Party to carry out such activities as scheduled”⁶. This statement is inaccurate on the assumption that Romania had failed to implement the previous improvement plans (see above) and it is highly questionable on its conclusion: The implementation schedule provided, consistently built in the answers of 5 November 2010, 9 February and 22 March 2011 (attached as **Annexes 1-3**), is both detailed and realistic; it sets firm milestones and deadlines—2011 as the completion date for three studies (studies 1-3); 2012 as the completion date for studies 4 and 5—and Romania has given comprehensive evidence that these will be met (see paragraphs 21-25 above). In particular, the implementation schedule lists for all studies planned and budgeted sharp deadlines; it gives detailed evidence of tender proceedings initiated, of institutional (both in-house and external) safeguards; and it provides reasonable timelines (e. g. three months for a certain tendering process; roughly six months for the preparation of a study).
34. Furthermore, the ERT has questioned the value of the studies in further improving the accuracy and completeness of the inventory and the comprehensive performance of the national system referred to above, arguing that “this list did not indicate any specific changes to the national system in order to ensure its proper functioning,” and has further rejected the list of funding for further research, arguing that “the information provided by the Party is insufficient for the ERT to conclude on whether the funding for the planned studies is sufficient”⁷
35. The foregoing statement is inaccurate on all accounts. In the first instance, the aforementioned studies address precisely the issues that led the ERT to raise Questions of Implementation with regard to Romania (see above, paragraphs 21-27).
36. In the second instance, while noted that the ERT fails to provide any guidance, let alone criteria, for what it considers “sufficient” and “insufficient”, respectively, the ERT’s conclusion is certainly not warranted by the facts. The list provided by Romania sets out detailed and specific sources for the funding of the studies. In particular, Romania confirmed that “all the studies can be funded at the current moment using the funds available at the Fund for the Environment Administration level,” and that “the relevant funds part of the MEF’s budget will

⁶ *Ibid.*, para 23.

⁷ *Ibid.*, para 25.

become available at the beginning of 2011.”⁸ This information has not altered ever since (see above). Moreover, all financial resources for developing studies relevant to the climate change field for the current year are being directed toward the enhancement of Romania’s national system and the continuous improvement of its NGHGI.

37. Finally, the ERT concludes that “the studies would only be available by 2012 for most categories [and therefore] the inventory could be stable and accurate only in the last two annual submissions pertaining to the Kyoto Protocol first commitment period (to be submitted in 2013 and 2014)”⁹. In the first instance, the statement seems to suggest a one-off (‘big-bang’) scenario for the ideal functioning of Romania’s national system, while international practice unambiguously shows that the improvement of both national system and accuracy and completeness of the inventory is a process (on this see below). Indeed, as will be demonstrated, few reviews of Parties’ NIRs by the ERT are entirely in line with the requirements of the IPCC guidance and the decisions of the CMP, and the ERT routinely indicates areas for continuous improvement. For another, the statement ignores that, wholly in line with the implementation schedule provided to the ERT, the results of three of the studies in question (studies 1-3) will be available by 2011, and Romania intends to incorporate their results into the 2012 NIR during the first two months of 2012. The remaining two studies are to be completed in 2012, and their results will be incorporated in the 2013 submission..

38. In addition, Romania foresees partial results of the second study being already available for inclusion in the August 2011 revision of the supplementary information concerning LULUF required under Article 7 (1) KP.

Accuracy of the Applied Evaluation Criteria

39. The objective of the individual review of the country’s annual submission is “a thorough and comprehensive technical assessment of all aspects of the implementation by a Party of this Protocol” (Article 8 (3) KP). With regard to national systems, this includes the assessment *to what extent* national systems are designed and operational “to ensure the transparency, consistency, comparability, completeness and accuracy of inventories”¹⁰ The applicable benchmark for the

⁸ Potential Problems and Further Questions from the ERT formulated in the course of the 2010 review of the greenhouse gas inventories of Romania submitted in 2010. Response by Romania, 9 February 2011 (Annex 2).

⁹ *Ibid.*, para 26.

¹⁰ Decision 19/CMP.1, para 6.

assessment is the IPCC Guidelines 1996, as elaborated by the IPCC GPG 2000 and the IPCC GPG-LULUCF.¹¹

40. It should be noted that these benchmark documents are not to be understood as fixed standards, rather, as the name “guidance” or “guidelines” duly suggests, as target orientation and referential systems for the (gradual) accomplishment of a country’s inventory data and national system. Decision 19/CMP.1 does not formulate fixed obligations and rather than imposing requirements and results (‘national systems must...’), it aims at objectives: “National systems should be designed and operated to ensure...”

41. The IPCC GPG 2000 and the IPCC GPG-LULUCF demonstrate the same flexibility. They aim at “good practice” rather than at a mandatory set of requirements and they concede that data may not be available and that applying good practices intrinsically is a *gradual and iterative process* of with a country’s national system and its inventory improving over time. Regarding the choice of method, the IPCC GPG-LULUCF advises that:

“It is good practice to use methods that provide the highest levels of certainty, while using available resources as efficiently as possible.”

42. The ERT’s Questions of Implementation depart from this logic when assuming “reporting requirements of completeness and accuracy.”¹² completeness and accuracy are guiding principles, not the benchmark.

43. The ERT’s inappropriate assumption leads to its inaccurate conclusions. The ERT alleges that Romania’s national system would fail to:

- (i) “Prepare methods in accordance with the IPCC Guidelines 1996, as elaborated by the IPCC GPG 2000 and the IPCC GPG-LULUCF, and ensure that appropriate methods are used to estimate emissions from key categories [...];
- (ii) Collect sufficient AD, process information and EFs as are necessary to support the methods selected for estimating anthropogenic GHG emissions by sources and removals by sinks [...].”

¹¹ Decision 19/CMP.1, Annex, para 9.

¹² Report of the individual review of the annual submission of Romania submitted in 2010 of 11 May 2011 (FCCC/ARR/2010/ROU), para 178.

We consider that these two assertions are intricately intertwined, and therefore must be considered together. The primary alleged deficiency with regard to methods identified by the ERT (point (i)) relates to the use of tier I methodologies for many key categories).¹³ Moving to higher tier methodologies is generally not possible without the collection of sufficient AD, EFs and process information, and indeed the collection of such data is only deemed necessary by the ERT to the extent that it is required to support the selected methods (point (ii)). It may be noted here that Romania's use of IPCC default EFs is generally consonant with its choice of tier I methodologies, and so it cannot be claimed that Romania has failed to develop sufficient EFs where only tier I methodologies are required.

44. In any case, the IPCC Guidelines 1996 and the IPCC GPG 2000 allow significant flexibility to Parties in their choice of methodologies for many categories, in particular where EFs and AD are insufficient to support higher tier estimations. In turn, the use of default EFs is permissible in many circumstances, and there is in many cases no legal obligation to develop national or sectoral EFs.
45. The following provides just some of the numerous examples of both key categories and non-key categories from the energy, agriculture and waste sectors where Romania clearly falls within the flexibility afforded by the relevant guidance with respect to choice of methods and EFs.
- The majority of categories falling under the heading "CO₂ Emissions from Stationary Combustion" in the IPCC GPG 2000 are classified as key source categories for Romania. For these categories, the IPCC GPG 2000 states that "[t]he choice of method is country-specific and is determined by the level of detail of the AD available."¹⁴ The Decision Tree for this category goes on to indicate that the use of tier I methodologies is recommended where data are not available for fuel combusted by plant or source category and estimates are not available for fuel combusted in large sources.¹⁵ As Romania does not currently have data available for fuel combusted by plant or source category and estimates are not yet available for fuel combusted in large sources, Romania falls clearly within the IPCC GPG 2000 for these key categories. The IPCC GPG 2000 further states that where specific carbon contents of fuel and calorific values cannot be obtained from fuel

¹³ Report of the individual review of the annual submission of Romania submitted in 2010 of 11 May 2011 (FCCC/ARR/2010/ROU), paras 17-18.

¹⁴ (IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, p.2.8.

¹⁵ (IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, p. 2.10.

suppliers, it remains good practice to use default EFs for these categories.¹⁶ As Romania has attempted to attain such data from fuel suppliers but found none available, it remains clearly in line with IPCC good practice.

- “CO2 Emissions from Road Vehicles” is also a key source category for Romania. The IPCC GPG 2000 does not indicate separate tier methodologies for this category. With respect to EFs, the IPCC recommends that country-specific EFs are used if they are available, and that default EFs are used where they are not.¹⁷ As no country-specific EFs are currently available for Romania, Romania continues to be in line with IPCC good practice in the use of default EFs.
- The ERT notes that Romania uses tier 1 methodologies for estimation of CH4 emissions from enteric fermentation emissions, and recommends that Romania move to higher tier methodologies for dairy cattle, non-dairy cattle and sheep, which it categorises as “relevant categories”.¹⁸ However, the IPCC GPG 2000’s decision tree for CH4 emissions from enteric fermentation stipulates that a tier 2 estimate is only required for “significant” sub-source categories, unless data is already available with which to conduct tier 2 estimates.¹⁹ Using the IPCC’s definition of “significant” (25-30%), only dairy cattle are considered to be significant sub-source categories and, since Romania does not have data available with which to conduct tier 2 estimates, it is not required to conduct such estimates for sheep and non-dairy cattle. Where the tier 1 method is used, the IPCC GPG 2000 states that default EFs should be taken from the IPCC Guidelines 1996, unless documented country-specific factors are available,²⁰ which in Romania’s case are not. (Note that for dairy cattle, data is being gathered as part of the study “NGHGI LULUCF both under the UNFCCC and KP obligations” - see above).
- For the key category “CH4 Emissions from Manure Management” the use of tier 1 methods is considered appropriate for animals where only a basic characterization is required, including sheep, goats, horses and poultry.²¹ Moreover, when using the

¹⁶ (IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, p. 2.11.

¹⁷ (IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, p. 2.44.

¹⁸ Report of the individual review of the annual submission of Romania submitted in 2010 of 11 May 2011 (FCCC/ARR/2010/ROU), para 97.

¹⁹ (IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, p. 4.24.

²⁰ (IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, p. 4.25.

²¹ (IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, p. 4.33.

tier 1 method, the IPCC GPG 2000 states that default EFs should be used.²² Romania thus remains in line with IPCC good practice on both accounts for all these sub-source categories.

- For the key category “Direct N₂O Emissions from Agricultural Soils” the use of tier 1a methods is considered appropriate where the AD needed to employ tier 1b methods, specifically rigorously documented country-specific EFs, is not available.²³ Where the latter are not available, moreover, default EFs are to be used.²⁴ As such AD is not yet available in Romania, Romania remains in line with IPCC good practice for this category on both accounts.
- For both “CH₄ and N₂O Emissions from Savannah Burning”²⁵ and “CH₄ and N₂O Emission from Agricultural Residue Burning”²⁶ the IPCC GPG 2000 states that default EFs should be used where these categories are not key source categories. As neither category is a key source category for Romania, Romania remains in line with IPCC good practice for these categories.
- As noted above, in a significant number of categories, including some key categories, separate tier methodologies are not specified. This includes “CO₂ Emissions from Road Vehicles”,²⁷ N₂O Emissions from Manure Management”,²⁸ CH₄ and N₂O Emissions from Savannah Burning”,²⁹ “CH₄ and N₂O Emission from Agricultural Residue Burning”,³⁰ “CH₄ Emissions from Rice Production”,³¹ and “CO₂ Emissions from Waste Incineration”,³²

²² (IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, p. 4.33.

²³ (IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, pp. 4.53-4.54.

²⁴ (IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, pp. 4.53-4.54.

²⁵ (IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, p.4.50.

²⁶ (IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, p. 4.52.

²⁷ IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, p. 2.44.

²⁸ IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, pp. 4.40-4.41.

²⁹ IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, pp. 4.49-4.50.

³⁰ IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, pp. 4.51-4.52.

³¹ IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, pp. 4.77-4.79.

³² IPCC) Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, pp. 5.25-5.26.

46. What we find in these examples is the reiteration of the same inaccurate assumption that we have described above: The ERT assumes a failure of performance, where a failure of performance could only exist in the case in which country-specific data are available but not used. This not being the case, the claim that Romania's national system would fail to perform any of its functions and that Romania would not be in compliance with its obligations is not accurate.

Margin of Appreciation and Powers of Recommendation

47. Consonant with States Parties' obligation of gradual improvement, the ERT is given a margin of appreciation, when concluding its reports. According to Decision 22/CMP.1, para 65 (h), the ERT shall

"Recommend possible ways for improving the estimation and the reporting of inventory information."

In subsequent years, the ERTs then assess the extent to which issues and questions raised by ERTs in previous reports have been addressed and resolved (para 65 (g)).

48. Thus, for all unresolved problems and issues identified the ERT has to choose whether to pursue with a Question of Implementation or whether the issuance of a recommendation is more appropriate. In conformity with the underlying principles of compliance, the ERT's decision is to be guided by the cause, type, degree and frequency of the problems and issues raised. In many cases, in fact, when, for instance, the problems and issues identified are not severe or when any problem can be remedied in the short term and the Party demonstrates determination to seek imminent remedy, the adoption of Questions of Implementation would not be justified under the compliance architecture of the Protocol.

49. While we have shown above that the basic assumptions made by the ERT for this review were not accurate and that Romania's reporting was generally within the flexibility granted by the IPCC Guidelines, we would like to emphasize that even if we were to consider some of the points raised by the ERT as existing problems and issues, the consequence to raise Questions of Implementation would not be warranted. Rather, the ERT would be bound to issue a recommendation.

50. The type and degree of the issues raised are several instances of non-available data and non-advanced emissions estimates. If these were issues under the IPCC Guidelines at all (see above), then both the type and the degree of these issues would be considered low both in terms of responsibility and relevance.

Romania has consistently increased data collection towards advanced tier calculation and substantial capacity improvements ensure that full tier 3 estimates will be available for the 2012 submission at the latest. Reporting of additional information under Article 3 (4) KP for its part is novel and any issues that might arise in this context cannot be regarded as grave or severe. Moreover, Romania decided to account for art. 3 (3) and 3 (4) KP activities only at the end of the commitment period,³³ and therefore significant space for improvement of the reporting pursuant to art. 7.1 KP does exist. When it comes to relevance and impact, we note that the combined uncertainty in overall emissions is not expected to exceed 5% of total emissions. This figure is very minor when referring to the level of GHG emissions in 2008 estimated at 54.1% of the GHG emissions in the base year (1989)³⁴, which is well below the KP target for Romania (92% of the base year). Similarly, out of the 36 Mt CO₂eq/year removals reported from the art. 3 (3) and 3(4) activities, in accordance with the Marrakesh Accords³⁵ it can only account for 4 Mt CO₂eq/year (11%).

51. However, the ERT has seemingly disregarded its margin of appreciation altogether by not inquiring as to the type and degree of the issues raised in the first place.
52. Regarding the cause and the frequency for the occurrence of any issues, we note that the ERT did not take into account Romania's specific national circumstances. As a country undergoing the process of transition to a market economy, Romania, like other countries in the region, has faced certain technical, institutional and organizational barriers which explain why data collection activities have so far been less pronounced than in some Annex II countries.
53. The ERT decision to raise the present Questions of Implementation is all the more questionable in light of the general Annex I review practice. The inventory reporting requirements of the Kyoto Protocol, as defined by decisions of the CMP and elaborated upon by the IPCC, apply equally to Annex I Parties. It is therefore incumbent upon the ERT to apply like standards and principles to the individual review of each Party's annual submission. In the case of the Questions of Implementation raised by the ERT concerning Romania, however, there is ample evidence that the ERT has not applied standards and principles equal to those it has applied for other Parties with respect to a number of issues:

³³ Romania's Initial Report under the Kyoto Protocol, May 2007, page 16.

³⁴ Report of the individual review of the annual submission of Romania submitted in 2010 of 11 May 2011 (FCCC/ARR/2010/ROU), para 3.

³⁵ Decision 16/CMP1, Annex

Tier 1 Emission Estimates & Default EFs

54. In several individual reviews the ERT has, as in the case of Romania, noted the use of tier 1 emission estimates and default EFs for numerous key categories by Parties, yet nonetheless found that those Parties' national systems continue to perform their required functions and did not identify any Questions of Implementation. For example:
- In its 2010 individual review of the Czech Republic's annual submission the ERT noted that the Czech Republic had not been able to collect sufficient AD and EFs necessary to move to higher tier calculations for several key categories, despite previous recommendations by the ERT to this effect.³⁶ Tier 1 methodologies were used for several key categories in four out of five sectors (energy, industrial processes, LULUCF and waste), and IPCC default EFs were used for most categories in the energy sector.³⁷ Similarly to Romania, these failures to use higher tier methodologies and country-specific EFs were explained by the insufficient allocation of financial resources.³⁸ Nonetheless, the ERT concluded that the Czech Republic's national system continues to perform its required functions,³⁹ and no Questions of Implementation were identified.⁴⁰
 - In its 2010 individual review of Belarus's annual submission, the ERT concluded that lower tiers and default EFs were applied for most key categories. Nonetheless, the ERT concluded that Belarus's inventory is generally in line with the UNFCCC reporting guidelines,⁴¹ and no Questions of Implementation were identified.
 - In its 2010 individual review of Poland's annual submission the ERT noted the use of tier 1 methods for several key categories,⁴² and for at least one key category (N₂O Emissions from agricultural soils), the substitution of country-specific with IPCC default EFs, and the consequent move from a higher tier to a tier 1 analysis.

³⁶ Report of the individual review of the annual submission of the Czech Republic submitted in 2010 of 28 March 2011 (FCCC/ARR/2010/CZE), para 12.

³⁷ Report of the individual review of the annual submission of the Czech Republic submitted in 2010 of 28 March 2011 (FCCC/ARR/2010/CZE), para 17.

³⁸ Report of the individual review of the annual submission of the Czech Republic submitted in 2010 of 28 March 2011 (FCCC/ARR/2010/CZE), para 12.

³⁹ Report of the individual review of the annual submission of the Czech Republic submitted in 2010 of 28 March 2011 (FCCC/ARR/2010/CZE), para 142.

⁴⁰ Report of the individual review of the annual submission of the Czech Republic submitted in 2010 of 28 March 2011 (FCCC/ARR/2010/CZE), para 146.

⁴¹ Report of the individual review of the annual submission of Belarus submitted in 2010 of 4 January 2011 (FCCC/ARR/2010/BLR), para 99..

⁴² Report of the individual review of the annual submission of Poland submitted in 2010 of 4 April 2011 (FCCC/ARR/2010/POL), para 121..

without providing any justification.⁴³ Nonetheless, the ERT concluded that, despite these and other “deviations from the IPCC good practice guidance and the IPCC good practice guidance for LULUCF,”⁴⁴ Poland’s national system continues to perform its required functions,⁴⁵ and no Questions of Implementation were identified.⁴⁶

- In its 2010 review of Portugal’s annual submission the ERT identified the need for Portugal to increase the accuracy of its inventory by moving to higher tier estimates with country-specific EFs and parameters for key categories.⁴⁷ Nonetheless, the ERT concluded that Portugal’s national system continued to perform its required functions,⁴⁸ and no Questions of Implementation were identified.⁴⁹

Failure to account for all carbon pools or provide verifiable information that the non-accounted carbon pools are not net sources

55. In a significant number of individual reviews the ERT has identified, as in the case of Romania, failures by Parties to either account for all carbon pools or provide verifiable information that non-accounted pools are not net sources of emissions, and the consequent incompleteness of estimates for KP-LULUCF activities. For example:

- In its 2010 review of Greece’s annual submission, the ERT noted that Greece “did not provide sufficient verifiable information, as required by paragraph 6(e) of the annex to decision 15/CMP.1, to demonstrate that omitted pools, namely litter, dead wood and soils, are not net sources of emissions.”⁵⁰ Nonetheless, the ERT concluded that Greece’s national system continued to perform its required functions,⁵¹ and no Questions of Implementation were identified.⁵²

⁴³ Report of the individual review of the annual submission of Poland submitted in 2010 of 4 April 2011 (FCCC/ARR/2010/POL), para 66.

⁴⁴ Report of the individual review of the annual submission of Poland submitted in 2010 of 4 April 2011 (FCCC/ARR/2010/POL), para 121.

⁴⁵ Report of the individual review of the annual submission of Poland submitted in 2010 of 4 April 2011 (FCCC/ARR/2010/POL), para 124.

⁴⁶ Report of the individual review of the annual submission of Poland submitted in 2010 of 4 April 2011 (FCCC/ARR/2010/POL), para 128.

⁴⁷ Report of the individual review of the annual submission of Portugal submitted in 2010 of 11 April 2011 (FCCC/ARR/2010/PRT), para 32 (b).

⁴⁸ Report of the individual review of the annual submission of Portugal submitted in 2010 of 11 April 2011 (FCCC/ARR/2010/PRT), para 124.

⁴⁹ ⁴⁹ Report of the individual review of the annual submission of Portugal submitted in 2010 of 11 April 2011 (FCCC/ARR/2010/PRT), para 128.

⁵⁰ Report of the individual review of the annual submission of Greece submitted in 2010 of 11 May 2010 (FCCC/ARR/2010/GRC), para 105.

⁵¹ Report of the individual review of the annual submission of Greece submitted in 2010 of 11 May 2010 (FCCC/ARR/2010/GRC), para 128.

- In its 2010 review of Poland's annual submission, the ERT noted that Poland did not account for emissions in the carbon pools litter and dead wood for any of its activities under Articles 3(3) and 3(4) KP (afforestation, reforestation and deforestation, and forest management) and did not provide verifiable information that the unaccounted pools were not net sources.⁵³ Nonetheless, the ERT concluded that Poland's national system continues to perform its required functions,⁵⁴ and no Questions of Implementation were identified.⁵⁵
- In its 2010 individual review of Portugal's annual submission, the ERT noted that the carbon pools litter, dead wood and soil for all activities under Article 3(3) KP were reported as "NE", and no verifiable information was provided that the unaccounted pools were net sources. Nonetheless, the ERT concluded that Portugal's national system continued to perform its required functions,⁵⁶ and no Questions of Implementation were identified.⁵⁷

Consistent representation of land use / land use change areas

56. In its individual review of Romania's 2010 submission⁵⁸, the ERT concluded that "the problems with data collection on land use and land-use change reflect problems regarding the ability of the national system to provide the necessary information for the inventory of the LULUCF sector". In a significant number of individual reviews the ERT has identified, as in the case of Romania, similar inconsistent representation of land areas. For example:

- In its 2010 individual review of Germany's annual submission, "the ERT identified deficiencies and errors in the LULUCF sector which meant that the ERT was not able to assess the accuracy of reported information. During the in-country review,

⁵² ⁵² Report of the individual review of the annual submission of Greece submitted in 2010 of 11 May 2010 (FCCC/ARR/2010/GRC), para 132.

⁵³ Report of the individual review of the annual submission of Poland submitted in 2010 of 4 April 2011 (FCCC/ARR/2010/POL), para 105.

⁵⁴ Report of the individual review of the annual submission of Poland submitted in 2010 of 4 April 2011 (FCCC/ARR/2010/POL), para 124.

⁵⁵ Report of the individual review of the annual submission of Poland submitted in 2010 of 4 April 2011 (FCCC/ARR/2010/POL), para 128.

⁵⁶ Report of the individual review of the annual submission of Portugal submitted in 2010 of 11 April 2011 (FCCC/ARR/2010/PRT), para 124.

⁵⁷ Report of the individual review of the annual submission of Portugal submitted in 2010 of 11 April 2011 (FCCC/ARR/2010/PRT), para 128.

⁵⁸ Report of the individual review of the annual submission of Romania submitted in 2010 of 11 May 2011 (FCCC/ARR/2010/ROU), para 108.

the ERT requested Germany to provide an action plan that identifies and sets out improvements in the preparation and reporting of LULUCF and the KP-LULUCF emission/removal estimates [...]”⁵⁹ In its conclusion, however, the ERT merely recommended that Germany provide justification for time-series consistency in the LULUCF sector when different methods of data collection are used, ultimately finding that Germany’s national system continued to perform its required functions.⁶⁰ No Questions of Implementation were identified.⁶¹

- In its 2010 individual review of the United Kingdom’s annual submission, “the ERT recommend[ed] that the United Kingdom elaborate the methodology used for identifying lands and provide information to ensure complete coverage of land areas in accordance with the requirements of paragraph 20 of the annex to decision 16/CMP.” The United Kingdom responded that it is working on the above-stated issues and that the new woodland map and revised figures are expected in March 2011 and will be included in the 2012 submission.”⁶² This commitment seemed sufficient for the ERT to make recommendations for improvement of the reporting and did not identify any Question of Implementation.⁶³
- In its 2010 individual review of the Austria’s annual submission, “the ERT noted that information related to demonstrating that activities under Article 3, paragraph 3, of the Kyoto Protocol were directly human induced was not adequately provided.”⁶⁴ Furthermore, the ERT noted that “Austria did not provide information that demonstrates that activities under Article 3, paragraph 3, of the Kyoto Protocol began on or after 1 January 1990 and before 31 December 2008, as required in paragraph 8(a) of the annex to decision 15/CMP.1”⁶⁵ In conclusion of the Report, the ERT recommended that Austria enhance efforts to provide more transparent

⁵⁹ Report of the individual review of the annual submission of Romania submitted in 2010 of 11 May 2011 (FCCC/ARR/2010/ROU), para 108.

⁶⁰ ⁶⁰ Report of the individual review of the annual submission of Romania submitted in 2010 of 11 May 2011 (FCCC/ARR/2010/ROU), para 176.

⁶¹ ⁶¹ Report of the individual review of the annual submission of Romania submitted in 2010 of 11 May 2011 (FCCC/ARR/2010/ROU), para 180.

⁶² Report of the individual review of the annual submission of the United Kingdom of Great Britain and Northern Ireland submitted in 2010 of 13 April 2011 (FCCC/ARR/2010/GBR), para 141.

⁶³ Report of the individual review of the annual submission of the United Kingdom of Great Britain and Northern Ireland submitted in 2010 of 13 April 2011 (FCCC/ARR/2010/GBR), para 173.

⁶⁴ Report of the individual review of the annual submission of Austria submitted in 2010 of 15 April 2011 (FCCC/ARR/2010/AUT), para 102.

⁶⁵ Report of the individual review of the annual submission of Austria submitted in 2010 of 15 April 2011 (FCCC/ARR/2010/AUT), para 105.

information regarding the LULUCF sector,⁶⁶ and no Question of Implementation was identified.⁶⁷

57. As the foregoing illustrates, Parties generally face difficulties meeting the requirements of accounting for all carbon pools or providing verifiable information that the missing pools are not net sources, and assuring consistent representation of lands. This appears to be accepted by the ERT which, as a rule, confines its response to making recommendations on this point; however, in the case of Romania it disregards this rule and bases its Questions of Implementations on these common difficulties.

58. The examples show that the present ERT findings are not consistent with the general review practice for Annex I countries and that considerations of consistent practice and equal treatment would require the ERT not to raise any Questions of Implementation in the case of Romania.

59. Finally, the ERT decision to raise Questions of Implementation is not consistent with the principle of proportionality as enshrined in the compliance mechanism under the Protocol. As Romania has provided a complete, consistent and reliable implementation schedule to address the problems and issues raised, it would be the appropriate response to list the issues raised as recommendation and to subject future reports to compliance with the implementation schedule provided. While the rejection of the implementation schedule provided to the ERT was not founded on facts (see above), the consequence to raise Questions of Implementation remains unwarranted by law.

VI. CONCLUSION AND CONSEQUENCE FOR THE DECISION OF THE ENFORCEMENT BRANCH OF THE COMPLIANCE COMMITTEE

60. While we can assess the compliance of the ERT report and the Questions of Implementation with the *formal* requirements only after a response from the Secretariat, the *material* assessment leads to the conclusion that the ERT report is substantially based on inaccurate facts; that it uses inconsistent assessment and evaluation criteria; and that the ERT did not apply its margin of appreciation in accordance with the law when raising its Questions of Implementation.

⁶⁶ Report of the individual review of the annual submission of Austria submitted in 2010 of 15 April 2011 (FCCC/ARR/2010/AUT), para 127 (g).

⁶⁷ Report of the individual review of the annual submission of Austria submitted in 2010 of 15 April 2011 (FCCC/ARR/2010/AUT), para 127.

61. The Enforcement Branch of the Compliance Committee is requested not to proceed further with the questions of implementation and to close the present compliance procedures.
62. Romania is pleased to confirm its firm determination to continue improving data availability, emissions calculation and methodologies and to further enhance its institutional, financial and operational capacities. To this effect, we reconfirm that Romania is on track with the implementation schedule presented and that we will maintain safeguards including verification mechanisms to ensure that all targets and milestones will be met within the time limits set. Substantial research results will be available already in 2011 and Romania will have comprehensive and sufficient data, estimates and methods available to address all major issues for improvement by the date of submission of the 2012 report at the latest.
63. Additionally, it should be noted that within the framework of the Kyoto Protocol, the main role of suspending a Party's eligibility is to encourage and determine such Party, when in non-compliance, to respect its obligations under the provisions of the Kyoto Protocol and subsequent rules. Romania however has remained, at all times, in compliance with its obligations under the KP, and thus any suspension from participating in the KP's flexible mechanisms would have the perverse effect of making Romania's continued compliance very difficult. The effects of such a decision are estimated to translate directly into economic losses of ca. EUR 3 billion over a two year period. As much of this income is earmarked for implementation of the UNFCCC and compliance with other eligibility criteria under the KP, suspension of eligibility will substantially affect the fulfillment of these goals. Furthermore, Romania, as an Annex I Party and an emerging donor in the international development assistance frameworks, has committed to significant funding of both mitigation and adaptation measures in non-Annex I countries, which would be, again, seriously affected by the suspension.

1. The implementation schedule is based on the following core milestones:

Proposed Measure	Milestone	Date	Verification	Effect
Institutional Enhancement	Creation of a separate operational unit within NEPA	June 2011	New organigram (provided as Annex 9)	Stable and effective institutional arrangements
	Increase in staff members dedicated to NGHGI from 5 to 14	June 2011	Decision of the President of NEPA, Proposal for amendment of Governmental Decision (Annex 8)	Stable and effective institutional arrangements
Financial Support	Access to the Fund for the Environment	May 2010	Governmental Emergency Ordinance 15/2010 and Law No. 167/ 2010; Governmental Decision 567/2011	General availability of sufficient funds for climate change related studies
	Funding through Green Investment Schemes	April 2010	Governmental Emergency Ordinance 29/2010. Governmental Decision 432/2010	Availability of funding for Studies 1-5

	Budgetary Earmark for Studies 1-4	Feb and May 2011		
Study 1: Elaboration/documentation of national emission factors/other parameters relevant to NGHGI Sectors Energy, Industrial Processes, Agriculture and Waste, values to allow for the higher Tier calculation methods implementation, commissioned by the Ministry of Environment	Tender Notice	23/06/11	124404/23.06.2011	Comprehensive data collection, improvement of information processing and the development of emission factors: this will enable Romania to move to higher tier calculations in almost all key categories (energy, industrial processes, agriculture and waste sectors)
	Commissioning	20/07/11	Opening of the offers: 4 July 2011	
	Draft Results	15/10/11 (Energy etc.), 15/11/11 (Waste) ... 15/10/11 (Energy, Industrial Processes, Agriculture), 15/11/11 (Waste)		
	Final Report			
Study 2: NGHGI LULUCF both under the UNFCCC and KP obligations, commissioned by the	Tender Notice	08/04/2011	119004/08.04.2011	Development of national parameter values in order to support the use of higher tier

Ministry of Environment	Commissioning	Forest Research and Management Planning Institute (ICAS)	Contract nr.46/23.05.2011 anexa xy	calculation methods in the LULUCF sector, including for forest management, assurance of consistency in land use matrix and estimating emissions/removals from all currently not-estimated land use categories and carbon pools (i.e. carbon soil changes in the soil, litter and dead wood pools in areas under forest management and in mineral soils under revegetation).
	Draft Results		30/07/11	
	Final Report		31/10/11	
Study 3: Support for the implementation of the European Union requirements on the monitoring and reporting of the carbon dioxide (CO ₂) and other greenhouse gas emissions, commissioned by the	Tender Notice	30/06/11	Terms of Reference, Tender Notice Opening of offers: 11/07/11	Improved overall functioning of the national system, improved knowledge of staff members in NEPA and at data provider level, and in programs of administrating the
	Commissioning	27/07/11		

Ministry of Environment				national EFs
	Final Report	31/10/11		
Study 4: Environmental Integrated Informational System, commissioned by the Ministry of Environment	Under implementation	90536 of 10/11/09	Contract 041/02.09.10	This study will supplement the other studies and enhance the national system as a whole by optimizing the processes through which the NGHGs are compiled.
	Commissioning	SC Asesoft International SA-SC TeamNet International SA-SC Star Storage SRL Consortium		
	Final Report	September 2012		
Study 5: Development of historical data, for the period 1989-2010, for allowing to estimate direct and indirect GHG emissions from Road Transport using the COPERT 4 model associated to the Tier 2 approach, commissioned	Tender Notice	First quarter 2012	Feedback to ERT	Allows for the use of higher Tier calculation methods within the Road transport subsector through the use of the COPERT IV model.
	Commissioning	15/11/12		

by the Ministry of Environment
Implementation of Study Results by, and under the responsibility of, NEPA

Final Report
First results will be integrated in ongoing (2011) reporting
Full results will be available for 2012 submission (for Study 5 for 2013 submission)

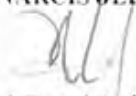
June-August 2011
April 2012

Revised NGHGI 2011
2012 submission (report)
2013 submission report

Overall strengthening of ongoing reporting
Full integration of problems and issues identified in previous ERT findings.

64. Alternatively and in case that the Enforcement Branch wishes the Questions of Implementation raised for Romania to be further assessed by the Compliance Committee, we would respectfully ask the Enforcement Branch to refer the matter to the Facilitative Branch for consideration in line with Decision 27/CMP.1, IX, Para 12. The ERT final report, if any, raises questions of further improvement and facilitation of improved reporting, while it does not demonstrate an issue of non-compliance.

NARCIS JELER



National Focal Point on UNFCCC