

## **PRELIMINARY FINDING**

*Party concerned: Lithuania*

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” (the rules of procedure),<sup>1</sup> the enforcement branch adopts the following preliminary finding.

## **BACKGROUND**

1. On 7 September 2011, 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 Lithuania submitted in 2010 (2010 ARR) and contained in document FCCC/ARR/2010/LTU. In accordance with paragraph 1 of section VI<sup>2</sup> and paragraph 2 of rule 10 of the rules of procedure, the question of implementation was deemed received by the Compliance Committee on 8 September 2011. The 2010 ARR results from a centralized review of Lithuania’s annual submission submitted in 2010 (hereinafter referred to as the “2010 annual submission”) which was conducted from 20 to 25 September 2010 in accordance with the “Guidelines for review under Article 8 of the Kyoto Protocol” (annex to decision 22/CMP.1).
2. The bureau of the Compliance Committee allocated the question of implementation to the enforcement branch on 15 September 2011 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 16 September 2011, 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 4 October 2011, 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-2011-3-2/Lithuania/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”) and the “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol” (annex to decision 15/CMP.1; hereinafter referred to as the “Article 7 guidelines”).<sup>3</sup> In particular, the expert review team concluded that the national system of Lithuania fails to perform some of the general and specific functions required by the guidelines for national systems and that the national system is not able to ensure that areas of land subject to land use, land-use change and forestry activities under Article 3, paragraphs 3 and 4, of the Kyoto Protocol (hereinafter referred to as “KP-LULUCF activities”) are identifiable in accordance with paragraph 20 of the “Definitions, modalities, rules and guidelines relating to land use, land-use

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> See paragraph 224 of the report of the expert review team contained in FCCC/ARR/2010/LTU.

change and forestry activities under the Kyoto Protocol” (annex to decision 16/CMP.1; hereinafter referred to as the “KP-LULUCF guidelines”).<sup>4</sup> The national system did not ensure that Lithuania’s 2010 annual submission was sufficiently transparent, consistent, comparable, complete and accurate, as required by the guidelines for national systems, the Article 7 guidelines, the UNFCCC reporting guidelines,<sup>5</sup> 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”),<sup>6</sup> 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”).<sup>7</sup>

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

7. On 11 October 2011, the enforcement branch agreed to invite three experts drawn from the UNFCCC roster of experts to provide advice to the branch (CC-2011-3-3/Lithuania/EB). One of these experts was part of the ERT that reviewed Lithuania’s 2010 annual submission.

8. On 19 October 2011, the enforcement branch received a request for a hearing from Lithuania (CC-2011-3-4/Lithuania/EB), which also indicated that Lithuania intended to make a written submission under paragraph 1 (b) of section X.

9. On 9 November 2011, the enforcement branch received a written submission from Lithuania (CC-2011-3-5/Lithuania/EB) in accordance with paragraph 1 of section IX, paragraph 1 (b) of section X, and rule 17 of the rules of procedure.

10. On 15 to 16 November 2011, the enforcement branch held a hearing in accordance with paragraph 2 of section IX and paragraph 1 (c) of section X. The hearing formed part of the sixteenth meeting of the enforcement branch held in Bonn from 14 to 18 November 2011, inter alia, to consider the adoption of a preliminary finding or a decision not to proceed further. During the hearing, Lithuania made a presentation and submitted additional documents for consideration by the enforcement branch (CC-2011-3-5/Lithuania/EB/Add.1). The enforcement branch received advice from the three invited experts during the meeting.

11. In its deliberations, the enforcement branch considered the 2010 ARR, the written submission of Lithuania contained in document CC-2011-3-5/Lithuania/EB, information presented by Lithuania during the hearing, both orally and in writing, including document CC-2011-3-5/Lithuania/EB/Add.1, and advice from the 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. In the 2010 ARR, the ERT found that the national system of Lithuania did not ensure that its annual submission was sufficiently transparent, consistent, comparable, complete and accurate, as required by the guidelines for national systems, the Article 7 guidelines, the UNFCCC reporting guidelines, the IPCC good practice guidance, and the IPCC good practice guidance for LULUCF.

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<sup>4</sup> See in particular paragraphs 16, 20, 187, 215, 216 and 225–228 of the report of the expert review team contained in FCCC/ARR/2010/LTU.

<sup>5</sup> “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.

<sup>6</sup> Available at <<http://www.ipcc-nggip.iges.or.jp/public/gp/english/>>.

<sup>7</sup> Available at <<http://www.ipcc-nggip.iges.or.jp/public/gpglulucf/gpglulucf.htm>>. See paragraphs 207 and 224 of the report of the expert review team contained in FCCC/ARR/2010/LTU.

13. During the course of its technical review, the ERT found that the national system of Lithuania did not perform some of the general and specific functions required by the guidelines for national systems. In particular, it failed to:

- (a) Ensure sufficient capacity for data collection for estimating anthropogenic greenhouse gas emissions by sources and removals by sinks (paragraph 10 (b) of the guidelines for national systems);
- (b) Prepare national annual inventories and supplementary information in a timely manner in accordance with Article 5 and Article 7, paragraphs 1 and 2, of the Kyoto Protocol and relevant decisions of the Conference of the Parties to the Convention (COP) and/or the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) (paragraph 10 (d) of the guidelines for national systems);
- (c) Provide information necessary to meet the reporting requirements defined in the Article 7 guidelines in accordance with the relevant decisions of the COP and/or the CMP (paragraph 10 (e) of the guidelines for national systems);
- (d) Prepare estimates in accordance with the methods described in the revised 1996 IPCC guidelines, as elaborated by the IPCC good practice guidance and IPCC good practice guidance for LULUCF, and ensure that appropriate methods are used to estimate emissions from key categories (paragraph 14 (b) of the guidelines for national systems); and
- (e) Collect sufficient activity data, process information and emission factors as are necessary to support the methods selected for estimating anthropogenic greenhouse gas emissions by sources and removals by sinks (paragraph 14 (c) of the guidelines for national systems).

14. The ERT also found many gaps in the reporting of KP-LULUCF activities. Specifically, the ERT found that the national system of Lithuania was not able to:

- (a) Ensure that areas of land subject to KP-LULUCF activities are identifiable in accordance with paragraph 20 of the KP-LULUCF guidelines;
- (b) Report information on KP-LULUCF activities in line with the requirements under paragraphs 5 to 9 of the Article 7 guidelines, including in particular:
  - i. Information that demonstrates that emissions by sources and removals by sinks resulting from activities elected under Article 3, paragraph 4, of the Kyoto Protocol are not accounted for under activities under Article 3, paragraph 3, of the Kyoto Protocol (paragraph 9 (c) of the Article 7 guidelines); and
  - ii. Information on which of the five carbon pools referred to in paragraph 6 (e) of the Article 7 guidelines (above-ground biomass, below-ground biomass, litter, dead wood and/or soil organic carbon) were not accounted for, together with verifiable information that demonstrates that these unaccounted pools were not a net source of anthropogenic greenhouse gas emissions (paragraph 6 (e) of the Article 7 guidelines).

15. In addition, the ERT noted that Lithuania has not addressed several recommendations of previous review reports.

16. In its written submission and during the hearing, Lithuania presented updated information on its national system, including a description of its new legal and institutional framework; improvements relating to inventory planning, preparation and management; measures to increase human capacity in the key institutions responsible for inventory preparation; and planned improvements for the 2012 annual submission. It explained that the legal and institutional arrangements relating to its redesigned national system had been in operation since July 2011 and that the 2012 annual submission is being prepared on the basis of these new arrangements. According to the information provided by Lithuania, additional staff in the key institutions responsible for inventory planning, preparation and management was to be appointed by the end of 2011 and an archive improvement plan<sup>8</sup> for full implementation in 2012 had been elaborated. In relation to its efforts with respect to reporting of KP-LULUCF activities, Lithuania presented measures it had implemented to improve reporting in the 2011 annual submission as well as measures to further improve reporting in the 2012 and 2013 annual submissions, as reflected in the “Action Plan to improve LULUCF reporting of Lithuania” (hereinafter referred to as the “LULUCF Action Plan”).<sup>9</sup> Lithuania requested that the enforcement branch decide not to proceed further or, alternatively, to defer a decision until the draft report of the in-country review of the 2011 annual submission of Lithuania is available in accordance with paragraph 11 of section IX or to refer the question of implementation to the facilitative branch in accordance with paragraph 12 of section IX.

17. In its written submission and at the hearing, Lithuania acknowledged that, at the time of the 2010 annual submission, there were a number of issues that prevented the Lithuanian national system from fully functioning in accordance with the guidelines for national systems. Lithuania informed the branch that, at the end of the in-country review of the 2011 annual submission from 26 September to 1 October 2011, the expert review team had concluded that Lithuania has put in place all the mandatory elements under the guidelines for national systems and the national system is generally prepared in accordance with the guidelines for national systems. Thus, in its view, at the time of its written submission, the question of implementation only remained with respect to Lithuania’s reporting obligations under Article 7 of the Kyoto Protocol regarding KP-LULUCF activities. Lithuania acknowledged that the ability of its national system to ensure that areas of land subject to such activities are identifiable continued to be an issue, with partial improvements to be reflected in the 2012 annual submission. However, Lithuania shared information with the branch at the hearing suggesting that the expert review team reviewing its 2011 annual submission considered that the LULUCF Action Plan contains the necessary information. On this basis, Lithuania claimed that the question of implementation has been fully resolved.

18. Following the presentation of information by Lithuania at the hearing, the experts indicated that unresolved national system problems regarding KP-LULUCF activities remain, in particular with respect to the identification of land areas subject to KP-LULUCF activities. The experts expressed the view that such identification is necessary to ascertain that the elected activities under Article 3, paragraph 4, of the Kyoto Protocol are not accounted for under activities under Article 3, paragraph 3 of the Kyoto Protocol in accordance with paragraph 9 (c) of the Article 7 guidelines. Such identification is also necessary to ensure the accuracy of any estimates reported in relation to KP-LULUCF activities. The experts stressed that the implementation of the measures presented by Lithuania in the LULUCF Action Plan is necessary to resolve the question of implementation. They also indicated that only a review of an annual submission could confirm that Lithuania’s national system is able to ensure that land areas subject to KP-LULUCF activities are identifiable and KP-LULUCF estimates are accurate.

19. After considering the 2010 ARR, the written submission of Lithuania, the presentation by Lithuania at the hearing, the additional documents submitted by Lithuania during the hearing, and the presentation and advice received from the invited experts, the enforcement branch was encouraged by

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<sup>8</sup> “Lithuania’s GHG inventory archive improvement plan,” Annex 11 to the written submission of Lithuania (CC-2011-3-5/Lithuania/EB).

<sup>9</sup> Annex 15 to the written submission of Lithuania (CC-2011-3-5/Lithuania/EB).

the willingness and commitment shown by Lithuania to address the unresolved problems referred to in paragraphs 12 to 14 above. It appeared to the enforcement branch that a number of these problems have been resolved; the measures to address the remaining problems and the timetables for their implementation have been developed and submitted to the enforcement branch in the written submission (CC-2011-3-5/Lithuania/EB); and, if implemented in accordance with these timetables, these measures can be expected to resolve these problems. However, the enforcement branch noted that:

- (a) As long as the implementation of these measures is pending, the national system is not operating in accordance with the guidelines for national systems;
- (b) The redesigned national system is yet to perform all specific functions relating to inventory planning, preparation and management to generate an annual inventory; and
- (c) Earlier expert review teams had consistently indicated a need for substantial improvements in the national system of Lithuania in the reports of the review of the initial report of Lithuania,<sup>10</sup> the individual review of the greenhouse gas inventories of Lithuania submitted in 2007 and 2008<sup>11</sup> and the individual review of the annual submission of 2009.<sup>12</sup>

20. The enforcement branch concludes, based on the information submitted and presented, that the unresolved problems referred to in paragraphs 12 to 14 above resulted in non-compliance with the guidelines for national systems at the time of the finalization of the 2010 ARR.

21. While Lithuania has submitted and presented information on positive steps it has undertaken before and after the finalization of the 2010 ARR to address the unresolved problems referred to in paragraphs 12 to 14 above, this information has not enabled the enforcement branch to conclude that the question of implementation has been resolved. The enforcement branch concludes that:

- (a) Lithuania needs to make further progress in the implementation of the measures referred to in paragraph 19 above to ensure that the national system performs all the general and specific functions described in the guidelines for national systems;
- (b) An in-country review of Lithuania's redesigned national system, in conjunction with a review of an annual inventory report that is generated by this system and reflects substantial progress, in particular in the reporting on KP-LULUCF activities, is required for the enforcement branch to assess compliance with the guidelines for national systems.

22. Furthermore, the enforcement branch concludes that:

- (a) Since the expedited procedures for the enforcement branch under section X apply to the question of implementation, paragraph 11 of section IX is not applicable;
- (b) As long as there are unresolved problems pertaining to language of a mandatory nature relating to Lithuania's national system, it is not appropriate to consider referral of the question of implementation to the facilitative branch under paragraph 12 of section IX.

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<sup>10</sup> FCCC/IRR/2007/LTU.

<sup>11</sup> FCCC/ARR/2008/LTU.

<sup>12</sup> FCCC/ARR/2009/LTU.

## FINDING AND CONSEQUENCES

23. The enforcement branch determines that Lithuania 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, Lithuania 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.

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

- (a) Lithuania is declared to be in non-compliance;
- (b) Lithuania shall develop a plan referred to in paragraph 1 of section XV, in accordance with the substantive requirements of paragraph 2 of section XV and paragraph 1 of rule 25 bis of the rules of procedure, and report on the progress of its implementation in accordance with paragraph 3 of section XV. Taking into account the measures and timetables for their implementation referred to in paragraph 19 above, Lithuania shall submit this plan within six months to the enforcement branch in accordance with paragraph 2 of section XV and may wish to consider:
  - i. With respect to subparagraphs 2 (b) and (c) of section XV, to consolidate these measures and timetables, including any updates it considers appropriate;
  - ii. To submit, together with the plan referred to in paragraph 1 of section XV, a progress report on the implementation of this plan in accordance with paragraph 3 of section XV;
- (c) Lithuania’s eligibility to participate in the mechanisms is suspended in accordance with the relevant provisions under Articles 6, 12 and 17 of the Kyoto Protocol pending the resolution of the question of implementation.

25. 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:* Joseph AMOUGOU, René LEFEBER, Stephan MICHEL, Ainun NISHAT, Sebastian OBERTHÜR, Ilhomjon RAJABOV, Oleg SHAMANOV, Mohamed SHAREEF.

*Members participating in the adoption of the preliminary finding:* Mohammad ALAM (alternate member serving as member), Joseph AMOUGOU (alternate member serving as member), Raúl ESTRADA-OYUELA, Balisi GOPOLANG (alternate member serving as member), René LEFEBER, Stephan MICHEL, Sebastian OBERTHÜR, Ilhomjon RAJABOV, Oleg SHAMANOV, Mohamed SHAREEF.

This decision was adopted by consensus in Bonn on 17 November 2011.