

DECISION ON PRELIMINARY EXAMINATION

Party concerned: Ukraine

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

BACKGROUND

1. On 8 April 2016, the secretariat received questions of implementation indicated in the report of the expert review team (ERT) of the individual review of the report upon expiration of the additional period for fulfilling commitments (true-up period) for the first commitment period of the Kyoto Protocol of Ukraine contained in document FCCC/KP/CMP/2016/TPR/UKR (TPR). The centralized review of the reports upon expiration of the additional period for fulfilling commitments (true-up period reports) for all Parties included in Annex I with commitments inscribed in Annex B to the Kyoto Protocol (Annex B Parties) took place from 8 to 12 February 2016 in accordance with the “Guidelines for review under Article 8 of the Kyoto Protocol” (annex to decision 22/CMP.1). In replying to the draft version of the TPR, Ukraine officially submitted its true-up period report and accompanying documents,² which were considered by the ERT in the final preparation of the TPR. In accordance with paragraph 1 of section VI³ and paragraph 2 of rule 10 of the rules of procedure, the questions of implementation were deemed received by the Compliance Committee on 11 April 2016.
2. The bureau of the Compliance Committee allocated the questions of implementation to the enforcement branch on 18 April 2016 under paragraph 1 of section VII, in accordance with paragraphs 4 and 6 of section V and paragraph 1 of rule 19 of the rules of procedure.
3. On 19 April 2016, the secretariat notified the members and alternate members of the enforcement branch of the questions of implementation, in accordance with paragraph 2 of rule 19 of the rules of procedure, and of their allocation to the branch.
4. The first question of implementation relates to compliance with the “Modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol” (annex to decision 13/CMP.1) and the “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol” (annex to decision 15/CMP.1).⁴ In particular, the ERT noted that Ukraine had not submitted its true-up period report either by the deadline of 2 January 2016⁵ or by the time of the centralized review of the true-up period reports for all Annex B Parties.⁶ In addition, the ERT noted that the information submitted

¹ All references to the rules of procedure in this document refer to the rules contained in the annex to decision 4/CMP.2 as amended by decisions 4/CMP.4 and 8/CMP.9.

² There were the standard electronic format tables for the period 1 January to 18 November 2015 (SEF tables for 2015), the list of serial numbers for the Kyoto Protocol units “which should have been transferred to the retirement account at the end of the true-up period” and the list of serial numbers for the emission reduction units (ERUs), certified emission reductions (CERs) and assigned amount units (AAUs) that Ukraine requested to be carried over to the second commitment period. See paragraph 4 of the TPR.

³ All section references in this document refer to the procedures and mechanisms.

⁴ See paragraph 11 of the TPR.

⁵ Paragraph 3 of decision 3/CMP.10 (Date of the completion of the expert review process under Article 8 of the Kyoto Protocol for the first commitment period) provides that the report upon expiration of the additional period for fulfilling commitments for the first commitment period of the Kyoto Protocol shall be submitted no later than 45

by Ukraine in its true-up period report and accompanying documents is not consistent with the information provided in the international transaction log (ITL).⁷ The ERT also indicated that it was unable to assess the accuracy of certain information provided in Ukraine's true-up period report because the national registry of Ukraine has been disconnected from the ITL since August 2015.⁸

5. The second question of implementation relates to compliance with Article 3, paragraph 1, of the Kyoto Protocol.⁹ In particular, the ERT concluded that the aggregate anthropogenic greenhouse gas emissions of Ukraine for the first commitment period exceed the quantities of ERUs, CERs, temporary CERs, long-term CERs, AAUs and removal units in the retirement account of Ukraine for the first commitment period.¹⁰

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

7. The enforcement branch notes that the expedited procedure as contained in paragraph 1 of section X and the procedures for the enforcement branch as contained in section IX differ with respect to time frames. The branch notes that the first question of implementation is related to the second question of implementation. The branch, therefore, considers that procedural efficiency and clarity, including full procedural safeguards of the Party concerned, are to be ensured by considering both questions of implementation in conjunction with each other and by the application of the timeframes set out under the expedited procedure as contained in paragraph 1 of section X to both questions of implementation.

DECISION

8. The enforcement branch decides to consider the questions of implementation described in paragraphs 4 and 5 above together, following the expedited procedures as contained in paragraph 1 of section X.

9. Having conducted the preliminary examination in accordance with paragraph 2 of section VII and paragraph 1 (a) of section X, the branch decides to proceed. In particular, the enforcement branch notes that the questions of implementation are supported by sufficient information, are not de minimis or ill-founded, and are based on the requirements of the Kyoto Protocol.

10. In accordance with paragraph 5 of section VIII and rule 21 of the rules of procedure, the enforcement branch further decides to seek expert advice on the content and basis of the TPR and on issues related to any decision of the enforcement branch with regard to the indicated questions of implementation.

days after the expiration of the additional period for fulfilling commitments for the first commitment period. In accordance with section XIII of the procedures and mechanisms, the additional period for fulfilling commitments for the first commitment period ended on the hundredth day set by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) for the completion of the expert review process under Article 8 of the Kyoto Protocol for the last year of that commitment period. The CMP, through decision 3/CMP.10 (paragraph 1), decided that the expert review process under Article 8 of the Kyoto Protocol for the last year of the first commitment period was to be completed by 10 August 2015. Consequently, the additional period for fulfilling commitments for the first commitment period ended on 18 November 2015 and the true-up period reports were due on 2 January 2016.

⁶ See paragraphs 4, 7 and 11 of the TPR.

⁷ See paragraph 11 and tables 1 and 2 of the TPR.

⁸ See paragraph 8 and table 2 of the TPR.

⁹ See paragraph 12 of the TPR.

¹⁰ See paragraphs 8–12 and tables 1–3 of the TPR.

Members and alternate members participating in the consideration and elaboration of the decision: Eva ADAMOVA, Joseph AITARO, Mohammad ALAM, Sébastien BLOCH, Zihua CHEN, Victor FODEKE, Antonio GONZALEZ NORRIS, Tuomas KUOKKANEN, Gerhard LOIBL, Leonardo MASSAI, Mohammed NASR, Ahmad RAJABI, Orlando Ernesto REY SANTOS, Iryna RUDZKO, Jacob WERKSMAN, Milan ZVARA.

Members participating in the adoption of the decision: Joseph AITARO, Mohammad ALAM, Zihua CHEN, Antonio GONZALEZ NORRIS (alternate member serving as member), Tuomas KOUKKANEN, Gerhard LOIBL, Mohamed NASR, Ahmed RAJABI, Iryna RUDZKO, Milan ZVARA.

This decision was adopted unanimously in Bonn on 3 May 2016.
