

## **PRELIMINARY FINDING**

*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)<sup>1</sup> 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),<sup>2</sup> the enforcement branch adopts the following preliminary finding.

### **I. 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, on 9 March 2016,<sup>3</sup> its true-up period report and accompanying documents,<sup>4</sup> which were considered by the ERT in the final preparation of the TPR. In accordance with paragraph 1 of section VI 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 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).<sup>5</sup> In particular, the ERT noted that Ukraine had not submitted its true-up period report either by the deadline of 2 January 2016<sup>6</sup> or by the

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<sup>1</sup> All section references in this document refer to the procedures and mechanisms.

<sup>2</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>3</sup> See paragraph 4 of the TPR.

<sup>4</sup> 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.

<sup>5</sup> See paragraph 11 of the TPR.

<sup>6</sup> 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 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.

time of the centralized review of the true-up period reports for all Annex B Parties.<sup>7</sup> In addition, the ERT noted that the information submitted by Ukraine in its true-up period report and accompanying documents is not consistent with the information provided in the international transaction log (ITL).<sup>8</sup> 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.<sup>9</sup>

3. The second question of implementation relates to compliance with Article 3, paragraph 1, of the Kyoto Protocol.<sup>10</sup> In particular, the ERT concluded that the aggregate anthropogenic greenhouse gas emissions of Ukraine for the first commitment period exceed the quantities of emission reduction units (ERUs), certified emission reductions (CERs), temporary CERs (tCERs), long-term CERs (lCERs), assigned amount units (AAUs) and removal units (RMUs) in the retirement account of Ukraine for the first commitment period.<sup>11</sup>

4. 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.

5. On 19 April 2016, the secretariat notified the members and alternate members of the 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.

6. On 3 May 2016, the branch decided, in accordance with paragraph 2 of section VII and paragraph 1 (a) of section X, to proceed with the questions of implementation (CC-2016-1-2/Ukraine/EB).

7. The first question of implementation relates to the eligibility requirements referred to in paragraph 31 (d) of the annex to decision 3/CMP.1, paragraph 21 (d) of the annex to decision 9/CMP.1 and paragraph 2 (d) of the 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. However, in adopting its decision to proceed with the questions of implementation referred to in paragraph 6 above, the branch decided to follow the expedited procedures contained in paragraph 1 of section X for both questions of implementation, taking into account that the questions of implementation were related and to ensure procedural efficiency and clarity.<sup>12</sup>

8. In accordance with the relevant timelines set out in procedures and mechanisms and the rules of procedure, the questions of implementation contained in the TPR,<sup>13</sup> the notification on the decision to proceed,<sup>14</sup> which included a reminder about the possibility to request a hearing and the deadline for making the written submission,<sup>15</sup> and the decision to seek expert advice<sup>16</sup> were forwarded to the diplomatic agent of Ukraine with a copy to the national focal point of Ukraine.

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<sup>7</sup> See paragraphs 4, 7 and 11 of the TPR.

<sup>8</sup> See paragraph 11 and tables 1 and 2 of the TPR.

<sup>9</sup> See paragraph 8 and table 2 of the TPR.

<sup>10</sup> See paragraph 12 of the TPR.

<sup>11</sup> See paragraphs 8–12 and tables 1–3 of the TPR.

<sup>12</sup> See paragraph 6 and 7 of the decision on preliminary examination, contained in document CC-2016-1-2/Ukraine/EB.

<sup>13</sup> Section VI, paragraph 2.

<sup>14</sup> Section VII, paragraph 4.

<sup>15</sup> Section X, paragraph 1 (b) and (c).

<sup>16</sup> Section VII, paragraph 7.

9. No request for a hearing from Ukraine under paragraph 1 (c) of section X was received by the branch.
10. On 30 May 2016, the branch agreed to invite three experts drawn from the UNFCCC roster of experts to provide advice to the branch (CC-2016-1-3/Ukraine/EB). Two of these experts were part of the ERT which conducted the true-up period review of Ukraine.
11. Ukraine did not submit any written submission in accordance with paragraph 1 of section IX, paragraph 1 (b) of section X, and rule 17 of the rules of procedure.
12. From 20 to 21 June 2016, the branch held its twenty-eighth meeting in Bonn to consider the questions of implementation with respect to Ukraine.<sup>17</sup> As Ukraine did not request a hearing pursuant to paragraph 1 (c) of section X, no hearing was held during that meeting. The branch received advice from two of the invited experts during the meeting.
13. No competent intergovernmental or non-governmental organization submitted any information under paragraph 4 of section VIII.

## **II. INFORMATION SUBMITTED, PRESENTED AND CONSIDERED**

14. In its deliberations, the branch considered the TPR, the true-up period report referred in paragraph 1 above, the correspondence dated 9 March 2016 from Ukraine sent in response to the communication by the secretariat of the draft TPR including the correspondence between Ukraine and the secretariat in relation to the national registry of Ukraine referred to therein, the 2014 annual submission of Ukraine and corresponding standard electronic format tables (SEF tables)<sup>18</sup> and their review contained in the report on the individual review of the annual submission of Ukraine submitted in 2014 (FCCC/ARR/2014/UKR) (2014 ARR), information as of 25 November 2015 published by the secretariat pursuant to decision 3/CMP.10,<sup>19</sup> and advice from the experts invited by the branch.
15. In the TPR, the ERT, in its overall assessment, found that the submission did not fulfill the requirements of timeliness, completeness and consistency, and of compliance with Article 3, paragraph 1.<sup>20</sup>
16. With respect to the unresolved problem referred to in paragraph 2 above, the ERT found that the information provided by the Ukraine in its true-up period report submission covered only some elements as required by decision 13/CMP.1, 15/CMP.1 and 3/CMP.10 and other relevant decisions of the Conference of the Parties serving as the meeting of the Parties of the KP.<sup>21</sup> It noted that the following mandatory reporting requirements were not fulfilled:
  - (a) Ukraine had not submitted its true-up period report either by the deadline of 2 January 2016<sup>22</sup> or by the time of the centralized review of the true-up period reports for all Annex B Parties,<sup>23</sup> in accordance with paragraph 3 of decision 3/CMP.10;
  - (b) While Ukraine had submitted SEF tables for 2015, the information provided is not consistent with the information provided in the ITL and cannot be considered to be

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<sup>17</sup> Item 4 of the agenda of the twenty-eighth meeting of the enforcement branch, contained in document CC/EB/28/2016/1.

<sup>18</sup> See

[http://unfccc.int/national\\_reports/annex\\_i\\_ghg\\_inventories/national\\_inventories\\_submissions/items/8108.php](http://unfccc.int/national_reports/annex_i_ghg_inventories/national_inventories_submissions/items/8108.php).

<sup>19</sup> See [http://unfccc.int/kyoto\\_protocol/reporting/items/9044.php](http://unfccc.int/kyoto_protocol/reporting/items/9044.php).

<sup>20</sup> Paragraph 3 of the TPR.

<sup>21</sup> See paragraph 6 of the TPR.

<sup>22</sup> See footnote 6.

<sup>23</sup> See paragraphs 4, 7 and 11 of the TPR.

accurate (paragraph 49 of annex to decision 13/CMP.1 and paragraph 89 (a) of the annex to decision 22/CMP.1);

- (c) The information provided by Ukraine in the SEF tables for 2015 on the total quantity and serial numbers of units in the retirement account is not consistent with the information provided in the ITL and with the information contained in Ukraine's national registry as of August 2015 (paragraph 89 (b) of the annex to decision 22/CMP.1);
- (d) The information submitted by Ukraine in accordance with paragraph 88 of annex to decision 22/CMP.1 is not free of inconsistencies and problems: information provided by Ukraine is not consistent with the information provided in the ITL, in particular in relation to total quantity of units retired, and cannot be considered as accurate (paragraph 89 (c) of the annex to decision 22/CMP.1);
- (e) The information submitted in accordance paragraph 20 of annex to decision 15/CMP.1 and paragraph 88 of annex to decision 22/CMP.1 is not consistent with the information provided in the ITL, in particular in relation to total quantity of units retired, and cannot be considered as accurate (paragraph 90 of the annex to decision 22/CMP.1);
- (f) In its true-up period report submitted on 9 March 2016, Ukraine stated that there were no discrepancies in transactions, CDM notifications, non-replacements or invalid units, and the R2-R5 reports were not populated. The ERT was unable to assess accuracy of this information because the national registry of Ukraine had been disconnected from the ITL since August 2015 (paragraph 20 of the annex to decision 15/CMP.1);
- (g) Ukraine reported that no discrepancies were identified by the ITL: the ERT was unable to assess accuracy of this information because the national registry of Ukraine had been disconnected from the ITL since August 2015 (paragraph 17 of the annex to decision 15/CMP.1).<sup>24</sup>

17. With respect to the unresolved problem referred to in paragraph 3 above, the ERT found that Ukraine has not retired any ERUs, CERs, tCERS, ICERS, AAUs, and RMUs for the purpose of demonstrating its compliance with its commitment under Article 3, paragraph 1, of the Kyoto Protocol. The ERT also found that the information provided in the Party's true-up period report and in the SEF tables for 2015 is not consistent with the information provided by the ITL, and therefore cannot be considered accurate.

18. The ERT was only able to assess how the aggregate anthropogenic greenhouse gas emissions of Ukraine in the first commitment period compared to the quantities of the Kyoto Protocol units (ERUs, CERs, tCERS, ICERS, AAUs and RMUs) in its retirement account on the basis of information available from the ITL as published by the secretariat on 25 November 2015 pursuant to paragraph 4 of decision 3/CMP.10.<sup>25</sup> The ERT concluded that the aggregate anthropogenic greenhouse gas emissions of Ukraine for the first commitment period exceeded the quantities of ERUs, CERs, tCERS, ICERS, AAUs and RMUs in the retirement account of Ukraine by 1,999,434,250 t CO<sub>2</sub> eq for the first commitment period.<sup>26</sup>

19. In the letter dated 9 March 2016 forwarding the true-up period report of Ukraine, Ukraine indicated that there were serious technical, organisational and financial problems that resulted in the disconnection of Ukraine's national registry from the ITL.

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<sup>24</sup> Table 2 of the TPR.

<sup>25</sup> Table 2 of the TPR.

<sup>26</sup> Paragraphs 8 and 9 of the TPR.

20. During the meeting, referred to in paragraph 12 above, the invited experts provided advice in relation to the questions of implementation. The expert advice, in particular, indicated that the disconnection of the national registry of Ukraine from the ITL in August 2015, appeared to be at the heart of the problem. It was further noted that, as a consequence of this disconnection, the ERT did not have before it any verified information on which it could base its assessment of the Party's true up period report. A general explanation on the functioning of national registries and their connection with the ITL was also provided.

### III. REASONS AND CONCLUSIONS

21. Based on the information submitted, presented and considered, the branch notes that:

- (a) As Ukraine did not submit a written submission, nor present information to the branch at its meeting referred to in paragraph 12 above, the branch is not in a position to assess the reasoning provided by Ukraine as referred to paragraph 19 above for the disconnection of Ukraine's national registry from the ITL and the resulting failure of consistency of the data with that contained in the ITL;
- (b) The disconnection of Ukraine's national registry from the ITL raises fundamental issues on the functioning of Ukraine's national registry in accordance with Article 7, paragraph 4, and the requirements of the relevant guidelines adopted thereunder;
- (c) Ukraine did not retire any ERUs, CERs, tCERs, ICERs, AAUs and RMUs in accordance with decision 13/CMP.1, thus no units have been retired for the entire first commitment period;
- (d) As a result of Ukraine's failure to comply with the requirements of the true-up period as set out in decision 13/CMP.1 and decision 3/CMP.10, the information provided by Ukraine cannot be considered as accurate information on which to base a carry-over of Ukraine units from the first to the second commitment period;
- (e) The secretariat will not be able to produce a final compilation and accounting report for Ukraine in accordance with paragraph 62 of the annex to decision 13/CMP.1 in the absence of accurate information concerning Ukraine;
- (f) It appears, however, from the information contained in the 2014 annual submission of Ukraine and corresponding SEF tables and their review contained in the 2014 ARR, also as supported by the information as of 25 November 2015 published by the secretariat pursuant to decision 3/CMP.10, in particular in relation to the total emissions for the first commitment period and the number of units in the holding account of the Ukraine's national registry,<sup>27</sup> that there were sufficient units in Ukraine's national registry, as of August 2015, to cover Ukraine's emissions during the first commitment period.<sup>28</sup>

22. The branch also notes that the circumstances surrounding the questions of implementation referred to in paragraphs 2 and 3 above arise from exceptional circumstances concerning, inter alia, the disconnection of Ukraine's national registry from the ITL and the fact that external transfer and retirement transactions for the purpose of the first commitment period cannot now be carried out in the ITL because the true-up period has ended. Furthermore, for the reasons set out in paragraph 21 (d) above, Ukraine is currently unable to proceed with any carry-over from the first commitment period. As such, the branch notes that there is no current procedure envisaged in relevant CMP decisions that would allow Ukraine to demonstrate its formal compliance with Article 3, paragraph 1, for the first

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<sup>27</sup> See [http://unfccc.int/kyoto\\_protocol/reporting/items/9044.php](http://unfccc.int/kyoto_protocol/reporting/items/9044.php).

<sup>28</sup> In particular paragraphs 96 and 97 of the 2014 ARR.

commitment period even if its registry becomes fully functional following the fulfillment of the action plan referred in paragraph 32 (b) below. The branch notes that CMP could decide to provide, on an exceptional basis, a way forward for Ukraine to resolve these difficulties.

23. The branch concludes, based on the information submitted, presented and considered, that the unresolved problem referred to in paragraph 2 above resulted in non-compliance with the annex to decision 13/CMP.1, in particular paragraphs 13, 14, 17, 19, 34, 40 and 49; and the annex to decision 15/CMP.1, in particular paragraph 2, at the time of finalization of the TPR.

24. However, in relation to the unresolved problem referred to in paragraph 3 above, the branch could not determine, on the basis of the information it had available to it, whether Ukraine is not in compliance with its quantified emission limitation or reduction commitment under Article 3, paragraph 1, as set out in section V, paragraph 4.

25. For the branch to be able to conclude that the unresolved problem referred to in paragraph 2 above, has been resolved, Ukraine needs to take measures to maintain its national registry in a manner that ensures the accurate accounting of the issuance, holding, transfer, acquisition, cancellation and retirement of ERU, CERs, AAUs and RMUs in accordance with the annex to decision 13/CMP.1 and other relevant CMP decisions. Such measures should be reflected in the action plan referred to in paragraph 32(b) below.

26. In addition, for the branch to re-assess Ukraine's compliance with the eligibility requirements set out in decisions 3/CMP.1, 9/CMP.1 and 11/CMP.1, in accordance with section X, paragraph 2, a review of Ukraine's national registry, as part of an in-country review of an annual inventory report, would be required.

#### **IV. FINDINGS**

27. The branch determines that Ukraine is not in compliance with Article 7, paragraph 1, in conjunction with paragraph 4, and the mandatory requirements set out in 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).

28. The branch also determines that as Ukraine does not have in place a national registry in accordance with Article 7, paragraph 4, of the Kyoto Protocol and the requirements and guidelines decided thereunder, Ukraine does not meet the eligibility requirements under Articles 6, 12 and 17 of the Kyoto Protocol.

29. As a result of Ukraine's non-compliance with Article 7, paragraph 1, in conjunction with paragraph 4, the quantity of ERUs, CERs, tCERs, AAUs and RMUs in the retirement account of Ukraine for the first commitment period is zero. Ukraine has therefore not been able to formally demonstrate its compliance with its commitment under Article 3, paragraph 1, of the Kyoto Protocol in accordance with the relevant procedures set out in decision 13/CMP.1.

30. However, the branch cannot, as a matter of substance, determine, on the basis of all the information it has available to it, including that referred to in paragraph 21 (f) above, whether Ukraine is not in compliance with its quantified emission limitation or reduction commitment under Article 3, paragraph 1, as set out in section V, paragraph 4.

31. These findings shall take effect upon confirmation by a final decision of the branch.

## V. CONSEQUENCES

32. In accordance with section XV, the branch applies the following consequences with respect to the unresolved problem referred to in paragraph 2 above:

- (a) Ukraine is declared to be in non-compliance;
- (b) Ukraine 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; submit it within three months to the branch in accordance with paragraph 2 of section XV; and report on the progress of its implementation in accordance with paragraph 3 of section XV;
- (c) Ukraine'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 first question of implementation.

33. These consequences shall take effect upon confirmation by a final decision of the branch.

*Members and alternate members participating in the consideration and elaboration of the preliminary finding:* Joseph AITARO, Zihua CHEN, Victor FODEKE, Tuomas KUOKKANEN, Gerhard LOIBL, Marília Telma MANJATE (alternate member serving as member), Leonardo MASSAI (alternate member serving as member), Ahmad RAJABI, Orlando REY SANTOS, Iryna RUDZKO, Jacob WERKSMAN (alternate member serving as member)

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This decision was adopted by consensus in Bonn on 21 June 2016.

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