

PRELIMINARY FINDING

Party concerned: Slovakia

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),¹ the enforcement branch adopts the following preliminary finding.

I. BACKGROUND

1. On 8 May 2012, the secretariat received questions of implementation indicated in the report of the expert review team of the individual review of the annual submission of Slovakia submitted in 2011 (ERT), contained in document FCCC/ARR/2011/SVK (2011 ARR). One of the questions of implementation related to a disagreement whether to apply adjustments that was also included in the 2011 ARR. In accordance with paragraph 1 of section VI² and paragraph 2 of rule 10 of the rules of procedure, the questions of implementation were deemed received by the Compliance Committee on 9 May 2012. The 2011 ARR resulted from an in-country review of Slovakia’s annual submission submitted in 2011 (2011 annual submission), which was conducted from 22 to 27 August 2011 in accordance with the “Guidelines for review under Article 8 of the Kyoto Protocol” (annex to decision 22/CMP.1).

2. The questions of implementation relate 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).³ In particular, the ERT concluded that the national system of Slovakia fails to perform some of the specific functions required by the annex to decision 19/CMP.1.⁴ The ERT also included a question of implementation with respect to Slovakia’s calculations of estimates for 2008 and 2009 of carbon dioxide (CO₂), methane (CH₄) and nitrous oxide (N₂O) emissions from road transportation and hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF₆) emissions from the consumption of halocarbons and SF₆ since they were incomplete and/or not prepared in accordance with the methodological and reporting requirements of the Revised 1996 Intergovernmental Panel on Climate Change (IPCC) Guidelines for National Greenhouse Gas Inventories (the Revised 1996 IPCC Guidelines)⁵ and the IPCC Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories (the IPCC Good Practice Guidance).^{6, 7}

3. The questions of implementation with respect to the annex to decision 19/CMP.1 are related to the eligibility requirements referred to in paragraph 31 (c) of the annex to decision 3/CMP.1, paragraph 21 (c) of the annex to decision 9/CMP.1 and paragraph 2 (c) of the annex to decision 11/CMP.1. Consequently, the expedited procedures as contained in section X apply to the consideration by the branch of these questions of implementation.

4. The bureau of the Compliance Committee allocated the questions of implementation to the enforcement branch on 16 May 2012 under paragraph 1 of section VII, in accordance with paragraphs 4 to 6 of section V and paragraph 1 of rule 19 of the rules of procedure.

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

² All section references in this document refer to the “Procedures and mechanisms relating to compliance under the Kyoto Protocol” contained in the annex to decision 27/CMP.1.

³ Paragraphs 238 and 239, 2011 ARR.

⁴ In particular, paragraphs 6, 7, 12, 20, 21, 24, 27–31, 37, 38, 40, 47–49, 51, 81, 102, 215, 222, 227 and 240–242, 2011 ARR.

⁵ Available at <<http://www.ipccnggip.iges.or.jp/public/gl/invs1.htm>>.

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

⁷ In particular, paragraphs 6, 8, 20, 28, 47, 51, 57–59, 220, 222 and 243 and sections II G and IV, 2011 ARR.

5. On 17 May 2012, 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 enforcement branch.
6. On 1 June 2012, the enforcement 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-2012-1-2/Slovakia/EB).
7. On 8 June 2012, the enforcement branch received a request for a hearing from Slovakia (CC-2012-1-3/Slovakia/EB), which also indicated that Slovakia intended to make a written submission under paragraph 1 (b) of section X.
8. On 27 June 2012, the enforcement branch agreed to invite two experts drawn from the UNFCCC roster of experts to provide advice to the branch (CC-2012-1-4/Slovakia/EB). One of these experts was part of the ERT that reviewed Slovakia's 2011 annual submission.
9. On 4 July 2012, the enforcement branch received a written submission from Slovakia (CC-2012-1-5/Slovakia/EB) in accordance with paragraph 1 of section IX, paragraph 1 (b) of section X, and rule 17 of the rules of procedure.
10. From 10 to 11 July 2012, 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 twentieth meeting of the enforcement branch held in Bonn from 9 to 14 July 2012 to, inter alia, consider the questions of implementation with respect to Slovakia and the disagreement whether to apply adjustments.⁸ During the hearing, Slovakia made a presentation and submitted additional information, both orally and in writing, for consideration by the enforcement branch. The enforcement branch received advice from the two invited experts during the meeting.
11. No competent intergovernmental or non-governmental organization provided any information under paragraph 4 of section VIII.

II. INFORMATION SUBMITTED, PRESENTED AND CONSIDERED

12. In its deliberations, the enforcement branch considered the 2011 ARR, the written submission of Slovakia, information submitted and presented by Slovakia during the hearing, both orally and in writing, and advice from the experts invited by the branch.
13. In the 2011 ARR, the ERT found that the national system of Slovakia did not fully perform the following specific functions required for national systems, as set out in the annex to decision 19/CMP.1:
 - (a) Define and allocate specific responsibilities in the inventory development process, including those relating to choice of methods, data collection, particularly activity data and emission factors from statistical services and other entities, processing and archiving, and quality control and quality assurance. This definition shall specify the roles of, and cooperation between, government agencies and other entities involved in the preparation of the inventory, as well as the institutional, legal and procedural arrangements made to prepare the inventory (paragraph 12 (c), annex to decision 19/CMP.1);
 - (b) Elaborate an inventory quality assurance and quality control plan which describes specific quality control procedures to be implemented during the inventory development process, facilitate the overall quality assurance procedures to be conducted, to the extent possible, on the entire inventory and establish quality objectives (paragraph 12 (d), annex to decision 19/CMP.1);

⁸ Item 4 of the agenda of the twentieth meeting of the enforcement branch, contained in document CC/EB/20/2012/1/Rev.1.

- (c) Establish processes for the official consideration and approval of the inventory, including any recalculations, prior to its submission and to respond to any issues raised by the inventory review process under Article 8 of the Kyoto Protocol (paragraph 12 (e), annex to decision 19/CMP.1);
- (d) 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), annex to decision 19/CMP.1);
- (e) Implement general inventory quality control procedures (tier 1) in accordance with Slovakia's quality assurance/quality control plan following the IPCC Good Practice Guidance (paragraph 14 (g), annex to decision 19/CMP.1);
- (f) Provide review teams under Article 8 of the Kyoto Protocol with access to all archived information used by the Party to prepare the inventory, in accordance with relevant decisions of the Conference of the Parties and/or Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (paragraph 16 (b), annex to decision 19/CMP.1); and
- (g) Respond to requests for clarifying inventory information resulting from the different stages of the review process of the inventory information, and information on the national system, in a timely manner in accordance with Article 8 of the Kyoto Protocol (paragraph 16 (c), annex to decision 19/CMP.1).

14. During the course of its technical review, the ERT found that the national system of Slovakia is vulnerable, both because of insufficient leadership and because of its reliance on individual external expertise, rather than on institutional expertise and cooperation between national institutions, including those managing the data sources. In particular, the ERT noted that the national system did not fully ensure:

- (a) Strong formal relations and agreements between institutions, with a clear specification of the roles of, and cooperation between, government agencies and other entities in order to ensure a reliable data flow for the preparation of the inventory, which currently relies heavily on a number of external experts and their personal networks of contacts for data acquisition for several sectors;
- (b) Clear communication channels with regard to the principles, purposes and procedures of the UNFCCC reporting guidelines⁹ and the review processes with external experts, ensuring that these experts fully understand the formal requirements of these guidelines, including reporting and review requirements, the need to ensure their availability during, or during a major part of, the in-country review, and that their contributions are delivered on time, as the current expertise within the permanent staff of the national system is insufficient to compensate for this and, for example, to:
 - i. Respond to questions and issues identified during the review process;
 - ii. Ensure time-series consistency (of the activity data and emission factors);
 - iii. Clearly understand the quality assurance/quality control principles and tools, the use of notation keys and the importance of providing comments to previous stages of the review process in time for the in-country review;
- (c) That the limited resources available for inventory planning, preparation and management are directed towards the highest priorities, such as the reconciliation of data used in the inventory with national statistical and internationally reported activity data, such as fuel use, and not towards other activities, such as the detailed tier 2 uncertainty analysis for some sectors and categories of the inventory.

⁹ "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.

15. In addition, the ERT found that Slovakia's estimates of emissions from road transportation and from the consumption of halocarbons and SF₆ were incomplete and/or had been prepared in a way that was not consistent with the methodological and reporting requirements of the Revised 1996 IPCC Guidelines and the IPCC Good Practice Guidance. Slovakia could not satisfactorily resolve the identified problems during the review, including through the submission of revised estimates, and did not agree with the adjustments calculated by the ERT. Therefore, the ERT listed a question of implementation regarding the calculation of the estimates of emissions from road transportation and from the consumption of halocarbons and SF₆.

16. During the hearing, the invited experts provided advice in relation to the questions of implementation identified by the ERT. Expert advice indicated that the proper management of the national system was the core issue. With regard to the question of implementation relating to the disagreement whether to apply adjustments, referred to in paragraph 15 above, the experts pointed out that the adjustments calculated and recommended by the ERT are an indicator of a structural problem of the national system to perform some of the specific functions required for national systems, in particular those relating to the collection of sufficient activity data, process information and emission factors. The experts also pointed out that these adjustments could have been avoided if Slovakia had provided adequate responses to the questions raised by the ERT during the review process.

17. With regard to the questions of implementation relating to Slovakia's national system referred to in paragraphs 13 and 14 above, in its written submission and during the hearing, Slovakia acknowledged that there were some issues that prevented its national system from functioning fully in accordance with the annex to decision 19/CMP.1 during the review of its 2011 annual submission. It stated that the issues identified during this review were either addressed during the review or only constituted *de minimis* deviations from the requirements for national systems.

18. Slovakia presented updated information on its national system in relation to its institutional structure and the roles of the institutions involved in the preparation of the inventory, including the establishment of the inter-ministerial High Level Committee on Coordination of Climate Change Policy in December 2011; its inventory quality assurance/quality control plan and implemented improvements; processes for the official consideration and approval of the inventory report; improvements in the national system since the 2011 in-country review, including the hiring of new personnel and the strengthening of contractual relationships with relevant institutions involved in the national system; and improvements made to ensure that experts involved in the preparation of the annual submission clearly understand the quality assurance/quality control principles and tools as well as the use of notation keys. Slovakia also underlined the appropriateness of its reliance on external experts for data acquisition as well as their availability during the review process; its actions to ensure that questions and issues identified during the in-country review were responded to; its actions to ensure time-series consistency; and its actions to prioritize the reconciliation of the inventory data with national statistics and internationally reported activity data, in particular on fuel use.

19. Furthermore, Slovakia asserted that its national system is fully operating and able to prepare inventory reports and manage inventory data at a very high standard. Slovakia requested that the enforcement branch decide not to proceed further with any of the questions of implementation listed in the 2011 ARR or, alternatively, to refer the questions of implementation listed in the 2011 ARR to the facilitative branch in accordance with paragraph 12 of section IX.

20. With regard to the question of implementation relating to the disagreement whether to apply adjustments, in its written submission and during the hearing, Slovakia acknowledged and explained the reasons for the lack of transparency in the 2011 annual submission. It expressed its disagreement with experts' advice that the adjustments are an indicator of a structural problem of the national system to perform some of the specific functions required for national systems. At the hearing, Slovakia accepted the adjustments with respect to estimates of emissions from the consumption of halocarbons and SF₆, and provided additional information on the estimates of emissions from road transportation.¹⁰

¹⁰ Paragraphs 13 and 14, decision on a disagreement whether to apply adjustments to inventories under Article 5, paragraph 2, of the Kyoto Protocol (CC-2012-1-6/Slovakia/EB).

21. Following the presentation of information by Slovakia at the hearing, expert advice indicated that it was clear that Slovakia had developed and implemented measures after the finalization of the 2011 ARR to address the questions of implementation. However, a review of the 2012 annual submission would be required to assess whether those measures have resolved the questions of implementation listed in the 2011 ARR relating to the national system. With regard to the question of implementation relating to the disagreement whether to apply adjustments, expert advice indicated that, in view of the additional information provided by Slovakia, the recommended adjustments with respect to estimates of emissions from road transportation were no longer considered necessary. In view of this and the fact that Slovakia accepted the recommended adjustments with respect to estimates of emissions from the consumption of halocarbons and SF₆, the experts considered that the question of implementation relating to the disagreement whether to apply adjustments had been resolved.

III. REASONS AND CONCLUSIONS

22. After considering the 2011 ARR, the written submission of Slovakia, the presentation by Slovakia at the hearing, the additional information, both orally and in writing, submitted by Slovakia during the hearing, and the presentation and advice received from the invited experts, the enforcement branch was encouraged by the willingness and commitment shown by Slovakia to address the unresolved problems referred to in paragraphs 13 to 15 above. The enforcement branch notes that:

- (a) With respect to the unresolved problems concerning the specific functions of the national system relating to inventory planning, preparation and management, referred to in paragraphs 13 to 14 above, Slovakia has developed measures and is implementing them to prevent the recurrence of these problems;
- (b) With respect to the unresolved problem relating to the disagreement whether to apply adjustments, referred to in paragraph 15 above, that the acceptance by Slovakia of the recommended adjustments with respect to estimates of emissions from the consumption of halocarbons and SF₆ and the information provided by Slovakia at the hearing on estimates of emissions from road transportation enabled the resolution of the disagreement whether to apply adjustments (see CC-2012-1-6/Slovakia/EB).

23. The enforcement branch concludes, based on the information submitted and presented, that:

- (a) The unresolved problems, referred to in paragraph 13 to 15 above, resulted in non-compliance with the annex to decision 19/CMP.1 at the time of the finalization of the 2011 ARR;
- (b) The question of implementation relating to the disagreement whether to apply adjustments, referred to in paragraph 15 above, has now been resolved.

24. The enforcement branch also concludes, based on the information submitted and presented, that Slovakia has in place a national system in accordance with Article 5, paragraph 1, of the Kyoto Protocol and the requirements in the guidelines decided thereunder. It appears to the enforcement branch that there was a partial operational impairment of the performance of some of the specific functions of Slovakia's national system during the review of Slovakia's 2011 annual submission. The enforcement branch considers that this partial operational impairment results in non-compliance with Article 5, paragraph 1, of the Kyoto Protocol and the guidelines decided thereunder, but does not result in non-compliance with the eligibility requirements under Articles 6, 12 and 17 of the Kyoto Protocol.

25. An in-country review of Slovakia's national system, in conjunction with a review of an annual inventory report that is generated by this system, is required in order for the enforcement branch to assess whether the measures developed and implemented by Slovakia will prevent the recurrence of the aforementioned operational impairment.

26. The enforcement branch:
- (a) Notes that Slovakia submitted its 2012 annual submission on 14 April 2012 and that arrangements are being made for a review of this submission;
 - (b) Encourages Slovakia to make arrangements and to commence preparations for an in-country review in a timely fashion;
 - (c) Invites Slovakia to inform the enforcement branch, as part of the plan that Slovakia is required to submit in accordance with this preliminary finding, of its preparations for the in-country review before it commences.

27. Furthermore, the enforcement branch concludes that, as long as there are unresolved problems pertaining to language of a mandatory nature relating to Slovakia'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.

IV. FINDING

28. The enforcement branch determines that Slovakia 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).

29. This finding takes effect upon confirmation by a final decision of the enforcement branch.

V. CONSEQUENCES

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

- (a) Slovakia is declared to be in non-compliance;
- (b) Slovakia 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 enforcement branch in accordance with paragraph 2 of section XV, and report on the progress of its implementation in accordance with paragraph 3 of section XV; Slovakia is invited to submit this plan before the in-country review of its 2012 annual submission and inform the enforcement branch of its preparations for this in-country review as part of this plan.

31. These consequences take effect upon confirmation by a final decision of the enforcement branch.

Members and alternate members participating in the consideration and elaboration of the preliminary finding: Mohammad ALAM, Joseph AMOUGOU, Mirza Salman BABAR BEG, Sandea JGS DE WET, Victor FODEKE, José Antonio GONZALEZ NORRIS, Rueanna HAYNES, Alexander KODJABASHEV, René LEFEBER, Gerhard LOIBL, Ainun NISHAT, Sebastian OBERTHÜR, Oleg SHAMANOV.

Members participating in the adoption of the preliminary finding: Mohammad ALAM (alternate member serving as member), Sandea JGS DE WET, Victor FODEKE, Antonio GONZALEZ NORRIS (alternate member serving as member), Alexander KODJABASHEV, René LEFEBER, Gerhard LOIBL, Ainun NISHAT, Sebastian OBERTHÜR.

This decision was adopted by consensus in Bonn on 14 July 2012.

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