

## **Informal information note by the secretariat**

### ***Latest news***

*On 8 February 2012, the enforcement branch decided that there no longer continues to be a question of implementation with respect to Croatia's eligibility, and that Croatia is now fully eligible to participate in the mechanisms under Articles 6, 12 and 17 of the Kyoto Protocol.*

### ***The compliance procedure with respect to Croatia***

- 1) Croatia submitted its initial report to the secretariat on 27 August 2008. The report is intended to document that Parties with emissions commitments can effectively account for their emissions under the Kyoto Protocol.
- 2) On 26 August 2009, an international team of experts (expert review team) finalized its initial review report of Croatia. The initial review report contains two questions of implementation which triggered the compliance mechanism of the Protocol. Croatia was given an official notification of the questions of implementation on 27 August 2009. The questions were allocated to the enforcement branch on 28 August 2009 and the branch decided to proceed with the questions on 7 September 2009.
- 3) The questions of implementation relate to Croatia's assigned amount and its commitment period reserve. The 'assigned amount' of a Party sets its base emission limit for the first commitment period of the Protocol (2008 to 2012), in the form of assigned amount units (a form of tradable emissions credits). The 'commitment period reserve' essentially limits the percentage of credits a Party can sell. At issue was whether a decision taken under the Convention would allow Croatia to issue more credits under the Protocol (which would also increase the commitment period reserve).
- 4) The questions of implementation with respect to Croatia did not relate directly to whether Croatia is in compliance with its 2012 emissions target.
- 5) A written submission was made by Croatia on 9 October 2009, and at its request, the enforcement branch held a hearing during its seventh meeting, from 11 to 13 October 2009. The seventh meeting of the enforcement branch resulted in a preliminary finding of non-compliance with respect to Croatia.
- 6) The enforcement branch held its eighth meeting from 23 to 24 November 2009. Following the completion of a vote using electronic means, the enforcement branch adopted a final decision on 26 November 2009. The decision confirmed the preliminary finding of non-compliance by the branch.
- 7) As a result of the final decision, the following consequences were applied with immediate effect to Croatia:
  - a. Declared to be in non-compliance;
  - b. Required to submit a plan to address its non-compliance within three months;
  - c. Not eligible to participate in the market mechanisms (Article 17, emissions trading; Article 12, clean development mechanism; and Article 6, joint implementation). This meant that Croatia could not sell and transfer credits, and could not acquire any credits, until the enforcement branch determined that there no longer continues to be a question of implementation with respect to Croatia's eligibility, and reinstates Croatia.
- 8) On 14 January 2010, Croatia lodged an appeal against the final decision of the enforcement branch. The plan to address Croatia's non-compliance was due on 2 March 2010. On 8 March 2010, Croatia indicated that it did not intend to submit such a plan in view of its submission of an appeal against the final decision of the enforcement branch. At its 11<sup>th</sup> meeting held on 16 September 2010, the branch noted that in accordance with the procedures and mechanisms relating to compliance, decisions of the

branch stand pending decisions on appeal. The branch agreed to request the plenary of the Compliance Committee to bring the matter of Croatia's non-submission of a plan to address its non-compliance to the attention of the CMP.

- 9) This appeal was considered by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) at its sixth meeting to be held in Cancun, Mexico, from 29 November to 10 December 2010. The CMP was not able to complete its consideration of the appeal at its sixth session and decided to include it on the provisional agenda for its seventh session. On 4 August 2011, Croatia withdrew its appeal against the final decision of the enforcement branch. At its seventh session, the CMP took note of the withdrawal by Croatia of its appeal and terminated its consideration of the appeal.
- 10) On 11 November 2011, Croatia submitted a plan to address its non-compliance. On 18 November 2011, during its 16<sup>th</sup> meeting, the enforcement branch reviewed and assessed the plan and concluded that the measure reflected in the plan, if implemented in accordance with the decision adopted by the branch, was expected to remedy Croatia's non-compliance.
- 11) On 27 December 2011, Croatia submitted a revised plan. At its 18<sup>th</sup> meeting held from 7 to 8 and 10 February 2012, the branch considered Croatia's request for reinstatement and concluded that there no longer continues to be a question of implementation. On 8 February 2012, Croatia became fully eligible to participate in the mechanisms on 8 February 2012 at 9:53:32, Greenwich Mean Time.

#### ***What the Compliance Committee does and the rules it follows***

- 12) The Compliance Committee is an independent body set up to facilitate, promote and where necessary, enforce compliance with the rules of the Kyoto Protocol. The enforcement branch of the Committee is made up of legal experts from developed and developing countries.
- 13) The members and alternate members of the Compliance Committee take an oath, including a commitment to be impartial and conscientious as well as an undertaking on confidentiality, which would mean that they cannot comment on closed discussions of the branch. The branch is like a court in that it speaks through written decisions.
- 14) The rules relevant to recent and current cases include, for example, that a national system is required to produce a reliable accounting of greenhouse gas (GHG) activity so that a country can demonstrate compliance with its 2012 emissions target and that a country must have a national registry to account for its emissions credits.
- 15) Cases come to the Committee in the form of 'questions of implementation' from a Kyoto country or an expert review team (of independent experts from different countries). The branch may and has sought expert advice. In its cases so far, it asked members of the expert review team to present its report and advice, and also asked other independent experts for their advice. The country concerned may also make written submissions, comments and present its views during a hearing.
- 16) In all cases of non-compliance, the enforcement branch of the Compliance Committee makes a public declaration of non-compliance and of the consequences applied.
- 17) Any country in non-compliance must submit a plan within three months, which is subject to review and assessment by the enforcement branch (the timing of the review and assessment is case specific, which the branch is expected to complete within four weeks).
- 18) Countries that are found not to meet the core eligibility criteria for the Kyoto mechanisms (emissions trading, clean development mechanism and joint implementation) are suspended from trading in the official Kyoto carbon market set up by these mechanisms.

- 19) Non-compliance with emissions targets is not an issue that can come before the enforcement branch until after the end of the commitment period in 2012.
- a. A country in non-compliance with its 2012 target has 100 days after the expert review of its final emissions inventory to make up any shortfall (i.e., to buy credits).
  - b. If such a country still misses its target, it must make up the difference, plus 30%, in the second commitment period after 2012. It is also suspended from selling emissions credits in the emissions trading mechanism and within three months, it must submit a plan on the action it will take to meet second commitment period target.
- 20) There are no financial penalties under the Kyoto Protocol, nor is there any consequence which involves loss of credits (although there is a loss of access to the carbon market).
- 21) Any country found in non-compliance can appeal to the Parties (CMP) against a decision of the enforcement branch, but only for issues relating to its 2012 target. (So an appeal related to a national registry or national system issue may not be accepted.)

### ***Further information***

Further information on the compliance mechanism under the Kyoto Protocol, including a table on eligibility of countries, is available here: [http://unfccc.int/kyoto\\_protocol/compliance/items/2875.php](http://unfccc.int/kyoto_protocol/compliance/items/2875.php).

Documents relating to the consideration by the enforcement branch of the questions of implementation with respect to Croatia are available here:

[http://unfccc.int/kyoto\\_protocol/compliance/enforcement\\_branch/items/5456.php](http://unfccc.int/kyoto_protocol/compliance/enforcement_branch/items/5456.php)

### ***Disclaimer***

This note should not be relied upon for any legal interpretation. It has been prepared with limited use of technical terms and references. This note was updated on 15 February 2012.

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