

Informal information note by the secretariat:

Latest news

On 13 July 2012, the enforcement branch decided that there no longer continues to be a question of implementation with respect to Romania's eligibility, and that Romania 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 Romania

- 1) Romania submitted its 2010 annual inventory submission to the secretariat on 15 April 2010. On 11 May 2011, an international team of experts (expert review team) finalized its report of the individual review of the 2010 annual submission of Romania. The individual review report contains a question which triggered the compliance mechanism of the Protocol.
- 2) The question relates to the national system of Romania. A national system includes the institutional, legal and procedural arrangements for estimating emissions and sinks covered by the Protocol, and for reporting and archiving this information.
- 3) Romania was given an official notification of the question of implementation on 12 May 2011. The question was allocated to the enforcement branch on 16 May 2011 and the branch decided to proceed with the question on 27 May 2011.
- 4) A written submission was made by Romania on 29 June 2011 and, at the request of Romania, the enforcement branch held a hearing during its thirteenth meeting from 6 to 8 July 2011. The thirteenth meeting of the enforcement branch resulted in a preliminary finding of non-compliance with respect to Romania.
- 5) Romania made a further written submission on 11 August 2011. After considering the further written submission by Romania the branch adopted a final decision to confirm its preliminary finding.
- 6) As a result of the final decision, the following consequences were applied with immediate effect to Romania:
 - 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-based mechanisms, (Article 17, emissions trading; Article 12, clean development mechanism; and Article 6, joint implementation). This means that Romania cannot sell and transfer credits (unless they are emission reduction units generated from Joint Implementation projects hosted by Romania and verified under a special track II joint implementation procedure), and cannot acquire any credits except those forwarded by a host developing country.
- 7) On 2 November 2011, Romania submitted a plan to address its non-compliance, which included the first progress report on the implementation of the plan. On 14 November 2011, during its sixteenth meeting, the enforcement branch invited three independent experts to provide advice to the branch on the plan. On the same day, the enforcement branch reviewed and assessed the plan and concluded that the plan met the relevant requirements.
- 8) On 26 January 2012, Romania submitted its second progress report which was considered by the branch at its eighteenth meeting (7–8 and 10 February 2012).
- 9) On 26 March 2012, Romania submitted a request for reinstatement of its eligibility to participate in the market-based mechanisms as well as its third progress report on the implementation of the plan.

This request was based on conclusions contained in an expert review team's report on its review of the 2011 annual submission of Romania.

- 10) At its twentieth meeting held from 9 to 14 July 2012, the branch considered the Romania's request for reinstatement and concluded, after receipt of expert advice, that there no longer continues to be a question of implementation. Romania became fully eligible to participate in the mechanisms on 13 July 2012 at 10:42:59, Greenwich Mean Time.

What the Compliance Committee does and the rules it follows

- 11) 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 Committee is composed of two branches: the enforcement branch, which is made up of legal experts from developed and developing countries; and the facilitative branch, which is made up of experts from developed and developing countries with competence related to climate change and in relevant fields.
- 12) The members and alternate members of the Compliance Committee take an oath, which included a commitment to be impartial and conscientious as well as an undertaking on confidentiality, which means that they cannot comment on closed discussions of the branch. The branch speaks through its written decisions.
- 13) 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.
- 14) Cases come to the Committee in the form of 'questions of implementation' from a Kyoto Party or an expert review team (of independent experts from different countries). So far, most of the questions of implementation have been allocated to the enforcement branch, in accordance with its mandate. The branch may and has sought expert advice, in particular it asked members of the expert review team to present their report and advice, and also asked other independent experts for their advice. The Party concerned may also make written submissions and present its views during a hearing.
- 15) 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.
- 16) Any country in non-compliance must submit a 'compliance action plan' within three months of a decision by the enforcement branch. The plan is subject to review and assessment by the enforcement branch (the timing of the review and assessment is case specific, and the branch is expected to complete it within four weeks).
- 17) Countries that are found not to meet the eligibility criteria for the Kyoto mechanisms (emissions trading, the clean development mechanism and joint implementation) are suspended from trading in the official Kyoto carbon market set up by these mechanisms.
- 18) Non-compliance with emissions targets is not an issue that can come before the enforcement branch until after the end of the first 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 its target for the second commitment period.

- 19) 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).
- 20) 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 and only in the case of denial of due process.

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.

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

http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/6030.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 first posted on 31 May 2011 and was last updated on 17 July 2012.
