

Informal information note by the secretariat:

Latest news

On 9 March 2012, the enforcement branch decided that there no longer continues to be a question of implementation with respect to Ukraine's eligibility, and that Ukraine 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 Ukraine

- 1) Ukraine submitted its 2010 annual inventory submission to the secretariat on 12 April 2010. The report is intended to provide information to enable Ukraine to maintain its eligibility to participate in the market-based mechanisms (Article 17, emissions trading; Article 12, the clean development mechanism; and Article 6, joint implementation). Ukraine first became eligible to participate in the mechanisms on 29 April 2008.
- 2) On 3 June 2011, an international team of experts (expert review team) finalized its report of the individual review of the 2010 annual submission of Ukraine. The individual review report contains a question which triggered the compliance mechanism of the Protocol.
- 3) The question relates to the national system of Ukraine. 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.
- 4) Ukraine was given an official notification of the question of implementation on 6 June 2011. The question was allocated to the enforcement branch on 13 June 2011 and the branch decided to proceed with its consideration of the question on 29 June 2011. The question of implementation with respect to Ukraine does not relate directly to whether it is in compliance with its 2012 emissions target.
- 5) A written submission was made by Ukraine on 2 August 2011 and, at the request of Ukraine, the enforcement branch held a hearing on 24 August 2011 during its fourteenth meeting. On 25 August 2012, the enforcement branch adopted a preliminary finding of non-compliance with respect to Ukraine.
- 6) Ukraine made a further written submission on 28 September 2011. After considering the further written submission by Ukraine, on 12 October 2011 the branch adopted a final decision to confirm its preliminary finding.
- 7) As a result of the final decision, the following consequences were applied with immediate effect to Ukraine:
 - 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 meant that Ukraine could not sell and transfer credits (unless they were emission reduction units generated from joint implementation projects hosted by Ukraine and verified under a special track II joint implementation procedure), and could not acquire any credits except those forwarded by a host developing country.
- 8) On 7 December 2011, Ukraine submitted a plan to address its non-compliance. On 21 December 2011, during its seventeenth meeting, the enforcement branch reviewed and assessed the plan and concluded that the plan met the relevant requirements.

- 9) On 23 January 2012, Ukraine submitted a request for reinstatement of its eligibility to participate in the market-based mechanisms. This request was based on conclusions contained in an expert review team's report on its review of the 2011 annual submission of Ukraine (2011 ARR).
- 10) On 7 February 2012, Ukraine submitted a progress report on the implementation of the plan to address its non-compliance.
- 11) On 10 February 2012, during its eighteenth meeting, the enforcement branch considered Ukraine's request for reinstatement and decided to defer the adoption of a decision on the request, pending the receipt of expert advice.
- 12) At its nineteenth meeting held from 8 to 9 March 2012, the branch continued its considerations of Ukraine's request for reinstatement and concluded, after receipt of expert advice, that there no longer continues to be a question of implementation. Ukraine became fully eligible to participate in the mechanisms on 9 March 2012 at 15:32:22, Greenwich Mean Time.

What the Compliance Committee does and the rules it follows

- 13) 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.
- 14) 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.
- 15) 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.
- 16) 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.
- 17) 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.
- 18) 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).
- 19) Countries that are found not to meet the core 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.
- 20) 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.
- 21) 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).
 - 22) 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 Ukraine are available here:
<http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/6077.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 4 July 2011 and last revised on 13 March 2012.

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