

Informal information note by the secretariat:

The compliance procedure with respect to Slovakia

- 1) Slovakia submitted its 2011 annual inventory submission to the secretariat on 15 April 2011. On 8 May 2012, an international team of experts (expert review team) finalized its report of the individual review of the 2011 annual submission of Slovakia in accordance with Article 8 of the Kyoto Protocol. The individual review report contains questions which triggered the compliance mechanism of the Protocol. In addition, the report also contains recommended adjustments to the calculation by Slovakia of several greenhouse gas emission estimates. These adjustments were formally rejected by Slovakia, thereby leading to a disagreement that had to be resolved by the enforcement branch of the Compliance Committee in accordance with the procedures and mechanisms relating to Compliance under the Kyoto Protocol contained in the annex to decision 27/CMP.1.
- 2) The questions relate to the national system of Slovakia and to its calculation of several estimates of greenhouse gas emissions. 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. A Party's inventory estimates must be prepared and reported in accordance with methodological and reporting requirements set out in guidelines developed by the Intergovernmental Panel on Climate Change and adopted by the highest decision-making body of the Kyoto Protocol, the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP).
- 3) Slovakia was given an official notification of the questions of implementation on 9 May 2012. The questions were allocated to the enforcement branch on 16 May 2012 and the branch decided to proceed with its consideration of these questions on 1 June 2012.
- 4) A written submission was made by Slovakia on 3 July 2012 and, at the request of Slovakia, the enforcement branch held a hearing from 10 to 11 July 2012, during its twentieth meeting. At that meeting, the enforcement branch adopted a preliminary finding of non-compliance with respect to Slovakia, stating that a partial operational impairment resulted in non-compliance with Article 5, paragraph 1, of the Kyoto Protocol and the guidelines decided thereunder, but did not result in non-compliance with the eligibility requirements under Articles 6, 12 and 17 of the Kyoto Protocol. In addition, the branch decided that the acceptance by Slovakia of the recommended adjustments with respect to estimates of emissions from the consumption of halocarbons and sulphur hexafluoride (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. On 17 August 2012, the enforcement branch adopted a final decision, by electronic means, confirming its preliminary finding.
- 5) The following consequences applied by the branch are that Slovakia was forthwith:
 - a. Declared to be in non-compliance;
 - b. Required to submit a plan to address its non-compliance within three months (see paragraph 12 below), and requested to submit this plan before the in-country review of its 2012 annual submission to inform the enforcement branch of its preparations for this in-country review.
- 6) On 20 September 2012, Slovakia submitted a plan to address its non-compliance, which also included a first progress report on its implementation. The enforcement branch reviewed and assessed the plan submitted by Slovakia and concluded that the plan sets out and adequately addresses the relevant requirements and, if implemented in accordance with this decision, is expected to remedy the non-compliance. The branch also concluded that the receipt of the report of the review of Slovakia's 2012 annual submission (2012 ARR) is required for it to determine whether all the questions of implementation have been resolved.

- 7) Slovakia submitted a second progress report on 15 March 2013 and at the twenty-second meeting of the enforcement branch held from 22 to 23 March 2013, the branch indicated that it could not yet come to a conclusion on whether all the questions of implementation with respect to Slovakia had been resolved.
- 8) The 2012 ARR was published on 6 June 2013 and was considered at the twenty-third meeting of the enforcement branch held from 3 to 4 July 2013. At this meeting, the branch decided that there no longer continues to be a question of implementation concerning Slovakia.

What the Compliance Committee does and the rules it follows

- 9) 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.
- 10) 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.
- 11) 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 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.
- 12) 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.
- 13) 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.
- 14) 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).
- 15) 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.
- 16) 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.

- 17) 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).
- 18) 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 Slovakia are available here:

http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/6920.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 5 June 2012 and last updated on 5 July 2013.
