

Informal information note by the secretariat:

The compliance procedure with respect to Ukraine

- 1) After the first commitment period of the Kyoto Protocol (CP1) ended on 31 December 2012, each Party to the Protocol with an emissions reduction target was given until 18 November 2015 to transfer and acquire Kyoto Protocol units from CP1 to ensure that it would meet its target. The report pertaining to these transactions (the 'true-up period' report) was due on 2 January 2016.
- 2) In finalizing its report on the review of Ukraine's true-up period report (document FCCC/KP/CMP/2016/TPR/UKR), the expert review team that reviewed Ukraine's report (ERT) listed two questions of implementation which triggered the compliance mechanism of the Kyoto Protocol.
- 3) The first question of implementation relates to the late submission by Ukraine of its true-up period report and inconsistencies between information submitted by it and the international transaction log (ITL) maintained by the secretariat. Ukraine submitted its true-up period report after the deadline of 2 January 2016 and after the centralized review of all true-up period reports, which took place in Bonn from 8 to 12 February 2016. The ERT was unable to determine the accuracy of information submitted by Ukraine since its national registry, i.e., the electronic database maintained by it for the transfer and tracking of Kyoto Protocol units in accordance with the rules adopted by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP), had not been connected to the ITL since August 2015.
- 4) The second question of implementation relates to Ukraine's emission reduction target for CP1. The ERT determined that Ukraine did not retire sufficient Kyoto Protocol units to cover its total greenhouse gas emissions for CP1, as required by the rules on accounting for Kyoto Protocol units adopted by the CMP.
- 5) Ukraine was given official notification of the questions of implementation on 11 April 2016. The questions were allocated to the enforcement branch on 18 April 2016. On 3 May 2016 the branch decided to proceed with its consideration of these questions. At this stage in the procedure Ukraine has not been found in non-compliance.
- 6) The next step is for the enforcement branch to make a preliminary finding or adopt a decision not to proceed further. For this purpose, the enforcement branch plans to hold a meeting from 13 to 14 June 2016, at which time there would also be a hearing, if one is requested by Ukraine.
- 7) If Ukraine is found to be in non-compliance with the requirements for a national registry, the following consequences would apply to it:
 - a. Declaration of non-compliance;
 - b. Requirement to submit a plan to address its non-compliance within three months;
 - c. Suspension from participation in the market-based mechanisms, save as may otherwise be provided in relevant decisions of the CMP.
- 8) If Ukraine is found to be in non-compliance with its emission reduction target for CP1, it will be:
 - a. Declared in non-compliance;
 - b. Required to submit a plan on the action it will take to meet its target for the second commitment period;
 - c. Required to make up the difference, plus 30%, between the total number of Kyoto Protocol units it has retired and its total greenhouse gas emissions for CP1 by deducting the equivalent number of units from its assigned amount for the second commitment period;
 - d. Suspended from making transfers under international emissions trading until it is reinstated in accordance with the procedures of the Compliance Committee.

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 past 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 emissions reduction target and that a country must have a national registry to account for its Kyoto Protocol units.
- 12) Cases come to the Committee in the form of ‘questions of implementation’ from a Party to the Kyoto Protocol 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) 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).
- 15) Any country found in non-compliance can appeal to the CMP against a decision of the enforcement branch, but only for issues relating to its emissions reduction target and only in the case of denial of due process.

Further information

Further information on the compliance mechanism under the Kyoto Protocol 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/9575.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 posted on 6 May 2016.

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