
DECISION ON EXPERT ADVICE

Party concerned: Kazakhstan

In accordance with the “Procedures and mechanisms relating to compliance under the Kyoto Protocol”, contained in the annex to decision 27/CMP.1 and adopted under Article 18 of the Kyoto Protocol, and the “Rules of procedure of the Compliance Committee of the Kyoto Protocol” (the rules of procedure),¹ the enforcement branch adopts the following decision.

BACKGROUND

1. Kazakhstan notified the Depositary on 23 March 2000 that, in accordance with Article 4, paragraph 2 (g), of the Convention, it intended to be bound by Article 4, paragraphs 2 (a) and (b), of the Convention. Upon the entry into force of the Kyoto Protocol for Kazakhstan on 17 September 2009, it became a Party included in Annex I for the purposes of the Protocol in accordance with Article 1, paragraph 7, of the Protocol.²
2. On 18 February 2019, the secretariat received questions of implementation indicated in the report of the expert review team (ERT) of the review of the report to facilitate the calculation of the assigned amount for the second commitment period of the Kyoto Protocol of Kazakhstan contained in document FCCC/IRR/2017/KAZ (hereinafter, IRR).
3. On the same day, the secretariat also received questions of implementation indicated in the ERT report of the individual review of the annual submission of Kazakhstan submitted in 2017 contained in document FCCC/ARR/2017/KAZ (hereinafter, 2017 ARR).
4. In accordance with paragraph 1 of section VI³ and paragraph 2 of rule 10 of the rules of procedure, the questions of implementation referred to in paragraphs 2 and 3 above were deemed received by the Compliance Committee on 19 February 2019.
5. The bureau of the Compliance Committee allocated the questions of implementation to the enforcement branch on 28 February 2019 under paragraph 1 of section VII, in accordance with paragraphs 4 to 6 of section V and paragraph 1 of rule 19 of the rules of procedure.
6. On 28 February 2019, the secretariat notified the members and alternate members of the enforcement branch of the questions of implementation, in accordance with paragraph 2 of rule 19 of the rules of procedure, and of their allocation to the enforcement branch.
7. On 14 March 2019, the enforcement branch decided, in accordance with paragraph 2 of section VII and paragraph 1 (a) of section X, to proceed with the questions of implementation (CC-2019-1-3/Kazakhstan/EB).

¹ All references to the rules of procedure in this document refer to the rules contained in the annex to decision 4/CMP.2 as amended by decision 4/CMP.4.

² See also FCCC/KP/CMP/2009/21, paragraph 91.

³ All section references in this document refer to the “Procedures and mechanisms relating to compliance under the Kyoto Protocol” contained in the annex to decision 27/CMP.1.

8. The questions of implementation contained in the IRR relate to compliance with the annex to decision 19/CMP.1⁴ in conjunction with decisions 3/CMP.11⁵ and 4/CMP.11⁶ and the annex to decision 13/CMP.1⁷ in conjunction with decision 3/CMP.11.⁸ In particular, the ERT concluded that the national system of Kazakhstan fails to perform some of the general and specific functions required in accordance with the annex to decision 19/CMP.1⁹ and that the national registry was not established at the time of the submission of the Kazakhstan report to facilitate the calculation of the assigned amount under the Kyoto Protocol or during the review.¹⁰ With regard to the availability of the national registry, the ERT also noted the mandatory requirement set out in paragraph 1(m) of Annex I to decision 2/CMP.8¹¹ that Parties included in Annex I that did not have a qualified emission limitation and reduction target in the first commitment period include the description of the registry, reported in accordance with the provisions of decision 15/CMP.1 in conjunction with decision 3/CMP.11 in their reports to facilitate the calculation of the assigned amount under the Kyoto Protocol.¹²

9. The questions of implementation contained in the 2017 ARR relate to compliance with the methodological and reporting requirements contained in the decision 2/CMP.8, decision 3/CMP.11 and decision 15/CMP.1.¹³ In particular, the ERT concluded that Kazakhstan failed to provide the information to be included in annual GHG inventories on land use, land use change and forestry (LULUCF) activities under Article 3, paragraphs 3 and 4, of the Kyoto Protocol required under paragraphs 2(b), 2(d), 2(e), 4(a), 4(b), 5(a), 5(b), 5(c) and 5(e) of annex II to decision 2/CMP.8.¹⁴ The ERT also concluded that Kazakhstan did not submit the standard electronic format (SEF) tables for the years 2013-2016 and other related information on accounting of Kyoto Protocol units required under paragraphs 12 to 18 of the annex to decision 15/CMP.1 in conjunction with decision 3/CMP.11 and in decision 3/CMP.11, in particular, paragraph 13.¹⁵

10. The questions of implementation with respect to the annex to decision 19/CMP.1 and the annex to decision 13/CMP.1, both in conjunction with decision 3/CMP.11 and 4/CMP.11, are related to the eligibility requirements referred to in paragraph 31(c) and (d), annex to decision 3/CMP.1, paragraph 21(c) and (d) annex to decision 9/CMP.1 and paragraph 2(c) and (d), annex to decision 11/CMP.1. The questions of implementation with respect to decision 2/CMP.8, the annex to decision 15/CMP.1 in conjunction with decision 3/CMP.11, and decision 3/CMP.11 are related to the eligibility requirement referred to in paragraph 31(e), annex to decision 3/CMP.1, paragraph 21(c), annex to decision 9/CMP.1 and paragraph 2(e), annex to decision 11/CMP.1. Consequently, the expedited procedures as contained in paragraph 1 of section X apply to the consideration by the branch of these questions of implementation.

11. The ERT calculated and applied adjustments to inventories under Article 5, paragraph 2, of the Kyoto Protocol as described in Section VI of the 2017 ARR. Kazakhstan did not agree with the adjustment estimated for CO₂, CH₄ and N₂O emissions from category 1.A fuel combustion (coking coal)

⁴ Decision entitled “Guidelines for national systems for the estimation of anthropogenic greenhouse gas emissions by sources and removals by sinks under Article 5, paragraph 1, of the Kyoto Protocol”.

⁵ Decision entitled “Implications of the implementation of decisions 2/CMP.7 to 4/CMP.7 and 1/CMP.8 on the previous decisions on methodological issues related to the Kyoto Protocol, including those relating to Articles 5, 7 and 8 of the Kyoto Protocol, part I: implications related to accounting and reporting and other related issues”.

⁶ Decision entitled “Implications of the implementation of decisions 2/CMP.7 to 4/CMP.7 and 1/CMP.8 on the previous decisions on methodological issues related to the Kyoto Protocol, including those relating to Articles 5, 7 and 8 of the Kyoto Protocol, Part II; implications related to review and adjustments and other related issues”.

⁷ Decision entitled “Modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol”.

⁸ See paragraph 5 of the IRR.

⁹ See, in particular, table 3, IDs #15 and 16, of the IRR.

¹⁰ See, in particular, table 3, ID #18, of the IRR.

¹¹ Decision entitled “Implications of the implementation of decisions 2/CMP.7 to 5/CMP.7 on the previous decisions on methodological issues related to the Kyoto Protocol, including those relating to Articles 5, 7 and 8 of the Kyoto Protocol”.

¹² Ibid., ID #18.

¹³ Decision entitled “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol”.

¹⁴ See, in particular, table 5, ID #KL.1, of the ARR.

¹⁵ See, in particular, table 5, ID #G14, of the ARR.

and formally communicated its disagreement with the adjustment in its communication included in Annex VI to the 2017 ARR. On 28 February 2019, the members and alternate members of the enforcement branch were informed in writing of this disagreement.

12. In deciding to proceed with the questions of implementation, the enforcement branch decided to seek expert advice on the content and basis of the IRR and the 2017 ARR and on issues related to any decision of the enforcement branch with regard to the indicated questions of implementation and the disagreement whether to apply an adjustment (CC-2019-1-2/Kazakhstan/EB, paragraph 14).

REASONS AND CONCLUSIONS

13. The highly technical nature of the questions of implementation identified in paragraphs 2 and 3 above and the disagreement whether to apply adjustments referred to in paragraph 11 above requires the enforcement branch to seek assistance from experts. Advice from experts will facilitate the branch's further understanding of the questions of implementation and the disagreement whether to apply adjustments, as well as the assessment of any information to be provided by the Party concerned during the hearing referred to in paragraph 14 below and any written submission to be made by the Party. The invited experts should include one of the lead reviewers of the ERT and one expert who was not part of that ERT.

14. The expert advice will be required during the meeting at which the branch will conduct a hearing as well as deliberate on, elaborate and adopt a preliminary finding or a decision not to proceed further. This meeting is scheduled to take place from 29 to 30 April 2019. Experts from whom advice is sought are invited to be available from 29 to 30 April 2019.

15. In the context of the questions of implementation and the disagreement whether to apply an adjustment, the branch will, in particular seek, the opinion of and ask questions to the invited experts on the following issues:

- (a) What is the nature and scope of the unresolved problems identified in the IRR and the 2017 ARR of Kazakhstan with respect to compliance with the mandatory provisions of decisions 2/CMP.8 and 13/CMP.1, 15/CMP.1 and 19/CMP.1 in conjunction with decision 3/CMP.11, including the following more specific questions:
 - i. Which unresolved problems substantiate the conclusion that the national system fails to perform some of the general and specific functions required by the guidelines for national systems?
 - ii. Noting from the IRR that the national registry has not been developed in time for either the submission of the initial report by Kazakhstan or the actual timing of the review, what specific registry requirements would be necessary to be implemented to ensure that a fully functioning registry is in place?
 - iii. With respect to the question of implementation related to reporting information on KP-LULUCF activities raised in the 2017 ARR, what specific measures or actions, in addition to those indicated as planned in Kazakhstan's response to the list of potential problems¹⁶ might be required to ensure that the mandatory information under annex II to decision 2/CMP.8 is complete and correctly reported?
 - iv. Which information referred to in Section E of the annex to decision 15/CMP.1 and annex II to decision 3/CMP.11 should be reflected in the SEF tables for Kazakhstan and how it can be reflected to demonstrate that the Party meets the requirements of the Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol (Annex to decision 15/CMP.1), noting that Kazakhstan has not, as yet, been considered to have met the requirements to participate in the flexibility

¹⁶ See 2017 ARR, table 5, ID #KL.1, p.100.

mechanism, while also noting the requirements contained in paragraph 13 and 15 of and in Annex II to decision 3/CMP.11 that each Annex I Party with a qualified emission limitation or reduction commitment inscribed in the third column of Annex I to decision 1/CPM.8 shall submit its SEF tables beginning with its first annual inventory submission?

- v. Whether there is a relationship between the ERT's decision to calculate a number of adjustments, and in particular, the adjustment with regard to which there is a disagreement, as described in annex IV of the 2017 ARR, and the unresolved problems relating to the performance of some general and specific functions of the national system of Kazakhstan?
- (b) What is the rationale for deciding to calculate each of the adjustments applied by the ERT, as well as for the assumptions, data and methodology used to calculate each of the adjustments, and how these differ from the information and approach put forward by Kazakhstan in its notification on the disagreement with the adjustment (FCCC/ARR/2017/KAZ, Annex VI)?
 - (c) What actions should be taken and which information should be submitted by Kazakhstan to resolve the questions of implementation, including the following more specific questions:
 - i. What are the changes in the national system that need to be implemented by Kazakhstan as a matter of priority to ensure that its national system can perform all the general and specific functions required by the guidelines for national systems at the soonest possible time and to address the weaknesses and vulnerabilities identified by the ERT?
 - ii. What steps must Kazakhstan take to ensure that its future estimates of CO₂, CH₄ and N₂O emissions from I.A fuel combustion (coking coal) are complete and/or prepared in accordance with the methodological and reporting requirements under the Kyoto Protocol?
 - (d) What would be required to review and ascertain that any action taken or to be taken by Kazakhstan addresses and resolves the questions of implementation?

16. The branch may put detailed follow-up questions to the invited experts during the meeting referred to in paragraph 14 above. It may also request experts to provide advice on the assessment of any new information received with respect to the questions of implementation since the ERT conducted the review.

DECISION

17. In accordance with paragraph 5 of section VIII, paragraph 5 of section X, rule 21 of the rules of procedure and the considerations in paragraph 13 above, the enforcement branch decides to seek expert advice during the meeting, referred to in paragraph 14 above, on the questions, referred to in paragraphs 15 and 16 above, from the following experts:

- Mr. Ioannis Sempos, a member of the roster of experts who was not part of the ERT; and
- Ms. Olya Glade, one of the two lead reviewers of the ERT and generalist in the team.

18. The expert advice is to be received in accordance with the procedures and mechanisms relating to compliance contained in the annex to decision 27/CMP.1 and the rules of procedure.

Members and alternate members participating in the consideration and elaboration of the decision:

Ms. Eva ADAMOVA, Mr. Joseph AITARO, Mr. Mohammad Sa'dat ALAM, Ms. Karoliina ANTTONEN, Mr. Zhihua CHEN, Mr. Gerhard LOIBL, Mr. Leonardo MASSAI, Mr. Sébastien NGUYEN-BLOCH, Mr. Yaw OSAFO, Mr. Orlando REY SANTOS, Ms. Iryna RUDZKO, Mr. Ahmad RAJABI, and Mr. Milan ZVARA.

Members participating in the adoption of the decision on preliminary examination:

Mr. Joseph AITARO, Mr. Mohammad Sa'dat ALAM, Mr. Zhihua CHEN, Mr. Gerhard LOIBL, Mr. Sébastien NGUYEN-BLOCH (voting as member), Mr. Yaw OSAFO, Mr. Orlando REY SANTOS, Mr. Ahmad RAJABI, Ms. Iryna RUDZKO, and Mr. Milan ZVARA.

This decision was adopted unanimously on 31 March 2019.
