

FINAL DECISION

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 (procedures and mechanisms)¹ and adopted under Article 18 of the Kyoto Protocol and the “Rules of procedure of the Compliance Committee of the Kyoto Protocol” (rules of procedure),² the enforcement branch adopts the following final decision confirming its preliminary finding (CC-2020-1-2/Kazakhstan/EB).

I. BACKGROUND

1. On 10 November 2020, the enforcement branch adopted a preliminary finding of non-compliance with respect to Kazakhstan.
2. In accordance with paragraph 1 (e) of Section X, the due date for any further written submission from Kazakhstan was 11 December 2020. The secretariat informed the branch that no further written submission had been received from Kazakhstan by that due date.

II. REASONS AND CONCLUSIONS

3. The enforcement branch notes that Kazakhstan has not made a further written submission under paragraph 1(e) of section X.
4. In the absence of a further written submission, in accordance with paragraph 7 of section IX and paragraph 1 (f) of section X, the enforcement branch is to forthwith adopt a final decision confirming its preliminary finding.

III. DECISION

5. The branch confirms, in accordance with paragraph 1 (f) of section X, and rule 22 of the rules of procedure, the preliminary finding annexed hereto, which shall be deemed to form an integral part of this final decision.
6. The consequences set out in paragraph 29 of the preliminary finding shall take effect forthwith.

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

Mohammad ALAM, Karoliina ANTTONEN, Leonardo MASSAI, Sébastien NGUYEN-BLOCH, Yaw OSAFO, Ahmad RAJABI, Orlando E. REY SANTOS, Arne RIEDEL, Stanley WAPOT and Milan ZVARA

¹ 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.

² 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 decisions 4/CMP.4 and 8/CMP.9.

Members participating in the adoption of the final decision:

Mohammad ALAM, Karoliina ANTTONEN, Yaw OSAFO, Ahmad RAJABI, Orlando E. REY SANTOS, Arne RIEDEL, Stanley WAPOT (*acting as member*) and Milan ZVARA.

This decision was adopted with the requisite majority³ on 13 January 2021.

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³ See paragraph 9 of section II in the annex to decision 27/CMP.1.

Annex

**PRELIMINARY FINDING ON QUESTIONS OF IMPLEMENTATION WITH RESPECT TO
KAZAKHSTAN**

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 (procedures and mechanisms)⁴ and adopted under Article 18 of the Kyoto Protocol and the “Rules of procedure of the Compliance Committee of the Kyoto Protocol” (rules of procedure),⁵ the enforcement branch adopts the following preliminary finding.

I. 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. Kazakhstan did not have a commitment inscribed in Annex B to the Kyoto Protocol in the first commitment period but has commitments inscribed in the third column of Annex B in the Doha Amendment as contained in the Annex to decision 1/CMP.8. However, it has not ratified the Doha Amendment.

2. On 2 September 2020, the secretariat received questions of implementation indicated in the ERT report of the individual review of the annual submission of Kazakhstan submitted in 2019 contained in document FCCC/ARR/2019/KAZ (hereinafter, 2019 ARR).

3. In accordance with paragraph 1 of section VI and paragraph 2 of rule 10 of the rules of procedure, the questions of implementation referred to in paragraphs 2 above were deemed received by the Compliance Committee on 3 September 2020.

4. The bureau of the Compliance Committee allocated the questions of implementation to the enforcement branch on 8 September 2020 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.

5. On the same day, 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.

⁴ 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.

⁵ 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 decisions 4/CMP.4 and 8/CMP.9.

6. One of the questions of implementation contained in the 2019 ARR relate to compliance with the annex to decision 19/CMP.1⁶ in conjunction with decisions 3/CMP.11⁷ and 4/CMP.11⁸ and the annex to decision 13/CMP.1⁹ in conjunction with decision 3/CMP.11.¹⁰ In particular, the ERT concluded that the national system of Kazakhstan fails to perform some of the general and inventory planning functions required in accordance with the annex to decision 19/CMP.1¹¹ in conjunction with decisions 3/CMP.11 and 4/CMP.11.

7. Another question of implementation contained in the 2019 ARR is referred to the national registry of Kazakhstan, which was not established for the 2019 annual submission.¹² The ERT noted that this problem was listed as a question of implementation in the report on the review of the report to facilitate the calculation of the assigned amount for the second commitment period of the Kyoto Protocol of Kazakhstan (FCCC/IRR/2017/KAZ, ID# 18).¹³ The ERT concluded that the national registry of Kazakhstan has not yet been developed and therefore a registry is not in place that is able to perform the mandatory requirements for the registry's functionality for the second commitment period of the Kyoto Protocol, in accordance with the requirements set out in decision 13/CMP.1, annex, chapter II, in conjunction with decision 3/CMP.11, and the annex to decision 5/CMP.1.

8. The ERT also listed as a question of implementation the finding on that Kazakhstan did not include in the 2019 annual submission the reporting on its Kyoto Protocol units using the Standard Electronic Format (SEF) tables as required in decision 3/CMP.11, paragraph 13. The ERT noted that this problem was listed as a question of implementation in the previous review report (FCCC/ARR/2017/KAZ, ID# G.14). During the review, the ERT considered the Party's response to the list of potential problems raised by the ERT and welcomed Kazakhstan's intention to provide SEF tables for 2013–2017 by 15 April 2021; however, because Kazakhstan did not provide in its response to this list of potential problems the requested SEF tables or any description of the specific actions and steps (including time frames, deliverables and responsibilities) that would lead to the problem being addressed in the next annual submission, the ERT considered that Kazakhstan has not satisfactorily resolved the problem related to the reporting of Kyoto Protocol units in accordance with decision 15/CMP.1, annex, chapter I.E, paragraphs 12–18, in conjunction with decision 3/CMP.11, in the SEF tables as required in decision 3/CMP.11, paragraph 13.¹⁴

9. The questions of implementation contained in the 2019 ARR also relate to compliance with the methodological and reporting requirements contained in the decision 2/CMP.8, decision 3/CMP.11 and decision 15/CMP.1.¹⁵ The ERT noted that Kazakhstan did not provide a chapter or section related to the reporting of KP-LULUCF activities in the NIR, and therefore did not report any of the required information related to KP-LULUCF activities in its 2019 annual submission. Therefore, Kazakhstan in

⁶ 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".

⁷ 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".

⁸ 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".

⁹ Decision entitled "Modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol".

¹⁰ See table 7 of the 2019 ARR.

¹¹ See, in particular, table 3, G.3, G.4, G.8, G.15, G.17 and G.22 of the 2019 ARR.

¹² See, in particular table 3, G.1 of the 2019 ARR

¹³ See, in particular, table 3, ID #18, of the IRR.

¹⁴ See, in particular table 3, G.2 of the 2019 ARR

¹⁵ Decision entitled "Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol".

its 2019 annual submission did not provide the mandatory information for AR and deforestation under Article 3, paragraph 3, of the Kyoto Protocol and for FM and GM under Article 3, paragraph 4, of the Kyoto Protocol, as required by decision 2/CMP.8, annex II, paragraphs 2(a–e) and (g), 3(a–c), 4(a–b) and 5(a–c) and (e), on KP-LULUCF activities.¹⁶ The ERT further noted that in its 2017 annual submission, Kazakhstan did not provide the mandatory information on KP-LULUCF activities in accordance with decision 2/CMP.8, annex II, paragraphs 2(b) and (d–e), 4(a–b) and 5(a–c) and (e).¹⁷ In addition, the ERT noted that Kazakhstan did not provide any information in the NIR demonstrating that the national inventory system ensures that areas of land subject to KP-LULUCF activities are identifiable, in accordance with decision 2/CMP.7, annex, paragraph 25.¹⁸

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. In accordance with the relevant timelines set out in the procedures and mechanisms and the rules of procedure, the questions of implementation contained in the 2019 ARR¹⁹ and the notification on the decision to proceed,²⁰ which included a reminder about the possibility to request a hearing and the deadline for making the written submission,²¹ were forwarded to the diplomatic agent of Kazakhstan with a copy to the national focal point of Kazakhstan.

12. No request for a hearing from Kazakhstan under paragraph 1(c) of section X was received by the branch.

13. Kazakhstan did not make a written submission per paragraph 1 of section IX, paragraph 1(b) of section X, and rule 17 of the rules of procedure.

14. From 9 to 10 November 2020, the enforcement branch held its thirty-fifth meeting in Bonn to consider the questions of implementation with respect to Kazakhstan.²² Kazakhstan made an oral statement at the meeting, and the members and alternate members of the branch were able to pose questions to Kazakhstan.

15. No competent intergovernmental or non-governmental organization submitted any information under paragraph 4 of section VIII.

II. INFORMATION SUBMITTED, PRESENTED AND CONSIDERED

16. In its deliberations, the enforcement branch considered the review report referred in paragraph 2 above, as well as the information provided by Kazakhstan during the thirty-fifth meeting of the enforcement branch.

¹⁶ See, in particular table 3, ID# KL.7 in table 5 of the 2019 ARR

¹⁷ See KL.7 on page 108 of the 2019 ARR, referring to table.3 ID# KL.1 of the 2017 ARR.

¹⁸ See, in particular table 3, ID# KL.6 in table 5 of the 2019 ARR

¹⁹ Section VI, paragraph 2.

²⁰ Section VII, paragraph 4.

²¹ Section X, paragraph 1(b) and (c).

²² Item 5 of the agenda of the thirty-fifth meeting of the enforcement branch, contained in document CC/EB/35/2020/1.

17. In its interventions during the meeting, Kazakhstan provided additional information with regard to the questions of implementation related to the national registry, the national system and the reporting of KP-LULUCF activities under Article 3, paragraph 3 and 4, of the Kyoto Protocol, including improvements planned to be made through the further development of national legislation, inter-agency co-operation and the mobilization of technical expertise to enhance capacity in the context of national inventory reporting.

III. REASONS AND CONCLUSIONS

18. The enforcement branch recalls that Kazakhstan has inscribed a commitment for the second commitment period of the Kyoto Protocol and recognizes the efforts made by Kazakhstan to start the implementation process at the national level, including by submitting the initial report and annual submissions. Furthermore, the branch notes with appreciation the efforts made by Kazakhstan in this regard to-date, including the current plans to revise some of the legislative and regulatory acts to improve the institutional arrangements to implement the Kyoto Protocol.

19. On 20 April 2020, the secretariat received from Kazakhstan the electronic copy of the document titled “Plan” (CC/2019/1/10/Kazakhstan /EB) in accordance with paragraph 26 (b) of the preliminary finding (CC/2019/1/5/Kazakhstan/EB), confirmed by the final decision of the enforcement branch of the Compliance Committee (CC/2019/1/5/Kazakhstan/EB) and referred to in paragraph 1 of section XV, in accordance with the substantive requirements of paragraph 2 of section XV and paragraph 1 of rule 25 bis of the rules of procedure of the Compliance Committee of the Kyoto Protocol (hereinafter referred to as the “revised plan”).

20. The branch decided that it needed to receive advice from experts in relation to further consideration of the revised plan submitted by Kazakhstan and whether the revised plan met the requirements outlined in the letter from the chairperson and the preliminary analysis of the first plan (CC/2019/1/9/Kazakhstan/EB). In particular, advice was sought. The branch adopted the decision on expert advice on 3 June 2020 (CC/2019/1/11/Kazakhstan/EB).

21. Based on the inputs from the experts, on whether the contents of Draft Decree No. 214 and its amendments are appropriate to ensure compliance with international requirements, whether the revised plan contained sufficient measures to bring national inventory reporting to the level necessary for compliance and whether the revised plan contained sufficient measures to bring the information on KP-LULUCF activities to the level necessary for compliance; in accordance with paragraph 2 of section XV and paragraph 3 of rule 25 bis of the rules of procedure, the branch reviewed and assessed the revised plan submitted by Kazakhstan. In its decision on the review and assessment of the revised plan (CC-2019-1-12/Kazakhstan/EB), the branch noted that full implementation by Kazakhstan of the measures set out in the revised plan and the recommendations referred to in paragraphs 11 and 12 of that decision will be required for the branch to consider whether the question of implementation has been resolved and that consideration by the branch of this matter might also be facilitated by the information contained in the report on the review of the next annual submission of Kazakhstan.

22. In deciding to proceed with the questions of implementation raised in the 2019 ARR, the branch notes that the questions of implementation raised in the 2019 ARR, while possibly exacerbated as compared to the questions of implementation raised in the 2017 ARR and IRR are still linked to the same issues of national system, national registry and reporting obligations, including in relation to KP-LULUCF activities.

23. The branch therefore considered that the implementation of the actions in Kazakhstan’s approved plan with recommendations as contained in decision CC-2019-1-12/Kazakhstan/EB would be sufficient to address all the questions implementation raised in the 2019 ARR.

24. The enforcement branch therefore requested the Chair of the enforcement branch to send a letter to Kazakhstan, on behalf of the branch, indicating that the first progress report to be submitted by Kazakhstan in accordance with paragraph 3 of section XV and the decision on the review and assessment of the plan (CC-2019-1-12/Kazakhstan/EB) no later than 31 January 2021 and the subsequent progress reports to be submitted thereafter on a periodic basis, at least once every six months, would need to address the questions of implementation raised in the 2019 ARR, in addition to the questions of implementation raised in the 2017 ARR and IRR and the recommendations of the branch contained in decision CC-2019-1-12/Kazakhstan/EB. The letter referred to in this paragraph will also include some of the key recommendations from 2019 ARR to be incorporated in all the consolidated progress reports to be submitted.

25. In light of the decision on the review and assessment of the revised plan recently adopted by the branch (CC-2019-1-12/Kazakhstan/EB), the letter referred to in paragraph 22 above, and the fact that the revised plan (CC/2019/1/10/Kazakhstan /EB) had not been submitted by Kazakhstan at the time of the review, the enforcement branch will wait for the consolidated progress reports to be submitted by Kazakhstan in accordance with paragraph 3 of section XV of the procedures and mechanisms to address the questions of implementation raised in the 2017 ARR and IRR and the 2019 ARR together.

26. The branch fully recognizes that it is a prerogative of each State to determine whether and when to ratify a particular treaty or an amendment to a treaty. However, unresolved problems pertaining to language of mandatory nature identified in the questions of implementation arise from the provisions of the Protocol which continue to be in force, such as those under Articles 7 and 8. The branch also notes that Kazakhstan submitted its report to calculate the assigned amount as well as annual inventory reports for all the years of the second commitment period and has undergone the review process under Article 8 of the Kyoto Protocol in 2019. The Doha Amendment threshold for entry into force was achieved on 2 October 2020²³, and entry into force of the Doha Amendment will occur, for the Parties that have ratified it, on 31 December 2020. The enforcement branch notes that Kazakhstan has not ratified the Amendment.

IV. FINDINGS

27. The enforcement branch determines that Kazakhstan is not in compliance with the “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol” (annex to decision 15/CMP.1 in conjunction with decision 3/CMP.11 and decision 2/CMP.8), the “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” (annex to decision 19/CMP.1 in conjunction with decision 3/CMP.11), the methodological and reporting requirements contained in the decision 2/CMP.8, decision 3/CMP.11 and decision 15/CMP.1, and the national registry requirements contained in Section II of decision 13/CMP.1 in conjunction with decision 3/CMP.11. Hence, Kazakhstan has not yet met the eligibility requirements under Articles 6, 12 and 17 of the Kyoto Protocol.

28. These findings shall take effect upon confirmation by a final decision of the branch.

V. CONSEQUENCES

²³ The Doha Amendment to the Kyoto Protocol, Article 2 (“This amendment shall enter into force in accordance with Articles 20 and 21 of the Kyoto Protocol.”); The Kyoto Protocol, Article 20, paragraph 4 (“Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to this Protocol.”); The Kyoto Protocol, Article 20, paragraph 5 (“The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.”).

29. In accordance with section XV, the enforcement branch applies the following consequences with respect to the unresolved problems referred to in paragraphs 6 to 9 above:

- (a) Kazakhstan is declared to be in non-compliance on the basis of the 2019 ARR
- (b) Kazakhstan will address the questions of implementation raised in the 2019 ARR through the additional reporting on the progress of its implementation of its revised plan in relation to the questions of implementation raised in respect of the 2017 ARR and IRR (CC/2019/1/10/Kazakhstan /EB) in accordance with paragraph 3 of section XV and the recommendations made by the enforcement branch within paragraph 11 and 12 of the decision on the review and assessment of the revised plan (CC-2019-1-12/Kazakhstan/EB).
- (c) Kazakhstan is not eligible to participate in the mechanisms under Articles 6, 12 and 17 of the Kyoto Protocol pending the resolution of the questions of implementation as a result of these findings in respect of the 2019 ARR.

30. These consequences shall take effect upon confirmation by a final decision of the enforcement branch.

Members and alternate members participating in the consideration and elaboration of the preliminary finding:

Marília Telma ANTÓNIO MANJATE, Karoliina ANTTONEN, Loredana DALLORA, Leonardo MASSAI, Sébastien NGUYEN-BLOCH, Yaw OSAFO, Ahmad RAJABI, Orlando E. REY SANTOS, Arne RIEDEL, Iryna RUDZKO, Ratnasari WARGAHA-DIBRATA and Milan ZVARA.

Members participating in the adoption of the preliminary finding:

Karoliina ANTTONEN, Leonardo MASSAI (*acting as member*), Yaw OSAFO, Ahmad RAJABI, Orlando E. REY SANTOS, Arne RIEDEL, Iryna RUDZKO, Ratnasari WARGAHADIBRATA (*acting as member*), and Milan ZVARA.

This decision was adopted by consensus in Bonn on 10 November 2020.
