Informal information note by the secretariat:

The Kyoto Protocol compliance procedure with respect to Kazakhstan

1) On 19 February 2019, the Compliance Committee received questions of implementation indicated in the report of the expert review team (ERT) 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 contained in document FCCC/IRR/2017/KAZ (hereinafter, IRR) and 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). The 2017 ARR also included a disagreement on whether to apply adjustment.

2) The questions of implementation contained in the IRR relate to compliance with the annex to decision 19/CMP.1 in conjunction with decisions 3/CMP.11 and 4/CMP.11 and the annex to decision 13/CMP.1 in conjunction with decision 3/CMP.11. 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.1 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. 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.8 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.

3) 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. 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. 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.

4) 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) 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 (CC-2019-1-2/Kazakhstan/EB).

5) The official notification of the questions of implementation was provided to Kazakhstan on 26 February 2019. The questions of implementation were allocated to the enforcement branch on 28 February 2019 and the branch decided to proceed with the questions of implementation on 14 March 2019.

6) No request for a hearing was made by Kazakhstan under paragraph 1(c) of section X and no written submission was made by Kazakhstan under paragraph 1 of section IX and paragraph 1(b), of section X of decision 27/CMP.1 and rule 17 of the rules of procedure. However, subsequently, a correspondence from Kazakhstan was received on 26 April 2017, which included a part entitled written submission.

7) The enforcement branch considered the questions of implementation and the disagreement on whether to apply an adjustment with respect to Kazakhstan at its 33rd meeting, on 29 and 30 April 2019. At that meeting, the enforcement branch adopted a preliminary finding that Kazakhstan was in non-compliance with the requirements arising from the Protocol provisions related to national systems,
reporting, registry and the methodological requirements under Article 5 and 7 of the Convention. The branch set out the following consequences: declaration of non-compliance, request to prepare an action plan. It also noted that Kazakhstan’s eligibility to participate in the mechanisms would be established only once the questions of implementation are resolved. In addition, the branch adopted a preliminary decision to apply the adjustment as originally calculated by the ERT. The decisions will take effect upon adoption of the final decision and of the decision on whether to apply the adjustment, respectively, following the timeline set out in Section X, paragraph 1 (f) of the annex to decision 27/CMP.1.

8) On 26 June 2019, the enforcement branch confirmed its preliminary findings by a final decision and declared Kazakhstan to be in non-compliance. Under paragraph 3 of Section XV, the Party concerned is requested to submit, within three months, a plan to address the non-compliance. In addition, the enforcement branch also confirmed its preliminary decision and issued a decision on a disagreement whether to apply an adjustment to the inventories under Art. 5, para. 2 of the Kyoto Protocol.

What the Compliance Committee does and the rules it follows:

1. The Compliance Committee of the Kyoto Protocol 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.

2. The members and alternate members of the Kyoto Protocol 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.

3. The rules relevant to past cases include, for instance, 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.

4. 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.

5. 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.

6. 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).

7. 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).

8. 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: https://unfccc.int/process/the-kyoto-protocol/compliance-under-the-kyoto-protocol.

Documents relating to the consideration by the enforcement branch of the questions of implementation with respect to Kazakhstan are available here: https://unfccc.int/fr/node/193805.

**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 27 June 2019.