

Informal information note by the secretariat:

The Kyoto Protocol compliance procedure with respect to Kazakhstan

I. Questions of implementation in 2019

- 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 (hereinafter, IRR). On the same day, the Committee received questions of implementation indicated in the ERT report of the individual review of the annual submission of Kazakhstan submitted in 2017 (hereinafter, 2017 ARR).
- 2) The 2017 ARR also included a disagreement on whether to apply an adjustment for CO₂, CH₄ and N₂O emissions from consumption of coking coal in the category 1.A fuel combustion for 2013, 2014 and 2015.
- 3) The bureau of the Committee, using electronic means, allocated the questions of implementation to the enforcement branch on 28 February 2019 for an expedited procedure. On 14 March 2019, the enforcement branch, using electronic means, conducted a preliminary examination and decided to proceed with the questions of implementation.
- 4) On 1 April 2019, the enforcement branch, using electronic means, adopted a decision on expert advice inviting two experts drawn from the UNFCCC roster of experts to provide advice to it on the content and basis of the IRR and the 2017 ARR and on issues related to the questions of implementation and the disagreement whether to apply an adjustment.
- 5) 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 quantified 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.
- 6) 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 greenhouse gas inventories on land use, land use change and forestry 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 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.
- 7) Kazakhstan did not make a written submission in accordance with paragraph 1 of section IX and paragraph 1(b) of section X of the procedures and mechanisms and rule 17 of the rules of procedure. It did, however, subsequently send a communication to the secretariat on 26 April 2019 which contained a part entitled “written submission”.
- 8) On 30 May 2019, during its 33rd meeting, in which Kazakhstan participated through electronic means, the enforcement branch adopted a preliminary finding in which it found that Kazakhstan was 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.

- 9) At the same meeting, the enforcement branch adopted a preliminary decision to apply an adjustment to inventories under Article 5, paragraph 2, of the Kyoto Protocol. In adopting the preliminary decision, the branch noted the timelines for the adoption of decisions on adjustment set out in paragraph 5 of Section X and paragraph 5 of Rule 25 ter of the rules of procedure. At the same time, the branch recalled its decision to extend the timeframes provided for in paragraph 5 of Rule 25 ter of the rules of procedure for this case in order to align the procedure with that of the consideration of the questions of implementation arising from the same review report, as set out in paragraph 7 of the decision on preliminary examination.
- 10) The branch, therefore, agreed to adopt a preliminary decision whether to apply adjustment to inventories under Article 5, paragraph 2, of the Kyoto Protocol with respect to Kazakhstan and to afford the possibility for Kazakhstan to provide its comments on the preliminary decision within the timeline referred to in paragraph 1(e) of Section X, with a view to adopting the final decision on whether to apply the adjustment at the time of the adoption of the final decision on the questions of implementation.
- 11) Kazakhstan did not make a further written submission under paragraph 1 (e) of section X or comment on the preliminary decision whether to apply adjustment to inventories under Article 5, paragraph 2, of the Kyoto Protocol.
- 12) On 26 June 2019, using electronic means, the enforcement branch adopted a final decision, confirming its preliminary finding with respect to Kazakhstan. On the same day, the branch also adopted a decision to apply an adjustment to inventories under Article 5, paragraph 2, of the Kyoto Protocol, confirming its preliminary decision on this matter.
- 13) Kazakhstan, in accordance with paragraph 26(b) of the preliminary finding¹ annexed to the final decision of the enforcement branch,² was to develop a plan, as referred to in the procedures and mechanisms (section XV, para. 1(b)), taking into account substantive requirements (section XV, para. 2) as well as the rules of procedure (rule 25 bis, para. 1), submit it within three months to the enforcement branch (section XV, para. 2) and report on the progress of its implementation on a regular basis (section XV, para. 3).
- 14) On 14 January 2020, the secretariat received from Kazakhstan an electronic copy of the plan³ referred to above.
- 15) The enforcement branch considered by electronic means the plan submitted by Kazakhstan and concluded that in order for the plan to fully meet the requirements set out in section XV, paragraph 2, of the procedures and mechanisms and rule 25 bis of the rules of procedure, revisions would be required.
- 16) On 6 February 2020, the Chair of the branch sent a letter to Kazakhstan⁴ which included a preliminary analysis of the plan submitted and a request to submit a revised plan by 1 April 2020.
- 17) On 20 April 2020, the secretariat received from Kazakhstan an electronic copy of a revision of the plan⁵ referred to above.
- 18) The branch decided that before further considering the revised plan submitted by Kazakhstan, it needed advice from experts as to whether the revised plan met the requirements outlined in the letter to Kazakhstan from the Chair referred to in paragraph 38 above, which included a preliminary analysis of

¹ Compliance Committee document CC-2019-1-6/Kazakhstan/EB.

² Compliance Committee document CC-2019-1-6/Kazakhstan/EB.

³ Compliance Committee document CC-2019-1-8/Kazakhstan/EB.

⁴ Compliance Committee document CC-2019-1-9/Kazakhstan/EB.

⁵ Compliance Committee document CC-2019-1-10/Kazakhstan/EB.

the first plan. In particular, advice was sought on whether (1) Kazakhstan's draft decree No. 214 and its amendments are appropriate for ensuring compliance with international requirements, (2) the revised plan includes sufficient measures to bring national inventory reporting to the level necessary for compliance and (3) the revised plan includes sufficient measures to bring the information on land use, land-use change and forestry activities and forest management reference levels to the level necessary for compliance. The branch adopted the decision on expert advice on 3 June 2020.⁶

- 19) On the basis of inputs from the experts, and in accordance with section XV, paragraph 2, of the procedures and mechanisms and rule 25 bis, paragraph 3, of the rules of procedure, the branch reviewed and assessed the revised plan submitted by Kazakhstan. The review and assessment was conducted by electronic means, as per the provision in paragraph 2 of rule 11 of the rules of procedure.
- 20) The branch considered the inputs of the experts, according to which the revised plan submitted by Kazakhstan was a step in the right direction but required further clarity on and refinement of some of its aspects. The branch noted that not all the measures described in the revised plan had been implemented. It urged Kazakhstan to implement both these measures and the recommendations of the branch to refine the plan, highlighting that full implementation of the measures and recommendations would be required to enable the branch to consider whether the question of implementation had been resolved. The branch also noted that its consideration of this matter might be facilitated by the information in the next ARR of Kazakhstan.
- 21) In accordance with section XV, paragraph 3, of the procedures and mechanisms, Kazakhstan is required to submit to the branch progress reports on the implementation of the plan on a regular basis. The branch invited Kazakhstan to submit the first such progress report no later than 31 January 2021, and subsequent progress reports periodically thereafter, at least once every four months. The branch invited Kazakhstan to include in these reports any progress made in acting on the specific recommendations of the branch and aligning them with the revised plan for implementation as well as any progress made in implementing the measures outlined in the five areas of the revised plan.
- 22) Pursuant to section XV, paragraph 2, of the procedures and mechanisms and rule 25 bis, paragraph 3, of the rules of procedure, the branch adopted the decision on review and assessment of the plan submitted by Kazakhstan⁷ by electronic means on 28 July 2020. The decision states that the revised plan submitted by Kazakhstan sets out and addresses in separate sections each of the substantive requirements, and if implemented along with the recommendations of the branch, is expected to remedy non-compliance.⁸

II. Questions of Implementation in 2020

- 23) On 3 September 2020, the Committee 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).
- 24) The bureau of the Committee allocated the questions of implementation to the enforcement branch on 8 September 2020, for an expedited procedure. On 30 September 2020, the enforcement branch, using electronic means, conducted a preliminary examination and decided to proceed with the questions of implementation.
- 25) The questions of implementation contained in the 2019 ARR 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 inventory planning functions required in accordance with the annex to decision 19/CMP.1 in conjunction with decisions 3/CMP.11 and 4/CMP.11 and that the national registry of Kazakhstan was not established for the 2019 annual submission and therefore a registry is not in place that is able to perform the mandatory requirements for the registry's

⁶ Compliance Committee document CC-2019-1-11/Kazakhstan/EB.

⁷ Compliance Committee document CC-2019-1-12/Kazakhstan/EB.

⁸ Compliance Committee document CC-2019-1-10/Kazakhstan/EB available at

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. The ERT also noted 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 and considered that 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, remains unresolved.

- 26) The questions of implementation contained in the 2019 ARR also relate to compliance with the methodological and reporting requirements contained in decisions 2/CMP.8, 3/CMP.11 and 15/CMP.1. 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. The ERT also 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). The ERT further noted that the Kazakhstan 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. The ERT noted that Kazakhstan did not provide any of the required information in accordance with decision 2/CMP.8, annex II, on KP-LULUCF activities, as recommended by the ERT. The ERT also 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.
- 27) The branch did not receive a request for a hearing from Kazakhstan under section X, paragraph 1(c), of the procedures and mechanisms. Kazakhstan did not make a written submission as per section IX, paragraph 1, and section X, paragraph 1(b), of the procedures and mechanisms, and rule 17 of the rules of procedure.
- 28) During its 35th meeting, the enforcement branch considered the questions of implementation with respect to Kazakhstan contained in its 2019 ARR. Kazakhstan made an oral statement at the meeting, and members and alternate members of the branch were able to pose questions to Kazakhstan.
- 29) On 10 November 2020, during its 35th meeting, the branch adopted by consensus a preliminary finding 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 decisions 3/CMP.11 and 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 decisions 2/CMP.8, 3/CMP.11 and 15/CMP.1, or the national registry requirements contained in decision 13/CMP.1, annex, chapter II, in conjunction with decision 3/CMP.11.
- 30) The enforcement branch did not receive any further submissions from Kazakhstan. On 13 January 2021, the enforcement branch adopted the final decision with respect to Kazakhstan by electronic means, confirming the preliminary finding.

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](#).

Documents relating to the consideration by the enforcement branch of the questions of implementation with respect to Kazakhstan are available [here](#) and [here](#).

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 9 February 2021.
