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Item 8 (a) of the provisional agenda
Matters relating to compliance under the Kyoto Protocol
Report of the Compliance Committee

Annual report of the Compliance Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol*

Summary

The fifth annual report of the Compliance Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol covers activities undertaken from 14 October 2009 to 18 September 2010. The report provides a summary of the further consideration by the enforcement branch of the two questions of implementation with respect to Croatia and its consideration of the question of implementation with respect to Bulgaria. It also contains information on discussions by the facilitative branch on provisions relating to facilitation, and discussions of the plenary of the Compliance Committee on consistency in the review process and on conflict of interest.

* This document was submitted after the due date in order to take into account the outcomes of the eighth meeting of the plenary of the Compliance Committee, which took place from 17 to 18 September 2010.

Contents

I. Introduction

A. Mandate

1. Under section III, paragraph 2 (a), of the "Procedures and mechanisms relating to compliance under the Kyoto Protocol" (annex to decision 27/CMP.1; hereinafter referred to as the procedures and mechanisms), the plenary of the Compliance Committee is to report on the activities of the Committee to each ordinary session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP).

B. Scope of the report

2. The fifth annual report of the plenary of the Compliance Committee covers the period from 14 October 2009 to 18 September 2010. It summarizes the work of and matters addressed by the Committee during that period.

C. Action to be taken by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol

3. In accordance with section XII of the procedures and mechanisms, the CMP is to consider the annual report of the Compliance Committee.

4. The CMP may also wish to:

(a) Invite the President of the CMP to undertake consultations on the nominations of members and alternate members of the Compliance Committee, as necessary;

(b) Ensure that any legal arrangements for privileges and immunities to be adopted by the CMP would cover members and alternate members of the Compliance Committee;

(c) Express its thanks to Parties that made contributions to the Trust Fund for Supplementary Activities to support the work of the Compliance Committee in the biennium 2010–2011.

5. In considering the appeal lodged by Croatia against the final decision of the enforcement branch,[1] the CMP may wish to note:

(a) That, as indicated in paragraph 33 below, no plan in accordance with section XV, paragraph 2, of the procedures and mechanisms, with rule 25 bis, paragraph 1, of the "Rules of procedure of the Compliance Committee of the Kyoto Protocol" (annex to decision 4/CMP.2 and the amendments contained in the annex to decision 4/CMP.4; hereinafter referred to as the rules of procedure) and with the final decision of the enforcement branch was submitted in a timely manner by Croatia;

(b) That appeals to the CMP under the procedures and mechanisms are available on the basis of due process only; that the final decision of the enforcement branch was adopted after consideration of all issues put forward by Croatia during the course of the proceedings; and that the issue of a possible conflict of interest with respect to an alternate member was raised only after the completion of the enforcement branch's consideration of

[1] FCCC/KP/CMP/2010/2.

the questions of implementation, though the information on the facts giving rise to the potential conflict of interest was available to Croatia during the course of the proceedings;

(c) The deliberations of the plenary of the Compliance Committee on conflict of interest as reflected in chapters III E and III F.

II. Organizational matters

6. The plenary of the Compliance Committee held two meetings during the reporting period. The seventh meeting of the plenary of the Committee was held on 30 June 2010 and the eighth meeting from 17 to 18 September 2010, both in Bonn, Germany.

7. The facilitative branch met twice in Bonn (on 1 July 2010 and on 16 September 2010) and the enforcement branch met four times in Bonn (from 23 to 24 November 2009, from 10 to 12 May 2010, on 28 June 2010 and on 16 September 2010).

8. The agenda and annotations, documentation supporting agenda items and the report on each meeting of the plenary of the Committee and of the facilitative and enforcement branches are available on the UNFCCC website.[2]

A. Election of the chairpersons and vice-chairpersons of the enforcement and facilitative branches of the Compliance Committee

9. Pursuant to rule 11, paragraph 2, of the rules of procedure and the decision taken by the plenary of the Compliance Committee at its sixth meeting, the enforcement branch elected Ms. Sandea de Wet as chairperson and Mr. René J M Lefeber as vice-chairperson by consensus using electronic means on 2 February 2010, and the facilitative branch elected Mr. Kunihiko Shimada as chairperson and Mr. Javad Aghazadeh Khoei as vice-chairperson by consensus using electronic means on the same date. These chairpersons and vice-chairpersons constitute the new bureau of the Committee.

10. The plenary of the Committee expressed appreciation for the work of the members of the previous bureau, namely Mr. Sebastian Oberthür, chairperson of the enforcement branch, Mr. Ismail El Gizouli, chairperson of the facilitative branch, Ms. De Wet, vice-chairperson of the enforcement branch, and Mr. Marc Pallemaerts, vice-chairperson of the facilitative branch.

B. Membership in the Compliance Committee

11. In accordance with rule 3, paragraph 5, of the rules of procedure, when a member or alternate member resigns or is otherwise unable to complete the assigned term or the functions of a member or alternate member, the Compliance Committee is to request the CMP to elect a new member or alternate member for the remainder of the term at its next session. Ms. Kirsten Jacobsen, an alternate member of the Committee nominated by Parties included in Annex I and elected to serve in the enforcement branch until 31 December 2011, resigned from the Committee as of 1 July 2010. Mr. Isidore Nonga Zongo, a member of the Committee nominated by Parties not included in Annex I and elected to serve in the facilitative branch until 31 December 2011, resigned from the Committee as of 30 June 2010. Since the resignation of Mr. Zongo, Ms. Inar Ichsana Ishak, elected as an alternate member, has been serving as a member.

[2] <http://unfccc.int/kyoto_protocol/compliance/items/2875.php>.

12. In accordance with section IV, paragraph 2, section V, paragraph 2, and section II, paragraph 5, of the procedures and mechanisms, the plenary of the Compliance Committee requests the CMP to fill the vacancy in the enforcement branch by electing an alternate member from Parties included in Annex I to serve for the remaining period of Ms. Jacobsen's term and to fill the vacancy in the facilitative branch by electing a member from Parties not included in Annex I to serve for the remaining period of Mr. Zongo's term.

C. Transparency, communication and information

13. On 8 June 2010, a vote by electronic means was launched in relation to a draft decision to hold the seventh meeting of the plenary of the Compliance Committee in private. Quorum was not achieved with respect to the vote. In accordance with rule 9, paragraph 1, of the rules of procedure, the seventh meeting of the plenary of the Committee was held in public.

14. Pursuant to the same rule, the seventh and eighth meetings of the plenary of the Committee, the eighth and ninth meetings of the facilitative branch and the parts of the eighth, ninth, tenth and eleventh meetings of the enforcement branch that were held in public were recorded and broadcast on the Internet through the UNFCCC website.

15. In accordance with rule 12, paragraph 2, of the rules of procedure, all documents of the plenary of the Committee and the enforcement and facilitative branches have been made available to the public through the UNFCCC website.[3]

16. At its fourth meeting, the plenary of the Committee agreed on working arrangements with regard to public participation in meetings of the Compliance Committee.[4] After reviewing these working arrangements at its eighth meeting, the plenary of the Committee noted that rule 9 of the rules of procedure is sufficiently operationalized through them. It decided that such working arrangements should continue to apply to future meetings of the Compliance Committee and requested the secretariat to bring any problems arising in their implementation to the attention of the plenary of the Committee. The plenary of the Committee will only consider this matter again should the secretariat bring any such problems to its attention.

D. Use of electronic means of decision-making

17. During the reporting period, the use of electronic means of decision-making was resorted to in two instances because of the lack of quorum to take a decision at the eighth meeting of the enforcement branch and the eighth meeting of the facilitative branch. The enforcement branch completed voting on the adoption of a final decision with respect to Croatia by electronic means and the facilitative branch adopted a decision by electronic means to send a letter to Monaco concerning its failure to submit its fifth national communication. The details of these decisions are set out in chapters III B and III D, respectively.

[3] Documents relating to the plenary of the Compliance Committee are available at <http://unfccc.int/kyoto_protocol/compliance/plenary/items/3788.php>. Documents relating to the facilitative branch are available at <http://unfccc.int/kyoto_protocol/compliance/facilitative_branch/items/3786.php> and documents relating to the enforcement branch are available at <http://unfccc.int/kyoto_protocol/compliance/enforcement_branch/items/3785.php>.

[4] FCCC/KP/CMP/2007/6, paragraphs 15–18.

18. In addition to the instances described in paragraphs 13 and 17 above, during the reporting period the bureau of the Compliance Committee used electronic means to take a decision on the allocation of a question of implementation. The enforcement branch also used electronic means to take decisions on preliminary examination and expert advice, and the enforcement and facilitative branches elected their chairperson and vice-chairperson by electronic means. The use of this means of decision-making on these occasions reduced the need for actual meetings, thereby reducing meeting-related costs.

E. Privileges and immunities for members and alternate members of the Compliance Committee

19. At its eighth meeting, the plenary of the Compliance Committee heard a report by the secretariat on the current state of negotiations on legal arrangements for privileges and immunities within the Subsidiary Body for Implementation (SBI). Having considered this information, the plenary of the Committee concluded that any future legal arrangements for privileges and immunities should afford protection to members and alternate members of the Compliance Committee. The plenary of the Committee has the firm conviction that the absence of such privileges and immunities would affect the effectiveness of the Committee's operations. For example, travel privileges are necessary to ensure that members and alternate members will not be prevented from attending meetings of the Committee. Furthermore, the attribution of immunity from jurisdiction is necessary to prevent members and alternate members from being sued for their participation in the work of the Committee, for example in the case of alleged conflict of interest. The plenary of the Committee decided to draw the attention of the CMP to its views on this matter.

20. In accordance with the conclusions of the SBI at its twenty-sixth session relating to privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol,[5] information on the allegation of a conflict of interest with respect to an alternate member of the Compliance Committee is contained in chapter III F.

III. Work undertaken in the reporting period

A. Reports of expert review teams under Article 8 of the Kyoto Protocol and other information received by the plenary of the Compliance Committee

21. In accordance with section VI, paragraph 3, of the procedures and mechanisms, the secretariat forwarded to the Compliance Committee the reports from the expert review teams of the centralized in-depth reviews of the fourth national communications of Canada, the European Community, Ireland, Poland and Romania. The secretariat also forwarded the report from the expert review team of the centralized in-depth review of the fifth national communication of the United Kingdom of Great Britain and Northern Ireland.

22. Similarly, in accordance with section VI, paragraph 3, of the procedures and mechanisms, the secretariat forwarded to the Compliance Committee the reports of the individual review of the annual submissions submitted in 2009 (2009 ARRs) by Australia, Austria, Belgium, Canada, Croatia, the Czech Republic, Denmark, Estonia, the European Community, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, the Netherlands, New Zealand,

[5] FCCC/SBI/2007/15, paragraph 164.

Norway, Poland, Portugal, Romania, the Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom.

23. Also in accordance with section VI, paragraph 3, of the procedures and mechanisms and paragraph 49 of the annex to decision 22/CMP.1, the secretariat forwarded to the Compliance Committee the annual status reports of annual inventories submitted in 2010 of Australia, Austria, Belgium, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Estonia, the European Union, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, the Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom.

24. In accordance with section VI, paragraph 1, of the procedures and mechanisms, the secretariat forwarded to the Compliance Committee the 2009 ARR of Bulgaria, which indicated a question of implementation. In accordance with section VI, paragraph 2, of the procedures and mechanisms, the report was also made available to Bulgaria. Information on the work of the enforcement branch with respect to this question of implementation is set out in chapter III C.

25. In accordance with paragraph 139 of the annex to decision 22/CMP.1, information on the delay in submission of fifth national communications from Parties included in Annex I to the Convention that are also Parties to the Kyoto Protocol was brought to the attention of the Compliance Committee (see document CC/2010/1). At its eighth meeting, the plenary of the Compliance Committee considered the information provided to it by the secretariat on the status of submission and review of reports under the Kyoto Protocol (document CC/8/2010/6) and noted, with great concern, that, nearly one year after the due date set out in decision 10/CP.13, Monaco had failed to submit its fifth national communication containing the supplementary information required under Article 7, paragraph 2, of the Kyoto Protocol. The plenary of the Committee noted, through the report of the facilitative branch, that Monaco, by a letter dated 16 September 2010, has stated that it is planning to submit its fifth national communication at the end of October or in early November (see also para. 46 below).

26. In accordance with paragraph 4 of decision 13/CMP.1, the secretariat forwarded to the Compliance Committee the second annual compilation and accounting report for Annex B Parties under the Kyoto Protocol and the addendum to this report (document CC/2009/2).

27. At its fifth meeting, the plenary of the Compliance Committee decided to continue to keep the issues of consistency in the review process and resource limitations, including the lack of available experts for the review process, under review in its future meetings. At its sixth meeting, the plenary of the Committee agreed to continue addressing the issue of consistency of reviews, including its implications for the work of both branches, at its next meeting. It was not possible to address this item at its seventh meeting due to the focus of that meeting on conflict of interest.

28. At its eighth meeting, the plenary of the Committee considered the information provided by the secretariat on the consideration of this matter by the SBI, the Subsidiary Body for Scientific and Technological Advice and the lead reviewers at their meetings. Given the importance of consistency in the review process, the plenary of the Committee agreed to keep this matter on the agenda for its next meeting.

B. Consideration by the enforcement branch of the questions of implementation with respect to Croatia

29. In the preceding reporting period, the enforcement branch considered two questions of implementation with respect to Croatia.[6] As part of its consideration, the branch adopted a preliminary finding (see document CC-2009-1-6/Croatia/EB), where it determined that Croatia was not in compliance with Article 3, paragraphs 7 and 8, of the Kyoto Protocol and the modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol (decision 13/CMP.1).

30. After receiving a further written submission from Croatia, the branch confirmed its preliminary finding in a final decision (document CC-2009-1-8/Croatia/EB) on 26 November 2009. On 31 December 2009, Croatia submitted comments on the final decision of the enforcement branch. In accordance with rule 22, paragraph 2, of the rules of procedure, the comments from Croatia on the final decision of the enforcement branch have been included in this report as annex II. On 14 January 2010, Croatia lodged an appeal against the final decision.

31. Paragraph 23 (b) of the preliminary finding required Croatia to develop the plan referred to in section XV, paragraph 1, of the procedures and mechanisms. In accordance with section XV, paragraph 2, such a plan was due on 2 March 2010. Croatia, by a letter dated 8 March 2010, in response to an inquiry in this regard, indicated that it did not intend to submit such a plan in view of its submission of an appeal against the final decision of the enforcement branch.

32. At its eleventh meeting, the enforcement branch considered the matter of the non-submission by Croatia of the plan referred to in paragraph 31 above.

33. The enforcement branch noted that section XI, paragraph 4, of the procedures and mechanisms provides that decisions of the enforcement branch stand pending decisions on appeal. Accordingly, Croatia is subject to the final decision of the branch until such time as the CMP has concluded its consideration of the appeal by Croatia. Nevertheless, no plan has been submitted in a timely manner by Croatia. The enforcement branch agreed to request the plenary of the Compliance Committee to bring this matter to the attention of the CMP.

34. In accordance with section III, paragraph 2 (a), of the procedures and mechanisms, the decision described in paragraph 30 above is listed in annex I to this report.

C. Consideration by the enforcement branch of a question of implementation with respect to Bulgaria

35. On 9 March 2010, the Compliance Committee received a question of implementation indicated in the 2009 ARR of Bulgaria.[7] The bureau of the Compliance Committee allocated the question of implementation to the enforcement branch on 15 March 2010. On 31 March 2010, the enforcement branch took a decision to proceed (see documents CC-2010-1-2/Bulgaria/EB and Corr.1) with the question of implementation.

36. The question of implementation relates to compliance with the "Guidelines for national systems for the estimation of anthropogenic greenhouse gas emissions by sources

[6] Details of this consideration that occurred in the previous reporting period can be found in chapter III C of the fourth annual report of the Compliance Committee to the CMP (FCCC/KP/CMP/2009/17).

[7] FCCC/ARR/2009/BGR.

and removals by sinks under Article 5, paragraph 1, of the Kyoto Protocol" (annex to decision 19/CMP.1).

37. The enforcement branch received a written submission from Bulgaria on 6 May 2010 and, on 10 May 2010, held a hearing at the request of Bulgaria. In its preliminary finding dated 12 May 2010 (see document CC-2010-1-6/Bulgaria/EB), the branch reached the determination that Bulgaria was not in compliance with the guidelines referred to in paragraph 36 above. After receiving a further written submission from Bulgaria, the branch confirmed its preliminary finding in a final decision (document CC-2010-1-8/Bulgaria/EB) on 28 June 2010.

38. On 21 July 2010, Bulgaria submitted comments on the final decision of the enforcement branch. On 3 August 2010, Bulgaria made a formal resubmission of its written comments. In accordance with rule 22, paragraph 2, of the rules of procedure, the resubmitted comments from Bulgaria on the final decision of the enforcement branch have been included in this report as annex III.

39. On 12 August 2010, Bulgaria submitted a document entitled "Updated Improvement Plan for ensuring the effective and timely functioning of Bulgarian National Inventory System in accordance with the requirements of Article 5.1 of the Kyoto Protocol and Decision 19/CMP.1, as well as the relevant requirements of EU" (CC-2010-1-11/Bulgaria/EB; hereinafter referred to as the updated improvement plan) pursuant to the final decision of the enforcement branch in accordance with section XV, paragraph 2, of the procedures and mechanisms. At its eleventh meeting, held on 16 September 2010, the enforcement branch noted that Bulgaria's updated improvement plan did not fully meet the requirements set out in section XV, paragraph 2, of the procedures and mechanisms, rule 25 bis, paragraph 1, of the rules of procedure and paragraph 20 (b) of the branch's preliminary finding. In particular, it did not include an analysis of the causes of the non-compliance, as required by section XV, paragraph 2 (a), of the procedures and mechanisms.

40. The branch noted that, in accordance with section XV, paragraph 2, of the procedures and mechanisms, Bulgaria had until 1 October 2010 to submit the plan referred to in paragraph 20 (b) of the preliminary finding. The branch encouraged Bulgaria to submit a complete plan as required by section XV, paragraph 2, of the procedures and mechanisms and rule 25 bis, paragraph 1, of the rules of procedure no later than 1 October 2010, after which time the branch would continue its review and assessment of the plan in accordance with rule 25 bis, paragraph 2, of the rules of procedure.

41. The branch urged Parties found in non-compliance to make the best use of the period provided under section XV, paragraph 2, of the procedures and mechanisms in order to submit plans that fully meet the requirements of section XV, paragraph 2, of the procedures and mechanisms and rule 25 bis, paragraph 1, of the rules of procedure.

42. In accordance with section III, paragraph 2 (a), of the procedures and mechanisms, the decisions taken by the enforcement branch with respect to Bulgaria during the reporting period are listed in annex I to this report.

D. Consideration by the facilitative branch of provisions related to facilitation

43. At its seventh meeting, the facilitative branch agreed to continue discussions at its eighth meeting on how it can carry out its responsibility to provide advice and facilitation with the aim of promoting compliance and providing for early warning of potential non-compliance under section IV, paragraph 6 (a), of the procedures and mechanisms. At its

eighth meeting, the branch had an initial exchange of views on the possible prioritization of the in-depth reviews of the fifth national communications from Parties included in Annex I.

44. At its ninth meeting, the branch noted the importance of the timely submission of national communications before the established deadline, in order for the in-depth reviews to be completed as quickly as possible. The branch also acknowledged the resource constraints of the expert review teams and encouraged Parties to address the need for adequate resources for the efficient and effective functioning of the review process under Article 8 of the Kyoto Protocol. In addition, it agreed that it would continue to explore a possible set of criteria for prioritization that could be used for the in-depth reviews of the sixth national communications, taking into account past experience, in particular in relation to the fifth national communications.

45. At its eighth meeting, the branch also noted that the plenary of the Compliance Committee had sought guidance from the CMP on action that the Committee could take in relation to delays in the submission by a Party included in Annex I of its national communication on two occasions[8] and that the CMP had not yet addressed its request.[9] At its ninth meeting, the branch noted that the CMP, at its fifth session, had not clarified any action that the branch could take in relation to its facilitative function and within the context of its mandate, including with respect to the continuing delay in the submission of national communications. While the branch would welcome clarification from the CMP on its facilitative function, as previously requested, the branch acknowledged the usefulness of developing its own practice based on its mandate, as in the case of Monaco (see para. 46 below).

46. At its eighth meeting, the branch also noted the need to take proactive action with respect to Parties that have not yet submitted their fifth national communications, which were due on 1 January 2010 in accordance with decision 10/CP.13. The branch agreed to put this matter to the full membership of the branch by electronic means, since quorum had not been achieved at its eighth meeting. On the basis of this agreement, the chairperson proposed, and the branch decided, to send a letter to Monaco (see annex to document CC/FB/2010/2),[10] with a request that a response be provided before the ninth meeting of the branch. The letter, sent on 28 July 2010, expressed the concern of the facilitative branch with regard to the delay in the submission of Monaco's fifth national communication and inquired as to whether, in accordance with section IV, paragraph 4, of the procedures and mechanisms, the facilitative branch could provide advice and facilitation in order to help Monaco implement its reporting obligations. Monaco responded by a letter dated 16 September 2010, stating that it was planning to submit its fifth national communication at the end of October or in early November.

47. At its ninth meeting, the branch agreed that if Monaco had not submitted its fifth national communication by 15 November 2010 the chairperson of the branch would send a letter to Monaco requesting information on the status of its submission and inquiring again as to whether the branch could provide any advice or facilitation.

48. In accordance with section III, paragraph 2 (a), of the procedures and mechanisms, the decision taken by the facilitative branch referred to in paragraph 46 above is listed in annex I to this report.

[8] See paragraphs 4 (b) and 22 of the second annual report of the Compliance Committee to the CMP (FCCC/KP/CMP/2007/6) and paragraphs 4 (b) and 22 of the fourth annual report of the Compliance Committee to the CMP (FCCC/KP/CMP/2009/17).

[9] See decisions 4/CMP.2 and 6/CMP.5.

[10] The letter is available at <http://unfccc.int/kyoto_protocol/compliance/facilitative_branch/items/3786.php>.

E. Conflict of interest in relation to the work of the Compliance Committee

49. At its seventh meeting, the plenary of the Compliance Committee conducted an initial discussion on issues relating to conflict of interest in the context of the work of the Compliance Committee. At its eighth meeting, the plenary of the Committee continued its discussions on the basis of a series of questions prepared by the co-chairs (document CC/8/2010/2). In considering these questions, the plenary of the Committee came to an understanding on a number of issues.

50. The plenary of the Committee agreed that being a member of a delegation to meetings under the Convention or its Kyoto Protocol and a member or alternate member of the Compliance Committee does not constitute in or of itself a conflict of interest or incompatibility with the requirements of independence and impartiality. However, the plenary of the Committee recognized that there may be circumstances in which this situation could result in a conflict of interest or incompatibility with the requirements of independence and impartiality. Members and alternate members of the Committee should exercise due diligence in such circumstances.

51. The plenary of the Committee agreed that rule 4, paragraph 4, of the rules of procedure allows the bureau to engage in informal discussions with the member or alternate member in relation to whom evidence of a possible conflict of interest has been received in accordance with this rule. The Compliance Committee will continue to develop its practice in this regard in conformity with rule 4, paragraph 4.

52. The plenary of the Committee noted that issues relating to potential conflicts of interest or incompatibility with the requirements of independence and impartiality should be raised in a timely manner. Such issues should be brought to the Committee's attention at the earliest possible time in the proceedings, when the information on the facts giving rise to a potential conflict of interest is available to the Party concerned, and not later than the hearing.

F. Possible conflict of interest with respect to an alternate member of the Compliance Committee

53. As noted in paragraph 30 above, the enforcement branch took a final decision with respect to Croatia on 26 November 2009. On 24 December 2009, among its comments on the final decision, Croatia raised, for the first time, an "evident conflict of interest" in the participation by Mr. Tuomas Kuokkanen, an alternate member of the Committee elected to serve in the enforcement branch, in the consideration and elaboration of the preliminary finding with respect to Croatia. In the view of Croatia, the conflict of interest arose from the fact that Mr. Kuokkanen "was also a member of the EU delegation at COP 12 in Nairobi which had expressed its reservation regarding the applicability of the flexibility under decision 7/CP.12 for Croatia to the Kyoto Protocol".[11] Croatia reiterated this point in its appeal against the final decision of the enforcement branch.

54. The plenary of the Compliance Committee recalled that appeals to the CMP under the procedures and mechanisms are available on the basis of due process only and recognized that issues of conflict of interest may raise such due process concerns.

55. On 26 January 2010, a note by the Executive Secretary entitled "Evidence from a Party which may indicate a conflict of interest" was sent to Mr. Oberthür, Ms. De Wet and

[11] See document CC-2009-1-9/Croatia/EB contained in annex II to this report. The reservation referred to by Croatia is contained in document FCCC/SBI/2006/28, paragraph 134.

Mr. Pallemaerts as members of the bureau of the Compliance Committee,[12] together with a letter dated 25 January 2010 from Mr. Kuokkanen, which was also received on the same date. Mr. Oberthür suggested that the new bureau, whose members were scheduled to take office on 3 February 2010, consider the matter. On 4 February 2010, the note and letter dated 25 January 2010 were sent to the members of the new bureau referred to in paragraph 9 above.

56. In response to a request by the bureau, the secretariat wrote a letter to Mr. Kuokkanen to, inter alia, seek his reactions, if any, to the note by the Executive Secretary, including any further thoughts he may have as regards his participation in the work of the Committee in relation to the matter to which the evidence relates and whether he intended to make any representations should the evidence of the conflict of interest be submitted to the plenary of the Committee.

57. Mr. Kuokkanen responded on 16 March 2010, stating that he has not acted against the rules of procedure and therefore he sees no need to refrain from participating in the work of the Committee in relation to the matter to which the allegation of Croatia relates.

58. In accordance with rule 4, paragraph 4, of the rules of procedure, the bureau requested the secretariat to submit the evidence of a possible conflict of interest (see document CC/7/2010/4)[13] to the plenary of the Committee, which considered the matter at its seventh and eighth meetings.

59. At the seventh meeting of the plenary of the Committee, Mr. Kuokkanen made an oral presentation. The plenary of the Committee noted that the claim of conflict of interest is a key part of the appeal by Croatia against the final decision of the enforcement branch. Since the CMP will consider the appeal at its sixth session, the plenary of the Committee also noted that the timing of any decision under rule 4, paragraph 4, of the rules of procedure should be given careful consideration.

60. The plenary of the Committee noted that Parties should raise issues relating to conflicts of interest at the earliest possible time in the proceedings. It further noted that the information on the facts giving rise to Croatia's claim of conflict of interest was available to Croatia by the time it received the decision on preliminary examination.

61. The plenary of the Committee recalled that appeals to the CMP under the procedures and mechanisms are available on the basis of due process only; that the final decision was adopted after consideration of all issues put forward by Croatia during the course of the proceedings; and that the issue of possible conflict of interest with respect to an alternate member was raised only after the completion of the enforcement branch's consideration of the questions of implementation, though the information on the facts giving rise to the potential conflict of interest was available to Croatia during the course of the proceedings.

62. The plenary of the Committee also noted that although Mr. Kuokkanen participated in the consideration and elaboration of the preliminary finding, he did not participate in the consideration and elaboration of the final decision and did not vote on either the preliminary finding or the final decision.

63. At its eighth meeting, the plenary of the Committee agreed that there was no need for it to further consider the possible conflict of interest with respect to Mr. Kuokkanen before consideration by the CMP of the appeal referred to in paragraph 53 above.

[12] Mr. El Gizouli, formerly a member of the facilitative branch, ceased to be a member of the bureau on 1 January 2010. His term of office as a member of the facilitative branch ended on 31 December 2009.

[13] This document contains the note by the Executive Secretary and the letter from Mr. Kuokkanen dated 25 January 2010 that are referred to in paragraph 55 above, the letter from the secretariat referred to in paragraph 56 above, and Mr. Kuokkanen's response referred to in paragraph 57 above.

IV. Availability of resources

64. For the biennium 2010–2011, EUR 1,228,060[14] was approved in the core budget of the UNFCCC for activities related to the Compliance Committee. As of 31 July 2010 contributions of USD 87,378 were received for the biennium. The CMP may wish to express its sincere thanks to Japan and Switzerland, which made contributions to the Trust Fund for Supplementary Activities to support the work of the Compliance Committee in the biennium 2010–2011.

[14] This amount does not include programme support costs (overheads) and the working capital reserve.

Annex I

Decisions taken by the branches of the Compliance Committee in the reporting period

Decisions taken by the branches of the Compliance Committee in the reporting period

Title	*Document No.*	*Date*
CROATIA (CC-2009-1/Croatia/EB)*		
Final decision	CC-2009-1-8/Croatia/EB	26 November 2009
BULGARIA (CC-2010-1/Bulgaria/EB)**		
Decision on preliminary examination	CC-2010-1-2/Bulgaria/EB and Corr.1	31 March 2010 and 17 May 2010
Expert advice: Bulgaria	CC-2010-1-4/Bulgaria/EB	15 April 2010
Preliminary finding	CC-2010-1-6/Bulgaria/EB	12 May 2010
Final decision	CC-2010-1-8/Bulgaria/EB	28 June 2010
MONACO***		
Report on a vote by electronic means (Letter to Monaco concerning the late submission of its fifth national communication)	CC/FB/2010/2	30 July 2010

* The decision with respect to Croatia is available at <http://unfccc.int/kyoto_protocol/compliance/enforcement_branch/items/5456.php>. The decision is available in all six official languages of the United Nations.

** Decisions with respect to Bulgaria are available at <http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/5538.php>. The decisions are available in all six official languages of the United Nations.

*** The report on the decision to send a letter to Monaco is available in English at <http://unfccc.int/kyoto_protocol/compliance/facilitative_branch/items/3786.php>.

Annex II

Comments from Croatia on the final decision* (CC-2009-1-8/Croatia/EB)

REPUBLIC OF CROATIA

MINISTRY OF ENVIRONMENTAL PROTECTION,

PHYSICAL PLANNING AND CONSTRUCTION

COMPLIANCE COMMITTEE

Secretariat

Enforcement Branch

COMMENTS OF CROATIA

on

Final decision CC-2009-1-8/Croatia/EB

Zagreb, 24 December 2009

* Enforcement branch of the Compliance Committee, CC-2009-1-9/Croatia/EB, 4 January 2010.

In accordance with section VIII, paragraph 8 of the Procedures and mechanisms relating to compliance contained in the annex to decision 27/CMP.1 and rule 22, paragraph 2, of the Rules of procedure of the Compliance Committee contained in the annex to decision 4/CMP.2 as amended by decision 4/CMP.4, the Republic of Croatia hereby provides its comments on the final decision CC-2009-1-8/Croatia/EB of the enforcement branch of the Compliance Committee adopted on 26 November 2009, as follows hereinafter.

Croatia hereby expresses a profound disappointment and disbelief with regard to the final decision CC-2009-1-8/Croatia/EB (the final decision) upholding the preliminary finding CC-2009-1-6/Croatia/EB in its entirety. Croatia believes that the respective final decision is groundless, inequitable, as well as unbalanced, and, as it currently stands, extremely damaging for Croatia, particularly bearing in mind that the enforcement branch of the Compliance Committee (EBCC) assumed the standpoint of not being competent to consider any of the arguments in favour of Croatia that are crucial for resolving this matter, especially the violation of the equal treatment principle.

Since the EBCC's final decision omitted to elaborate in detail crucial arguments provided by Croatia, Croatia hereby once again refers to the Statement of position of Croatia CC-2009-1-7/Croatia/EB of 12 November 2009. The comments hereof shall be read together with and in furtherance of the Statement of position of Croatia CC-2009-1-7/Croatia/EB, enclosed hereto as an annex.

COMMENTS

1. In deciding the Croatian case, the EBCC on the account of alleged non-competency, disregarded all arguments provided by Croatia, thus adopting an inappropriate and inequitable decision.

2. The final decision is not in line with Article 31, paragraphs 1 and 2 of the Vienna Convention on the Law of Treaties which calls for a treaty to be interpreted in good faith and in the light of its object and purpose, and that for the purpose of interpretation, both the annex and the preamble of the treaty should be taken into consideration.

Contrary to the above, when interpreting provisions of the Kyoto Protocol, the EBCC failed to take into consideration the preamble of the Kyoto Protocol, which recalls the United Nations Framework Convention on Climate Change (the Convention), in particular with respect of pursuing its ultimate objective (Article 2) and guiding principles (Article 3) striving for 'equitable approach in accordance with common but differentiated responsibilities and respective capabilities', as well as the Berlin Mandate. Accordingly, pursuant to the preamble of the Kyoto Protocol and international legal standards, the EBCC was under an obligation to interpret the Kyoto Protocol as an extension of the Convention and in light of its objective and purpose, as opposed to treating it as an entirely separate treaty. Had the EBCC followed this course of action, an equitable decision would be one that would respect Croatia's particular circumstances and capabilities as previously recognized under the Convention pursuant to decision 7/CP.12.

Hence, the EBCC's restrictive interpretation clearly contradicts the fact that the Kyoto Protocol was adopted in furtherance of and based on the Berlin Mandate, as laid out in decision 1/CP.1 of the Conference of the Parties, following the review of Article 4, paragraphs 2(a) and (b,) of the Convention and the subsequent conclusion that the aforementioned paragraphs were inadequate. Indeed, the Berlin Mandate opted for strengthening the commitments of the Parties under Article 4, paragraph 2(a) and (b) in order to ensure effective achievement of the Convention's goals. This initiative resulted in the adoption of the Kyoto Protocol. As the Kyoto Protocol derived from Article

4, paragraph 2 of the Convention, it should obviously be read in light of the Convention's objective and purpose. It is important to note here that Croatia was granted flexibility for the implementation of its commitments under, no other but, Article 4, paragraph 2, of the Convention and consequently its amendments or elaborations.

In calling for a treaty to be interpreted in good faith and in light of its object and purpose, the Vienna Convention on the Law of Treaties therefore fully endorses and favours a teleological interpretation of treaties over a grammatical one. A position Croatia strongly advocates and calls for to be fully respected and adhered to.

3. The final decision is not in line with Article 31, paragraph 3, subparagraph (b), of the Vienna Convention on the Law of Treaties, which stipulates that any subsequent practice in the application of the treaty shall be taken into account regarding its interpretation.

Contrary to the above, the EBCC failed to take into consideration the flexibility allowed under the Convention for application of the Kyoto Protocol in the comparable cases of Bulgaria, Hungary, Poland, Romania, Slovenia and Iceland. In these cases, flexibility was allowed without ever requiring confirmation of the Conference of the Parties serving as meeting of the Parties to the Protocol (CMP) or any other additional confirmation, hence setting transparent and consistent practice (precedents) for recognition of flexibility to Croatia under decision 7/CP.12 with respect of the Kyoto protocol, as already done in all aforementioned cases. This fact alone represents a clear violation of the equal treatment principle.

4. The final decision is not in line with Article 32 of the Vienna Convention on the Law of Treaties, which stipulates that when the interpretation of the treaty *"a) leaves the meaning ambiguous or obscure; or b) leads to a result which is manifestly absurd or unreasonable"*, supplementary means of interpretation including the preparatory work of the treaty and the circumstances of its conclusion should be taken into account.

As pointed out by Croatia during the entire procedure before the Compliance Committee, EBCC's final decision of non-compliance denying flexibility to Croatia under decision 7/CP.12 is obviously absurd and unreasonable from several different aspects:

(a) Denying previously approved flexibility for Croatia's particularities would setback the country's economy by forty years, to energy demands in 1974. It should be recalled here that in 1990 only 27% of consumed electricity was generated in fossil-fuelled power plants on Croatian territory.

(b) Full consideration should have been taken that decision 7/CP.12 was adopted in 2006 when the Kyoto Protocol was already in force, therefore at the point when Croatia was no longer in position of intervening into text of the Kyoto protocol, and that this decision was a crucial precondition set by Croatia with regard to its ratification, so as to ensure Croatia's compliance with the Kyoto Protocol.

(c) If the decision 7/CP.12 is not to be applied to Croatia during the first commitment period, then it brings into question the whole purpose of several years of negotiations, as well as the ultimate unanimous decision 7/CP.12 taken at COP 12 in Nairobi, Kenya. Denying the applicability of the decision 7/CP.12 would prevent Croatia enjoying the envisaged flexibilities prescribed therein, to enable full compliance and in turn, would give rise to a critical economic situation to Croatia.

(d) The consequence of ignoring decision 7/CP.12 is that Croatia was and still is in non-compliance of the greenhouse gases emissions target under both the Convention and the Kyoto Protocol from 2005

onwards. This is the exact reason why flexibility was requested by and subsequently granted to Croatia pursuant to decision 7/CP.12.

The EBCC failed to take into consideration the consequences for Croatia arising from the dissolution of former Yugoslavia which were explicitly recognized under decision 7/CP.12 of the Conference of the Parties (COP) whereby, pursuant to Article 4, paragraph 6, of the Convention, Croatia was allowed to add 3.5 Mt CO2 equivalent to its 1990 level of greenhouse gas emissions not controlled by the Montreal Protocol, for the purpose of establishing the level of emissions for the base year for implementation of its commitments under Article 4, paragraph 2, of the Convention.

The EBCC further failed to take into consideration that Croatia and the Parties to the Convention were well aware of Croatia's historical circumstances and its inability of meeting the 2012 Kyoto Protocol target and duly acknowledged this fact by adopting COP decision 7/CP.12. In doing so the parties to the Convention ensured that Croatia would have a fair chance of meeting the required target, which otherwise would undisputedly prove impossible for Croatia to achieve.

The EBCC failed to take into account that decision 7/CP.12 was a vital precondition for Croatia to ratify the Kyoto Protocol.

The EBCC failed to take into consideration the official List of Annex I Parties to the Convention, published on the Convention's official internet site, whereby Croatia is recognized as a "** *Party for which there is a specific COP and/or CMP decision*" – the relevant decisions being decision 4/CP.3, decision 10/CP.11 and decision 7/CP.12.

Together these substantial omissions on the part of the EBCC have rendered its final decision unreasonable and without grounds, especially when taking into account Croatia's historical circumstances and particularities leading to Croatia's ratification of the Kyoto Protocol.

5. The final decision is not in line with Article 7, paragraph 1, of the Kyoto Protocol, which prescribes obligations for each Party included in Annex I to provide its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, in accordance with relevant decisions of the Conference of the Parties (including decision 7/CP.12).

6. The final decision is not in line with Article 8, paragraph 1 of the Kyoto Protocol, which prescribes that any information submitted under Article 7 by each Party included in Annex I shall be reviewed by expert review teams pursuant to the relevant decisions of the Conference of the Parties (including decision 7/CP.12).

7. The final decision is not in line with paragraph 7(a) of the annex to decision 13/CMP.1, which prescribes that part one of the report referred to in paragraph 6 shall, among other, contain complete inventories of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for all years from 1990, or another approved base year or period under Article 3, paragraph 5, to the most recent year available, prepared in accordance with Article 5, paragraph 2, and relevant decisions of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP), taking into account any relevant decisions of the Conference of the Parties (including decision 7/CP.12).

8. The final decision is not in line with section II, paragraph 11, of the Procedures and mechanisms relating to compliance contained in the annex to decision 27/CMP.1, which obligates the

Compliance Committee to take into account Article 4, paragraph 6, of the Convention and any degree of flexibility allowed to the Parties included in Annex I undergoing the process of transition to a market economy (including decision 7/CP.12).

9. The EBCC omitted to apply its authority under decision 27/CMP.1, annex, section V, paragraph 5, to adjust inventories and correct the compilation and accounting database for the accounting of assigned amounts in the event of a disagreement between an expert review team (ERT) and the party concerned. Since the ERT disregarded its obligation under Article 8, paragraph 1 of the Kyoto Protocol to perform an expert review of Croatia's inventory data pursuant to the relevant decisions of the Conference of the Parties (decisions 9/CP.2 and 7/CP.12), the EBCC should have exercised its authority under decision 27/CMP.1, annex, section V, paragraph 5, by applying the respective flexibility allowed to Croatia and adjusting the ERT disputed data. Furthermore it should be taken into account that the application of COP decisions on flexibility falls outside the ERT mandate, as explicitly stated in paragraph 159 of the Report of the review of the initial report of Croatia FCCC/IRR/2008/HRV.

10. The final decision is not in line with section VIII, paragraph 6, of the Procedures and mechanisms relating to compliance contained in the annex to decision 27/CMP.1, which stipulates that any information considered by the relevant branch shall be made available to the party concerned and that branch shall indicate to the party which parts of this information it has considered, and consequently that the party shall be given an opportunity to comment in writing on such information.

At the Eighth meeting of the EBCC held on 23 and 24 November 2009 in Bonn, Germany, as well as on several previous occasions, the EBCC made reference to the EU delegation's remark expressed at COP 12 held in Nairobi, Kenya, that Croatia could not apply decision 7/CP.12 for the purposes of its compliance with the Kyoto Protocol target. However, it is important to point out here, that the EU delegation voted in favour of decision 7/CP.12, which was adopted by acclamation, and only afterwards made an oral remark which does not create a legal precedent. As the EU delegation remark from COP 12 was undisputedly an important element in initiating the EBCC procedure against Croatia, as well as in its final outcome, the EBCC was under a clear obligation to provide an explanation of the EU delegation's remark and its implications for Croatia's case, both in its preliminary finding and in its final decision. Furthermore, the EBCC was obliged to provide Croatia with an opportunity to respond to the EBCC's standpoint in writing. Omission by the EBCC to this end represents a clear procedural violation on the part of the EBCC.

11. The final decision is not in line with rule 4 of the Rules of procedure of the Compliance Committee contained in the annex to decision 4/CMP.2 as amended by decision 4/CMP.4, which prescribes that each member and alternate member shall serve in its individual capacity and act in an independent and impartial manner and avoid any real or apparent conflicts of interest.

Contrary to the above, it should be stressed that Mr. Tuomas Kuokkanen, alternate EBCC member, who participated in the consideration and elaboration of the upheld preliminary finding with respect to Croatia, was also a member of the EU delegation at COP 12 in Nairobi which had expressed its reservation regarding the application of flexibility under decision 7/CP.12 for Croatia to the Kyoto Protocol. The involvement by Mr. Kuokkanen is an evident conflict of interest in which rule 4 of the Rules of Procedure of the Compliance Committee is entirely applicable.

* * * *

The Croatia hereby kindly requests translation of these comments with annex to Spanish language pursuant to section VIII, paragraph 9, of the Procedures and mechanisms relating to compliance contained in the annex to decision 27/CMP.1.

The arguments set out above and in the course of the entire process shall be further elaborated in Croatia's appeal against the final decision CC-2009-1-8/Croatia/EB of the enforcement branch of the Compliance Committee, adopted on 26 November 2009 pursuant to section XI of the Procedures and mechanisms relating to compliance contained in the annex to decision 27/CMP.1.

The final decision shall stand pending the CMP decision on appeal.

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Annex III

Resubmitted comments from Bulgaria on the final decision* (CC-2010-1-8/Bulgaria/EB)

COMMENTS BY BULGARIA ON THE FINAL DECISION CONCERNING BULGARIA ADOPTED BY THE ENFORCEMENT BRANCH ON 28 JUNE 2010

In accordance with rule 22, paragraph 2 of the "Rules of procedure of the Compliance Committee of the Kyoto Protocol" Bulgaria herein provides written response on the final decision by the Enforcement Branch.

Bulgaria expresses its disappointment of the final decision which confirmed the preliminary finding of 12 May 2010 regarding Bulgaria.

Our disappointment comes from the fact that the fundamental actions taken by Bulgaria since the ERT in-country review to improve its national system were not taken into account by the Enforcement Branch in the course of its decision-making process.

The final decision, as the preliminary finding, is based mainly on the findings and conclusions made by the ERT during its visit to Bulgaria in September-October 2009. However, there have been substantial improvements to the national system since then, which were duly reported through the following communications by Bulgaria:

- on 16 November 2009 Bulgaria submitted a work plan with measures addressing improvement of the institutional arrangements, technical competence of staff and quality of the annual inventory submission;
- on 16 February 2010 Bulgaria submitted an update of the work plan with progress report of scheduled projects, training workshops and the accomplished institutional cooperation agreements;
- in its written submission of 5 May 2010 and in its presentation at the hearing on 10 May Bulgaria has provided detailed information and clearly demonstrated its institutional and legal arrangements and measures undertaken to strengthen the national inventory system;
- On 15 June 2010 Bulgaria presented a detailed sector-based improvement plan with specific priorities and deadlines to be met in order to achieve speedy solution of outstanding issues and the improvement of its national system.

Bulgaria believes that the expedited procedure, laid down in Section X of "Procedures and mechanisms relating to compliance under the Kyoto Protocol", does not provide the country concerned with adequate opportunities to effectively prove the progress made and thereby avoid the serious economic and financial consequences stemming from the inevitable, in the current circumstances, confirmation of non-compliance. Such a procedure is hardly justifiable, especially when it is linked to application of mechanisms under Articles 6, 12 and 17 embodying basic principles and rights of Parties under the Kyoto Protocol. Therefore, we advocate that in the period between the preliminary finding and the final decision there should

* Enforcement branch of the Compliance Committee, CC-2010-1-10/Bulgaria/EB, 9 August 2010.

be appropriate time and conditions set for the country concerned to make reasonable efforts and demonstrate progress sufficient to alter the final outcome.

We noted with due respect the efforts made by the Enforcement Branch to accommodate to certain extend our concerns regarding the text in section "Conclusions and reasons", paragraph 14 of the preliminary finding. We take this as a positive sign of recognition by the Enforcement Branch of our willingness and efforts made to address the outstanding issues as early as possible. In this vein, we consider the respective part of the addition to the section "Conclusions and reasons" as reflecting a more balanced and equitable approach. However, our justified doubts are not sufficiently met since in the further submission of 15 June 2010 and the intervention made during the 28 June 2010 meeting we did not question the right of the Enforcement Branch to seek expert advice but only the level of objectivity and correctness of quotation of expert opinions as they were presented at the hearing on 10 May 2010.

Bulgaria reconfirms its intention to provide a 2010 resubmission (CRF tables and NIR) as well as an updated Improvement plan by 12 August 2010 to further demonstrate the substantial progress made by the country.

Following Section X, paragraph 2 of "Procedures and mechanisms of the Compliance Committee" Bulgaria confirms its intention to request an in-country review to be carried out in September-October 2010, following our resubmission. We express our hopes and expectations for a fair and equitable treatment and prompt resolution of the matter within a short period of time following the in-country review in September-October 2010.

ANNEX to document COMMENTS BY BULGARIA ON THE FINAL DECISION CONCERNING BULGARIA ADOPTED BY THE ENFORCEMENT BRANCH

INTERVENTION BY BULGARIA AT THE MEETING OF THE ENFORCEMENT BRANCH BONN, 28-29 JUNE 2010

Mr. Chairman,
Distinguished members of the Enforcement branch,

At the hearing on May 10-th, I made on behalf of Bulgaria a thorough presentation on the improvements of the Bulgarian national inventory system, in particular the institutional arrangements, roles and responsibilities of the national respective governmental bodies, the underlying legal framework, arrangements for technical competence of staff and measures taken for strengthening of the national system since the ERT review in 2009.

I take the floor today to provide our views on the preliminary finding adopted by the Enforcement branch on May 12-th, 2010 and to give you a brief outline and further clarifications, if needed, of the Improvement Plan, submitted by Bulgaria on 15 June 2010.

Allow me, first to comment on the preliminary finding. We express regrets that steps and actions taken by Bulgaria following the ERT in-country review were not adequately taken into account by the Enforcement branch in the course of its decision-making process. During the hearing we acknowledged we had been facing challenges with institutional arrangements and technical competence of staff due to the lack of human and financial resources. However, we clearly identified a number of actions being taken for the improvement of the national system in accordance with a plan for further eradication of the outstanding problems.

Although the Enforcement branch recognized the progress made as well as the willingness and commitment of Bulgaria to address the issues related to its national system, ultimately it preferred to base its decision on the findings and conclusions made by the ERT as a result of its visit to Bulgaria in September-October last year. Thus, substantive improvements to the system and the positive trend towards resolving the outstanding problems made since ERT's visit had been ignored.
Speaking about the regulations in the area of compliance, we are a bit frustrated that the so called "expedited procedure" does not provide the Party concerned with the possibility to effectively defend itself by proving the progress achieved after the latest in-country review. Actually, in the unreasonably short period between the adoption of the preliminary finding and the final decision, the country does not have much of a chance to reverse the preliminary finding. Scheduling an ERT visit is not possible and the opportunity of early resolution of the question of implementation seems precluded. And this is not acceptable since the economic and financial consequences born by the Party concerned are extremely heavy.

Apart from this principle position, we have reservations concerning the wording of the preliminary finding, in particular the text of section "Conclusions and reasons". In our view the text in p. 14 does not reflect in a sufficiently correct and comprehensive manner the expert opinions as they were expressed during the meeting on May 10th. Indeed, in the course of the

meeting all experts confirmed that there were unresolved problems with respect to the national inventory system of Bulgaria operating in accordance with the requirements of the guidelines for national systems. However, while one expert advised that: "significant improvements in the quality of Bulgaria's national submissions cannot be expected to become evident until the review of the 2011 annual submission, another expert was of the view that if Bulgaria deploys sufficient efforts it could rectify identified problems by early fall of 2010 and request an ERT's visit in September 2010.

Mr. Chairman,

We are concerned that generalization of the experts' views, as it currently stands in the text, distorts the opinions expressed in a way suggesting negative outlook on the prospects for an early resolution of the question of implementation pertaining to Bulgaria. Furthermore, making projections of the timeframe, in which Bulgaria will be able to provide evidence of the necessary improvements of its national system, goes beyond the mandate of this respected body, as this mandate is clearly outlined in Section V, paragraph 4 of the Annex to Decision 27.CMP.1. It may also raise issues of balance and equitable treatment since, again, not all experts' opinions were equally taken into account while considering the Bulgarian case.

Therefore, we strongly encourage the Enforcement Branch to consider deleting the last sentence of p.14 or, at least, reformulating the text to reflect the factual narrative of the meeting.

In addition to the positive steps mentioned above and in the wake of the experts' advice we undertook measures to further ensure the proper and coherent functioning of the Bulgarian national inventory system (BGNIS) by enhancing institutional arrangements and strengthening administrative capacity.

An **Improvement Plan** was prepared to address the requirement for further progress by Bulgaria. With this plan it is clearly stated how planned improvements are implemented or envisaged to be implemented in the BGNIS in order to fulfill the recommendations of Expert Review Team as set out in the annual review report FCCC/ARR/2009/BGR.

Let me highlight the major improvements made in accordance with this plan:

Institutional arrangements: Two new agreements have been signed between MoEW and the following data providers:

- Ministry of Economy, Energy and Tourism;
- Ministry of Internal Affairs.

The English version of the agreements is included in Annex 1 and Annex 2 of the Improvement plan.

Strengthening the legal basis: The BGNIS will be enshrined in law through a special Regulation of the Council of Ministers which will be adopted in September 2010. The new regulation will establish and maintain the institutional, legal and procedural arrangements necessary to perform the functions of BGNIS, defined in Decision 19/CMP.1 for national systems.

Enhancing expert capacity in ExEA:

- Extension of the staff, engaged in planning, preparation and management of the national GHG emissions inventory was realized in 2010. The Order issued by the Executive Director of ExEA regulates the name and responsibilities of experts from different departments within the ExEA, who are engaged to support preparation of the inventory. The results are shown on Figures 1-2 of the Improvement plan.
- Staff training through the project with the Federal Environment Agency of Austria (workshops in the period December 2009 to June 2010) is ongoing.

Collaboration with consultants and external auditors

- Establishment of relations with Branch Business Associations – letter sent to the Branch Association of the Cement Industry.
- Continued intensive cooperation for research (verification of EFs) with universities and private consultants

Source categories improvements are in process for all sectors.

For the preparation of the final version of NIR for 2010 submission (sent on 27th May) Quality Assurance/Quality Control approaches have been applied. Sector specific QA/QC procedures have been performed by the Sector experts at the MoEW.

In relation to the above mentioned improvements I will draw your attention **to the measures envisaged in the key sectors playing the most important role for the quality of the GHG emissions inventory.**

Energy sector

- Revising of the entire time series of the Activity data (AD) has been undertaken due to differences in IEA/EUROSTAT questionnaire (international reporting obligation) and national energy balance (national reporting obligation with different allocation/definition fuel). Outcome is consolidated "Energy Balance" for national and UNFCCC/ UNECE reporting obligation.
- Revising of the emission factor (EF). Investigation whether it would be possible to update country specific EF.
- A cross-check with ETS, EPRTR, IPPC data has just started.
- Providing carbon mass balance will be also realized.

Concluding on achieved Transparency we can state that in submission 2010 for CRF 1 information on methodology, activity data and emission factor for the entire time series is provided. In the next submission further improvements concerning transparency will be undertaken. This will be done by updating and revising EF and AD.

Transport

- Revising the AD based on International Energy Agency (IEA)/EUROSTAT questionnaire and compare to national statistics to make sure that these are in line.
- Revising the EF (gasoline, Diesel, LPG). Investigation whether it would be possible to update country specific emission factors for liquid fuels and gaseous fuels.
- The training on the model COPERT, which is a country support tool for reporting provided by the European Environment Agency (EEA) has been completed. The

model will be incorporated within the next submission. Thus a higher TIER method for estimation CO2, N2O and CH4 as well as non-GHG will be realized.

Consumption of Halocarbons and SF6 (CRF 2.F)

- A study on F-gases actual emissions is almost completed. The main findings and proposals for methodologies to be used are presented in NIR 2010, submitted to UNFCCC and EC on May, 27th. The final results of the study will be reported in the next submission of the inventory.

Speaking about our Improvement plan let me highlight that it is a product of our proactive approach and strong willingness to deal with the problems as soon as possible. I wish to remind you that, as EU member-state Bulgaria is committed to contribute to the implementation of its ambitious climate and energy package, which requires well established and sustainable national systems. This, as well as our first year of participation in the Emission Trading Scheme has further motivated the increased pace and the scale of the measures we have undertaken. Because our efforts are not just to overcome one particular compliance issue, but to remain a reliable partner in the global climate change agenda.

Having said that let me share with you what we are planning as further steps and actions for an early resolution of the question of implementation:

1. We will be ready to provide a 2010 resubmission (CRF tables and NIR) and an updated Improvement plan by August 12, 2010;

2. We will present a request for an in-country expert review of BGNIS to be carried out in September-October 2010. Thus we wish to make use of our right in accordance with para 1, subpara 2 of Section X of Procedures and Mechanisms of Compliance Committee as well as recommendations contained in the ERT report and independent experts' opinions expressed at the hearing.

And finally, Mr. Chairman, let me express our hopes that the Enforcement Branch would duly acknowledge the substantive steps taken by my country and would revise its preliminary finding accordingly.

I thank you for your attention.