



## **Framework Convention on Climate Change**

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### **Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol**

Seventh session

Durban, 28 November to 9 December 2011

Item 9(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 sixth 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 19 September 2010 to 13 October 2011. The report provides a summary of the further consideration by the enforcement branch of the questions of implementation with respect to Bulgaria and Croatia and its consideration of three new questions of implementation with respect to Lithuania, Romania and Ukraine. It also contains information on discussions of the facilitative branch on provisions relating to facilitation, and discussions of the plenary of the Compliance Committee on issues relating to the status of reports of expert review teams and the consistency of reviews under Article 8 of the Kyoto Protocol.

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\* This document was submitted after the due date in order to take into account the outcomes of the ninth meeting of the plenary of the Compliance Committee, which took place on 13 October 2011.

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## **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 sixth annual report of the plenary of the Compliance Committee covers the period from 19 September 2010 to 13 October 2011. 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 the early adoption of legal arrangements for privileges and immunities and ensure that such arrangements cover the members and alternate members of the Compliance Committee;

(c) Extend the eligibility for funding related to the costs of travel and participation in meetings of the Compliance Committee to all members and alternate members of the Committee;

(d) Take note of the work of the Compliance Committee related to the consistency of reviews under Article 8 of the Kyoto Protocol and consider the proposal of the Committee related thereto, when it deems appropriate;

(e) 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.

## **II. Organizational matters**

5. The ninth meeting of the plenary of the Compliance Committee was held on 13 October 2011, in Bonn, Germany.

6. The facilitative branch met once in Bonn (from 11 to 12 October 2011) and the enforcement branch met four times in Bonn (from 3 to 4 February 2011, from 6 to 8 July 2011, from 22 to 27 August 2011 and from 11 to 12 October 2011).

7. The agenda and annotations, documentation supporting agenda items and the report on each meeting of the plenary of the Compliance Committee and of the facilitative and enforcement branches are available on the UNFCCC website.<sup>1</sup>

## **A. Membership of the Compliance Committee**

8. In accordance with rule 3, 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 4/CMP.4; hereinafter referred to as the rules of procedure), the term of office of each member and alternate member starts on 1 January of the calendar year immediately following his or her election and ends on 31 December two or four years thereafter, as applicable. The list of members and alternate members whose terms expire on 31 December 2011 is contained in annex I to this report.

9. 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 of office 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. Mr. Tahar Hadj-Sadok, a member of the Committee nominated by the African Group and elected to serve in the facilitative branch until 31 December 2011, resigned from the Committee as of 2 February 2011.<sup>2</sup> Since the resignation of Mr. Hadj-Sadok, Mr. Mohamed Nasr, elected as an alternate member, has been serving as a member of the Committee.

10. 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 elect five new members to serve in the facilitative branch, five new members to serve in the enforcement branch and an alternate member for each new member, respectively, all for a term of four years.

## **B. Transparency, communication and information**

11. In accordance with rule 9, paragraph 1, of the rules of procedure, the parts of the ninth meeting of the plenary of the Compliance Committee, the tenth meeting of the facilitative branch and the parts of the twelfth, thirteenth, fourteenth and fifteenth meetings of the enforcement branch that were held in public were recorded and broadcast on the Internet through the UNFCCC website.

12. In accordance with rule 12, paragraph 2, of the rules of procedure, all documents of the plenary of the Compliance Committee and of the enforcement and facilitative branches have been made available to the public through the UNFCCC website.<sup>3</sup>

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<sup>1</sup> <[http://unfccc.int/kyoto\\_protocol/compliance/items/2875.php](http://unfccc.int/kyoto_protocol/compliance/items/2875.php)>.

<sup>2</sup> In view of the fact that the term of Mr. Hadj-Sadok was due to expire on 31 December 2011, the CMP is not requested to elect a new member for the remainder of his term; see also paragraph 10 of this document.

<sup>3</sup> Documents relating to the plenary of the Compliance Committee are available at <[http://unfccc.int/kyoto\\_protocol/compliance/plenary/items/3788.php](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](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](http://unfccc.int/kyoto_protocol/compliance/enforcement_branch/items/3785.php)>.

### **C. Use of electronic means of decision-making**

13. During the reporting period, the bureau of the Compliance Committee used electronic means to take decisions on the allocation of three questions of implementation. The enforcement branch also used electronic means to take decisions on preliminary examination, expert advice, and the deferral of the completion of the review and assessment of Bulgaria's plan submitted under section XV, paragraph 2, of the procedures and mechanisms.

14. On 9 September 2011, a vote by electronic means was launched in relation to a draft decision to defer the consideration of the further written submission from Ukraine and the elaboration and adoption of a final decision with respect to Ukraine. The required majorities under section 2, paragraph 9, of the procedures and mechanisms were not achieved; therefore the decision to defer was not adopted. Details relating to the consideration of the question of implementation with respect to Ukraine by the enforcement branch are set out in chapter III.E below.

### **D. Privileges and immunities for members and alternate members of the Compliance Committee**

15. At its ninth meeting, the plenary of the Compliance Committee received an oral report by the secretariat on the current state of negotiations under the Subsidiary Body for Implementation on legal arrangements for privileges and immunities for individuals serving on constituted bodies under the Kyoto Protocol. Having considered the information provided, the Committee reiterated its earlier request that any such future legal arrangements should afford protection to members and alternate members of the Compliance Committee. It noted with concern the lack of progress in the resolution of this matter and emphasized the importance and urgency of conferring privileges and immunities to its members and alternate members.

### **E. Working arrangements relating to time frames**

16. The plenary of the Compliance Committee noted the delay in the enforcement branch's adoption of its preliminary finding with respect to Ukraine, which was due to the impossibility of reaching quorum at an earlier date (see chapter III.E below).

17. The plenary recalled that the enforcement branch is required to make every possible effort to adopt decisions within the time frames provided for in the procedures and mechanisms and the rules of procedure. It agreed that any decision to delay may only be taken as a last resort, for overriding reasons, and that it should result in the shortest possible delay.

### **F. Working arrangements relating to contact with a Party concerned**

18. At its eighth meeting, the plenary of the Compliance Committee agreed that, consistent with rule 4 of the rules of procedure, a member or alternate member:

(a) Is to refrain from discussing any matter related to a question of implementation pending before the Committee with agents, representatives or other persons representing a Party concerned;<sup>4</sup>

(b) Is to report forthwith, through the secretariat, to the bureau of the Compliance Committee, any approaches by an agent, representative or other person representing a Party concerned to discuss a matter related to a question of implementation pending before the Committee;

(c) May refer an agent, representative or other person representing a Party concerned to the secretariat for information on procedural matters related to a question of implementation pending before the Committee.

19. The plenary noted that the secretariat is available to provide, at the request of the Party concerned, information that is limited to procedural matters related to questions of implementation pending before the Committee.

### **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**

20. 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 (ERTs) of the centralized in-depth reviews of the fifth national communications of Austria, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, Spain, Sweden, Switzerland and Ukraine.

21. 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 reviews of the annual submissions submitted in 2010 (2010 ARR) by Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, European Union, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom of Great Britain and Northern Ireland.

22. 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 the annual inventories submitted in 2010 of Austria, Australia, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, European Union, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine and United Kingdom.

23. In accordance with section VI, paragraph 1, of the procedures and mechanisms, the secretariat forwarded to the Compliance Committee the 2010 ARRs of Lithuania, Romania and Ukraine, each of which indicated a question of implementation. In accordance with section VI, paragraph 2, of the procedures and mechanisms, the reports were also made

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<sup>4</sup> "Party concerned" is defined in section VI, paragraph 2, of the procedures and mechanisms as "the Party in respect of which the question of implementation is raised".

available to those Parties. Information on the work of the enforcement branch with respect to these questions of implementation is set out in chapters III.D, III.E and III.F below.

24. At its ninth meeting, the plenary of the Compliance Committee considered the information provided to it by the secretariat on the status of submission and review of the fifth national communications and the annual reports submitted under decision 15/CMP.1 by Parties included in Annex I to the Convention that are also Parties to the Kyoto Protocol, as contained in document CC/9/2011/3. Upon the request of the plenary, the secretariat also provided information on the dates of publication of review reports and the number and dates of resubmissions of common reporting format tables, national inventory reports or supplementary information under Article 7, paragraph 1, of the Kyoto Protocol made by Parties after the formal submission deadline, for consideration at its next meeting. The plenary noted that, for the 2010 annual submissions under Article 7, paragraph 1, of the Kyoto Protocol by Parties included in Annex I, 18 review reports out of 38 were completed later than one year after the due date of the annual submissions. The delays in publication ranged from a few days up to more than five months. The secretariat indicated that the delays could in large part be attributed to the extensive engagements of some Parties with the ERTs and the need to incorporate those Parties' comments into the review reports. The plenary noted that these delays have implications for the work of the Compliance Committee, which is required to deal with matters within strict time frames.

25. 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 at its future meetings.

26. At its ninth meeting, the plenary noted that, in its decision to reinstate Bulgaria's eligibility to participate in the mechanisms under Articles 6, 7 and 12 of the Kyoto Protocol, the enforcement branch had identified systemic issues that concern the review process under Article 8 of the Kyoto Protocol and the compliance system as a whole, which required urgent attention.<sup>5</sup> To enhance coordination between the review process under Article 8 of the Kyoto Protocol and the compliance system, arrangements were made for the chairperson and vice-chairperson of the enforcement branch to participate in the annual meetings of inventory lead reviewers, in particular with a view to addressing the need for consistency not only within the review process, but also between the review process and the work of the Compliance Committee.

27. At its ninth meeting, the plenary decided to convene a closed session to hear a report from the vice-chairperson of the enforcement branch on his participation in the eighth meeting of inventory lead reviewers, which was held from 21 to 22 March 2011 in Bonn, Germany. The overriding reason for holding this part of the meeting in private was the fact that the vice-chairperson was reporting back on a closed meeting. After the plenary had heard the report, it continued to consider the consistency in the review process in an open session.

28. The plenary discussed concrete suggestions for enhancing consistency in the review process, including the clarity of the reports of ERTs. It expressed its appreciation to the inventory lead reviewers for their willingness to enter into a dialogue with the Compliance Committee and its desire to continue the dialogue, and requested the secretariat to make arrangements for the bureau of the Compliance Committee to attend upcoming meetings of inventory lead reviewers, and to consider modalities for enhanced and continued cooperation. It recalled the proposal of the enforcement branch that future reports of ERTs include a list of problems identified by the ERT, clearly stating whether or not each problem relates to language of a mandatory nature, pursuant to paragraph 8 of the annex to decision 22/CMP.1, and the reason for such a determination. In addition, if the ERT decides

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<sup>5</sup> CC-2010-1-17/Bulgaria/EB, paragraph 14.

not to list a question of implementation in relation to an unresolved problem pertaining to language of a mandatory nature, the report should include an explanation of the basis of such a decision.<sup>6</sup> It agreed to bring this proposal to the attention of the CMP for its consideration when it deems appropriate.

29. The plenary invited the facilitative branch to further consider the issue of consistency with the assistance of the secretariat. The plenary agreed to continue its consideration of this issue at its next meeting.

30. The plenary noted that the enforcement branch had expressed the need to have access to the same training modules as the ERTs on accounting rules and reporting and review requirements, including in respect of land use, land-use change and forestry.<sup>7</sup> The secretariat made the necessary arrangements for members and alternate members of the enforcement branch to have access to those training modules. At its fourteenth meeting, the enforcement branch acknowledged the usefulness of the training modules for its work.<sup>8</sup> Since access to the training modules will also be useful for the work of the facilitative branch, the plenary requested the secretariat to make arrangements for all members and alternate members of the Compliance Committee to have access to them.

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

31. In the two preceding reporting periods, the enforcement branch considered two questions of implementation with respect to Croatia.<sup>9</sup> As part of its consideration, the branch adopted a final decision (CC-2009-1-8/Croatia/EB) on 26 November 2009. On 14 January 2010, Croatia lodged an appeal with the CMP against the final decision of the enforcement branch (FCCC/KP/CMP/2010/2). In response to an inquiry regarding the plan that Croatia was required to develop in accordance with section XV, paragraph 1, of the procedures and mechanisms, Croatia indicated, by a letter dated 8 March 2010, 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. At its sixth session, the CMP initiated, but was not able to complete, its consideration of Croatia's appeal.<sup>10</sup>

32. On 4 August 2011, by means of a communication to the secretariat, Croatia declared that it was withdrawing its appeal (FCCC/KP/CMP/2011/2). Furthermore, on 23 August 2011, Croatia wrote to the Secretary to the Compliance Committee indicating that Croatia intends to submit a plan referred to in section XV, paragraph 1, of the procedures and mechanisms and requesting the enforcement branch to reinstate its eligibility pursuant to section X, paragraph 2, of the procedures and mechanisms. Upon a request sent by the secretariat on behalf of the chairperson and vice-chairperson of the enforcement branch, on 13 September 2011 Croatia confirmed its understanding that it does not expect the branch to take action on its request before it submits the plan and provides further information that demonstrates that the questions of implementation with respect to the calculation of its assigned amount and its commitment period reserve have been resolved.

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<sup>6</sup> CC/EB/12/2011/2, paragraph 15.

<sup>7</sup> CC/EB/13/2011/2, paragraph 25.

<sup>8</sup> CC/EB/14/2011/2, paragraph 24.

<sup>9</sup> Details of the consideration that occurred in the two previous reporting periods can be found in chapter III.C of the fourth annual report of the Compliance Committee to the CMP (FCCC/KP/CMP/2009/17) and chapter III.B of the fifth annual report of the Compliance Committee to the CMP (FCCC/KP/CMP/2010/6).

<sup>10</sup> FCCC/KP/CMP/2010/12, paragraphs 67 and 68.



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

33. In the preceding reporting period, the enforcement branch considered a question of implementation with respect to Bulgaria.<sup>11</sup> As part of its consideration, the branch adopted a final decision on 28 June 2010 (CC-2010-1-8/Bulgaria/EB) confirming that Bulgaria was not in compliance with 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). Pursuant to that final decision, Bulgaria submitted a plan in accordance with section XV, paragraph 2, of the procedures and mechanisms. At its eleventh meeting, held on 16 September 2010, 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.

34. The plan was received by the branch on 4 October 2010, and on 25 October 2010 the enforcement branch decided to defer the completion of the review and assessment of the plan until after the publication of the 2010 ARR of Bulgaria (CC-2010-1-13/Bulgaria/EB). That report, contained in document FCCC/ARR/2010/BGR and Corr.1, was published and forwarded to the branch on 29 November 2010. Bulgaria submitted a request to reinstate its eligibility to participate in the mechanisms under Articles 6, 12 and 17 of the Kyoto Protocol (CC-2010-1-14/Bulgaria/EB) on 3 December 2010, and a progress report on the implementation of its Compliance Action Plan (CC-2010-1-15/Bulgaria/EB) on 28 January 2011. On 4 February 2011, the enforcement branch decided that there no longer continued to be a question of implementation and that Bulgaria is fully eligible to participate in the mechanisms under Articles 6, 12 and 17 of the Kyoto Protocol (CC-2010-1-17/Bulgaria/EB).

35. 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 II to this report.

### **D. Consideration by the enforcement branch of a question of implementation with respect to Romania**

36. On 12 May 2011, the Compliance Committee received a question of implementation indicated in the 2010 ARR of Romania.<sup>12</sup> The bureau of the Compliance Committee allocated the question of implementation to the enforcement branch on 16 May 2011. On 27 May 2011, the enforcement branch took a decision to proceed (CC-2011-1-2/Romania/EB) with the question of implementation.

37. The question of implementation relates to compliance with 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).

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<sup>11</sup> Details of the consideration that occurred in the previous reporting period can be found in chapter III.C of the fifth annual report of the Compliance Committee to the CMP (FCCC/KP/CMP/2010/6).

<sup>12</sup> FCCC/ARR/2010/ROU.

38. The enforcement branch received a written submission from Romania on 30 June 2011 and, on 7 July 2011, held a hearing at the request of Romania. In its preliminary finding, dated 8 July 2011 (CC-2011-1-6/Romania/EB), the branch reached the determination that Romania was not in compliance with the guidelines referred to in paragraph 37 above. After receiving a further written submission from Romania on 11 August 2011, the branch confirmed its preliminary finding in a final decision (CC-2011-1-8/Romania/EB) on 27 August 2011.

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

## **E. Consideration by the enforcement branch of a question of implementation with respect to Ukraine**

40. On 6 June 2011, the Compliance Committee received a question of implementation indicated in the 2010 ARR of Ukraine.<sup>13</sup> The bureau of the Compliance Committee allocated the question of implementation to the enforcement branch on 13 June 2011. On 29 June 2011, the enforcement branch took a decision to proceed (CC-2011-2-2/Ukraine/EB) with the question of implementation.

41. The question of implementation relates to compliance with 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).

42. The enforcement branch received a written submission from Ukraine on 3 August 2011 and, on 24 August 2011, held a hearing at the request of Ukraine. In its preliminary finding, dated 25 August 2011 (CC-2011-2-6/Ukraine/EB), the branch reached the determination that Ukraine was not in compliance with the guidelines referred to in paragraph 41 above.

43. On 2 September 2011, Ukraine submitted a request to defer the consideration of its further written submission and the elaboration and adoption of a final decision with respect to Ukraine, planned to take place during the fifteenth meeting of the enforcement branch, in view of the fact that the in-country review of the annual submission of Ukraine submitted in 2011 was scheduled for the same week and the individuals that would have to attend the fifteenth meeting of the enforcement branch on behalf of Ukraine would also need to participate in the in-country review. The enforcement branch considered the request made by Ukraine through a decision to postpone its fifteenth meeting by electronic means, which did not achieve the required majorities (see para. 14 above).

44. After receiving a further written submission from Ukraine, the branch confirmed its preliminary finding in a final decision (CC-2011-2-9/Ukraine/EB) on 12 October 2011.

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

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<sup>13</sup> FCCC/ARR/2010/UKR.

## **F. Consideration by the enforcement branch of a question of implementation with respect to Lithuania**

46. On 8 September 2011, the Compliance Committee received a question of implementation indicated in the 2010 ARR of Lithuania.<sup>14</sup> The bureau of the Compliance Committee allocated the question of implementation to the enforcement branch on 15 September 2011. On 4 October 2011, the enforcement branch took a decision to proceed (CC-2011-3-2/Lithuania/EB) with the question of implementation.

47. The question of implementation relates to compliance with 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) and the “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol” (annex to decision 15/CMP.1).

## **G. Consideration by the facilitative branch of provisions related to facilitation**

48. At its ninth meeting, the facilitative branch agreed to continue discussions at its tenth meeting on how it can fulfil 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. The branch continued its discussion on these issues on the basis of a background note prepared by the secretariat upon a request made by the chairperson of the branch (CC/FB/10/2011/2). The discussion demonstrated a convergence of views on the facilitative role of the branch. With respect to the mandate of the branch under section IV, paragraphs 4–6, of the procedures and mechanisms, there was broad agreement that paragraph 4 outlines the overall mandate of the branch to provide advice and facilitation to Parties in implementing the Kyoto Protocol, and to promote compliance by Parties with their commitments under the Kyoto Protocol, while paragraphs 5 and 6 address specific issues that the branch is mandated to address in the context of that overall mandate.

49. In relation to the overall mandate under section IV, paragraph 4, of the procedures and mechanisms, the branch considered that the reference to having to “take into account the circumstances pertaining to the questions before it” should not be interpreted to necessarily refer to questions of implementation. It is rather a reference to the issues before it, which could include questions of implementation. The action by the branch in the case of Monaco’s delay in submitting its fifth national communication was an example of the branch developing its practice pursuant to section IV, paragraph 4, in the absence of a question of implementation. Another example of a situation in which the branch could act under its overall mandate under section IV, paragraph 4, of the procedures and mechanisms was a referral by the enforcement branch of a question of implementation to the facilitative branch under section IX, paragraph 12, of the procedures and mechanisms.

50. The branch agreed that section IV, paragraph 5, of the procedures and mechanisms mandates it to address specific questions of implementation falling outside the mandate of the enforcement branch. Section IV, paragraph 6, on the other hand, mandates the branch to provide advice and facilitation with the aim of promoting compliance and providing for early warning of potential non-compliance, without reference to the need for a question of implementation.

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<sup>14</sup> FCCC/ARR/2010/LTU.

51. The branch was of the view that action under section IV, paragraphs 4–6, of the procedures and mechanisms is triggered by the reports submitted to the Compliance Committee under section VI, paragraphs 1–3, of the procedures and mechanisms. Such action may be triggered by reports submitted to the Compliance Committee under section VI, paragraph 3, of the procedures and mechanisms, as well as taking into account rule 24, paragraph 3, of the rules of procedure and the reports of the Conference of the Parties, the CMP and the subsidiary bodies under the Convention and the Kyoto Protocol. In its deliberation on such issues, the branch took note of the general procedures applicable to the consideration of questions of implementation contained in section VIII of the procedures and mechanisms.

52. In terms of the consequences to be applied by the branch under section XIV of the procedures and mechanisms, it was generally agreed that while subparagraphs (b) and (d) clearly refer to consequences to be applied by the branch in the case of a Party in relation to which a question of implementation has been raised (“the Party concerned” as defined in section VI, paragraph 2, of the procedures and mechanisms), subparagraphs (a) and (c) refer to consequences to be applied by the branch outside of its consideration of questions of implementation, in the context of its mandate under section IV, paragraphs 4 and 6, of the procedures and mechanisms.

53. With regard to the need to further clarify its practice and/or procedures on how to discharge its responsibilities, the branch agreed that it was premature to attempt to formalize its developing practice at this stage. The branch agreed to continue to develop its practice on the basis of the overall and specific mandates under section IV, paragraphs 4–6, of the procedures and mechanisms and the rules of procedure. In this context, rule 24, paragraphs 1 and 2, of the rules of procedure, which outline procedures to be followed by the branch in the context of its consideration of a question of implementation, should not be read as implying a limitation on the power of the branch to act in order to discharge its broader mandate under section IV of the procedures and mechanisms, as it did in the case of Monaco.

54. In the context of its mandate set out in section IV, paragraph 6(a), of the procedures and mechanisms, the facilitative branch also discussed ways to address concerns with regard to potential non-compliance by Parties with their commitments under Article 3, paragraph 1, of the Kyoto Protocol, identified in or on the basis of review reports received by it under section VI, paragraph 3, of the procedures and mechanisms.

55. The branch noted that its function of providing advice and facilitation under section IV, paragraph 6(a), of the procedures and mechanisms could be triggered only by the information contained in review reports made available to it pursuant to section VI, paragraph 3, of the procedures and mechanisms.

56. The branch agreed that, where concerns with regard to potential non-compliance by a Party are raised in a report under Article 8 of the Kyoto Protocol, it will consider how the matter can be best addressed, including by seeking further information from the relevant ERT or the Party involved, as appropriate.

57. The branch also noted the importance of applying the principles of due process and fair and equal treatment when considering whether and how it was appropriate to engage in the provision of advice and facilitation under section IV, paragraph 6(a), of the procedures and mechanisms in connection with a particular case arising from a report under Article 8 of the Kyoto Protocol.

58. In addition, the branch, in considering information submitted to it under section VI, paragraph 3, of the procedures and mechanisms, noted that the report of the in-depth review

of the fifth national communication of Italy<sup>15</sup> and the report of the individual review of the annual submission of Canada submitted in 2010<sup>16</sup> point to potential problems in the fulfilment of these Parties' commitments, which the branch considered to engage its role under section IV, paragraph 6(a), of the procedures and mechanisms relating to promoting compliance and providing for early warning of potential non-compliance.

59. In this regard, the branch agreed to continue its consideration of the information contained in all reports submitted to it under section VI, paragraph 3, of the procedures and mechanisms, including those relating to Canada and Italy, at its future meetings, with a view to determining any appropriate action it may need to take under section IV, paragraph 6(a), of the procedures and mechanisms.

60. Furthermore, the branch emphasized the importance of having all relevant reports available in time for its deliberations, in particular in the case of Parties which were subject to prior consideration by the branch. To that end, it requested the secretariat to facilitate the timely availability of relevant reports to the Compliance Committee.

61. The plenary of the Compliance Committee noted the discussions and consensus reached by the facilitative branch on the above issues. The consensus reached by the facilitative branch is without prejudice to the interpretation of the mandate of the enforcement branch. Outstanding issues were identified, notably the absence of procedures and the need to provide procedural safeguards to Parties, as well as the possible implications of interpretations of the procedures and mechanisms and the development of related practices by one branch for the work of the other, while ensuring consistency in this respect. The plenary agreed to continue discussions thereon at its next meeting.

62. The plenary also noted that the facilitative branch, at its ninth meeting, had agreed that it would continue to explore the development of a possible set of criteria for scheduling prioritization that could be used for the in-depth reviews of the sixth national communications, due in 2014.

#### **IV. Participation of members and alternate members**

63. Members and alternate members of the Compliance Committee are elected to serve in their individual capacities. In order for members and alternate members to maintain their independence, which is essential for the effective functioning of the Committee, and to ensure that a quorum to adopt decisions is reached at Committee meetings and that deliberations may be held at short notice, especially in the light of the increasing number of meetings of the enforcement branch, the Committee reiterates the recommendation that the eligibility for funding related to the costs of travel and participation in meetings of the Committee should be extended to all members and alternate members.<sup>17</sup>

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<sup>15</sup> FCCC/IDR.5/ITA.

<sup>16</sup> FCCC/ARR/2010/CAN.

<sup>17</sup> See paragraph 26 of the first annual report of the Compliance Committee to the CMP (FCCC/KP/CMP/2006/6), paragraph 27 of the second annual report of the Compliance Committee to the CMP (FCCC/KP/CMP/2007/6), paragraph 38 of the third annual report of the Compliance Committee to the CMP (FCCC/KP/CMP/2008/5) and paragraphs 34–36 of the fourth annual report of the Compliance Committee to the CMP (FCCC/KP/CMP/2009/17).

## **V. Availability of resources**

### **A. Budget for the work of the Compliance Committee**

64. For the biennium 2010–2011, it was envisaged that approximately 45 per cent of the approved core budget of the Legal Affairs Programme of the UNFCCC<sup>18</sup> would be used for activities related to the Compliance Committee. In addition, of the EUR 591,000 under the item “Support to the Compliance Committee” of the resource requirements of the Trust Fund for Supplementary Activities, contributions of EUR 142,401 were received for the biennium. The Committee expresses its thanks to the following Parties that made contributions to the Trust Fund for Supplementary Activities to support the work of the Compliance Committee in the biennium 2010–2011: Belgium, Japan and Switzerland.

### **B. Resources required for the biennium 2012–2013**

65. For the biennium 2012–2013, it is envisaged that approximately 40 per cent of the core budget of the Legal Affairs Programme of the UNFCCC that has been proposed for approval by the CMP at its seventh session would be used for activities related to the Compliance Committee.<sup>19</sup> In addition, EUR 417,700 is to be provided from the Trust Fund for Supplementary Activities.

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<sup>18</sup> See decision 12/CP.15 and FCCC/SBI/2009/2/Add.1, paragraph 65.

<sup>19</sup> See FCCC/SBI/2011/7/Add.1 and FCCC/SBI/2011/2/Add.1.

## Annex I

### Members and alternate members of the Compliance Committee whose terms expire on 31 December 2011

#### Enforcement branch

<i>Member</i>	<i>Alternate member</i>	<i>Group</i>
Mr. René J. M. Lefeber	Mr. Gerhard Loibl	Western Europe and Others
Mr. Mohamed Shareef	Ms. Mary Jane Mace	Small island developing States
Mr. Oleg Shamanov	Ms. Iryna Rudzko	Eastern Europe
Mr. Stephan Michel	Mr. Vidar Vik	Annex I Parties
Mr. Ilhomjon Rajabov	Mr. Ainun Nishat	Non-Annex I Parties

#### Facilitative branch

<i>Member</i>	<i>Alternate member</i>	<i>Group</i>
Mr. Marc Pallemmaerts	Mr. Adrian Roberts	Western Europe and Others
Mr. Pedro L. Pedroso Cuesta	Mr. Antonio Monteiro Lima	Small island developing States
Mr. Valeriy Sedyakin	Mr. Siarhei Nikitsin	Eastern Europe
Ms. Anna Dixelius	Mr. Nicola Notaro	Annex I Parties
Mr. Najmadeen Jalouta	Ms. Inar Ichsana Ishak	Non-Annex I Parties

## Annex II

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

#### Bulgaria (CC-2010-1/Bulgaria/EB)\*

<i>Title</i>	<i>Document no.</i>	<i>Date</i>
Decision to defer the completion of the review and assessment of the plan submitted under paragraph 2 of section XV	CC-2010-1-13/Bulgaria/EB	25 October 2010
Decision on expert advice	CC-2010-1-16/Bulgaria/EB	31 January 2011
Decision under paragraph 2 of section X with respect to Bulgaria	CC-2010-1-17/Bulgaria/EB	4 February 2011

#### Romania (CC-2011-1/Romania/EB)\*\*

<i>Title</i>	<i>Document no.</i>	<i>Date</i>
Decision on preliminary examination	CC-2011-1-2/Romania/EB	27 May 2011
Decision on expert advice	CC-2011-1-3/Romania/EB	3 June 2011
Preliminary finding	CC-2011-1-6/Romania/EB	8 July 2011
Final decision with respect to Romania	CC-2011-1-8/Romania/EB	27 August 2011

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\* Decisions with respect to Bulgaria are available at  
[http://unfccc.int/kyoto\\_protocol/compliance/questions\\_of\\_implementation/items/5538.php](http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/5538.php).

\*\* Decisions with respect to Romania are available at  
[http://unfccc.int/kyoto\\_protocol/compliance/questions\\_of\\_implementation/items/6030.php](http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/6030.php).



## Ukraine (CC-2011-2/Ukraine/EB)\*\*\*

<i>Title</i>	<i>Document no.</i>	<i>Date</i>
Decision on preliminary examination	CC-2011-2-2/Ukraine/EB	29 June 2011
Decision on expert advice	CC-2011-2-3/Ukraine/EB	6 July 2011
Preliminary finding	CC-2011-2-6/Ukraine/EB	25 August 2011
Final decision with respect to Ukraine	CC-2011-2-9/Ukraine/EB	12 October 2011

## Lithuania (CC-2011-3/Lithuania/EB)\*\*\*\*

<i>Title</i>	<i>Document no.</i>	<i>Date</i>
Decision on preliminary examination	CC-2011-3-2/Lithuania/EB	4 October 2011
Decision on expert advice	CC-2011-3-3/Lithuania/EB	11 October 2011

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\*\*\* Decisions with respect to Ukraine are available at  
 <[http://unfccc.int/kyoto\\_protocol/compliance/questions\\_of\\_implementation/items/6077.php](http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/6077.php)>.

\*\*\*\* Decisions with respect to Lithuania are available at  
 <[http://unfccc.int/kyoto\\_protocol/compliance/questions\\_of\\_implementation/items/6195.php](http://unfccc.int/kyoto_protocol/compliance/questions_of_implementation/items/6195.php)>.