

## **FINAL DECISION**

*Party concerned: Romania*

In accordance with the “Procedures and mechanisms relating to compliance under the Kyoto Protocol” contained in the annex to decision 27/CMP.1 and adopted under Article 18 of the Kyoto Protocol and the “Rules of procedure of the Compliance Committee of the Kyoto Protocol” (the rules of procedure),<sup>1</sup> the enforcement branch adopts the following final decision:

### **BACKGROUND**

1. On 8 July 2011, the enforcement branch adopted a preliminary finding of non-compliance with respect to Romania (CC-2011-1-6/Romania/EB). On 11 August 2011, the enforcement branch received a further written submission from Romania in accordance with paragraph 7 of section IX,<sup>2</sup> paragraph 1 (e) of section X and rule 17 of the rules of procedure (CC-2011-1-7/Romania/EB). The enforcement branch considered this further written submission in elaborating a final decision during its fourteenth meeting, held in Bonn from 22 to 27 August 2011.

2. In accordance with paragraph 1 (d) of rule 22 of the rules of procedure, the enforcement branch confirms that the Party concerned had an opportunity to comment in writing on all information considered.

### **CONCLUSIONS AND REASONS**

3. After full consideration of the further written submission from Romania, the enforcement branch concludes that there are not sufficient grounds provided in the submission to alter the preliminary finding of this branch. In this respect, the branch:

- (a) Notes with respect to Romania’s legal arguments regarding due process, equal treatment and proportionality: to the extent these arguments are raised with respect to the review process under the “Guidelines for review under Article 8 of the Kyoto Protocol” contained in the annex to decision 22/CMP.1, they are not within the mandate of the enforcement branch to address; to the extent these arguments are raised with respect to the consideration of the question of implementation by the enforcement branch, the branch applies the “Procedures and mechanisms relating to compliance under the Kyoto Protocol” contained in the annex to decision 27/CMP.1 and the rules of procedure, in which the concepts of due process, equal treatment and proportionality are embodied. These procedures implement Article 18 of the Kyoto Protocol and address cause, type, degree and frequency of non-compliance by applying different consequences to different categories of non-compliance;
- (b) Clarifies, with respect to paragraph 19 of the preliminary finding, that it considered all factual arguments raised by Romania in addressing the substance of the question of implementation before it, but that it is not within the mandate of the branch to assess whether the views of Romania were correctly reflected in the report of the review of the annual submission of Romania submitted in 2010 itself. The branch emphasizes that it reached its preliminary finding on the basis of the totality of the information before it.

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<sup>1</sup> All references to the rules of procedure in this document refer to the rules contained in the annex to decision 4/CMP.2 as amended by decision 4/CMP.4.

<sup>2</sup> All section references in this document refer to the “Procedures and mechanisms relating to compliance under the Kyoto Protocol” contained in the annex to decision 27/CMP.1.

4. The enforcement branch further notes that:
- (a) With respect to paragraph 16 of the preliminary finding, Romania, in its submissions, had acknowledged that “certain technical, institutional and organisational barriers have led to data collection activities so far being less pronounced than in some Annex II countries”,<sup>3</sup> but had not acknowledged “challenges relating to the improvement of its inventory”,<sup>4</sup>
  - (b) Romania has shown willingness and continued commitment, which is appreciated, to improve its national system, as evidenced by the information provided in its further written submission related to the strengthening of its national system and the improvements recently implemented with respect to its 2011 national greenhouse gas inventory;
  - (c) Further information on the design and implementation of the measures planned and initiated is required to enable the branch to review and assess the adequacy of these measures; and
  - (d) The plan to be developed and submitted to the branch by Romania under paragraph 24 (b) of the preliminary finding is to include information on the development and implementation of measures Romania is taking and intends to take in order to remedy the non-compliance, including further information on measures already planned and initiated, for review and assessment by the branch in accordance with paragraph 2 of section XV and paragraph 2 of rule 25 bis of the rules of procedure.

## DECISION

5. The branch confirms, in accordance with paragraph 8 of section IX, paragraph 1 (f) of section X, and rule 22 of the rules of procedure, the preliminary finding annexed hereto, which shall be deemed to form an integral part of this final decision.

6. The consequences set out in paragraph 24 of the preliminary finding shall take effect forthwith, and the consequences set out in paragraph 24 (c) of the preliminary finding shall be applied taking into account the guidelines adopted under Articles 6, 12 and 17 of the Protocol.

*Members and alternate members participating in the consideration and elaboration of the final decision:* Mohammad ALAM, Joseph AMOUGOU, Raúl ESTRADA-OYUELA, René LEFEBER, Mary Jane MACE, Stephan MICHEL, Sebastian OBERTHÜR, Ilhomjon RAJABOV, Oleg SHAMANOV, Mohamed SHAREEF.

*Members participating in the adoption of the decision:* Mohammad ALAM (alternate member serving as member), Joseph AMOUGOU (alternate member serving as member), Raúl ESTRADA-OYUELA, René LEFEBER, Stephan MICHEL, Sebastian OBERTHÜR, Ilhomjon RAJABOV, Oleg SHAMANOV, Mohamed SHAREEF.

This decision was adopted by consensus in Bonn on 27 August 2011, 11:03:20 Greenwich Mean Time.

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<sup>3</sup> Paragraph 1 of the further written submission from Romania (CC/2011-1-7/Romania/EB). See also paragraph 52 of the written submission from Romania (CC/2011-1-5/Romania/EB).

<sup>4</sup> Paragraph 1 of the further written submission from Romania (CC/2011-1-7/Romania/EB).

## Annex

### ENFORCEMENT BRANCH OF THE COMPLIANCE COMMITTEE

CC-2011-1-6/Romania/EB  
8 July 2011

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#### PRELIMINARY FINDING

*Party concerned: Romania*

In accordance with the “Procedures and mechanisms relating to compliance under the Kyoto Protocol” contained in the annex to decision 27/CMP.1 and adopted under Article 18 of the Kyoto Protocol and the “Rules of procedure of the Compliance Committee” (the rules of procedure),<sup>1</sup> the enforcement branch adopts the following preliminary finding:

#### BACKGROUND

1. On 11 May 2011, the secretariat received a question of implementation from an expert review team (the ERT), indicated in the report of the review of the annual submission of Romania submitted in 2010 (2010 ARR) and contained in document FCCC/ARR/2010/ROU. In accordance with paragraph 1 of section VI<sup>2</sup> and paragraph 2 of rule 10 of the rules of procedure, the question of implementation was deemed received by the Compliance Committee on 12 May 2011.
2. The bureau of the Compliance Committee allocated the question of implementation to the enforcement branch on 16 May 2011 under paragraph 1 of section VII, in accordance with paragraphs 4 (b) and (c) of section V and paragraph 1 of rule 19 of the rules of procedure.
3. On 17 May 2011, the secretariat notified the members and alternate members of the enforcement branch of the question of implementation, in accordance with paragraph 2 of rule 19 of the rules of procedure, and of its allocation to the enforcement branch.
4. On 27 May 2011, the enforcement branch decided, in accordance with paragraph 2 of section VII and paragraph 1 (a) of section X, to proceed with the question of implementation (CC-2011-1-2/Romania/EB).
5. 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; hereinafter referred to as the “guidelines for national systems”). In particular, the ERT found that the national system fails to perform some of the specific functions required by the guidelines for national systems in relation to inventory preparation. In addition, the ERT found that the national system is unable to comply with the requirements for the preparation of information under Article 7, paragraph 1, of the Kyoto Protocol, in particular for the land use, land-use change and forestry (LULUCF) activities under Article 3, paragraphs 3 and 4, of the Kyoto Protocol as set out in the “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol” and the “Definitions, modalities, rules and guidelines relating to land use, land-use change and forestry activities under the Kyoto Protocol” (annexes to decisions 15/CMP.1 and 16/CMP.1, respectively).<sup>3</sup>

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<sup>1</sup> All references to the rules of procedure in this document refer to the rules contained in the annex to decision 4/CMP.2 as amended by decision 4/CMP.4.

<sup>2</sup> All section references in this document refer to the “Procedures and mechanisms relating to compliance under the Kyoto Protocol” contained in the annex to decision 27/CMP.1.

<sup>3</sup> See paragraphs 20, 21, 27, 108, 142, 144, 178 and 185–187 of the report of the expert review team contained in FCCC/ARR/2010/ROU.

6. This question of implementation is related to the eligibility requirements referred to in paragraph 31 (c) of the annex to decision 3/CMP.1, paragraph 21 (c) of the annex to decision 9/CMP.1 and paragraph 2 (c) of the annex to decision 11/CMP.1. Consequently, the expedited procedures as contained in section X apply.

7. On 3 June 2011, the enforcement branch agreed to invite four experts drawn from the UNFCCC roster of experts to provide advice to the branch (CC-2011-1-3/Romania/EB). Two of these experts belonged to the ERT that reviewed Romania's 2010 annual submission.

8. On 14 June 2011, the enforcement branch received a request for a hearing from Romania (CC-2011-1-4/Romania/EB), which also indicated that Romania intended to make a written submission under paragraph 1 (b) of section X.

9. On 29 June 2011, the enforcement branch received a written submission (CC-2011-1-5/Romania/EB) in accordance with paragraph 1 of section IX, paragraph 1 (b) of section X, and rule 17 of the rules of procedure.

10. As requested by Romania on 14 June 2011, a hearing was held on 7 July 2011 in accordance with paragraph 2 of section IX and paragraph 1 (c) of section X. The hearing formed part of the meeting of the enforcement branch that was held from 6 to 8 July 2011 to consider the adoption of a preliminary finding or a decision not to proceed further. During the hearing, Romania made a presentation. The enforcement branch received advice from the four invited experts during the meeting.

11. In its deliberations, the enforcement branch considered the 2010 ARR, the written submission of Romania contained in document CC-2011-1-5/Romania/EB, information presented by Romania during the hearing and advice from experts invited by the branch. No competent intergovernmental or non-governmental organization provided any information under paragraph 4 of section VIII.

## CONCLUSIONS AND REASONS

12. From 20 to 25 September 2010, the ERT conducted a centralized review of Romania's 2010 annual submission in accordance with the "Guidelines for review under Article 8 of the Kyoto Protocol" (annex to decision 22/CMP.1; hereinafter referred to as the "guidelines for review"). The ERT found that Romania's 2010 annual submission was not sufficiently complete, accurate and transparent, as required by UNFCCC reporting guidelines,<sup>4</sup> the Revised 1996 Intergovernmental Panel on Climate Change (IPCC) Guidelines for National Greenhouse Gas Inventories (hereinafter referred to as the "revised 1996 IPCC guidelines"),<sup>5</sup> the IPCC Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories (hereinafter referred to as the "IPCC good practice guidance")<sup>6</sup> and the IPCC Good Practice Guidance for Land Use, Land-Use Change and Forestry (hereinafter referred to as the "IPCC good practice guidance for LULUCF")<sup>7</sup>

13. During the course of its technical review, the ERT found that the national system of Romania did not perform some of the specific functions required by the guidelines for national systems. In particular, it failed to:

- (a) Prepare estimates in accordance with the methods described in the revised 1996 IPCC guidelines, as elaborated by the IPCC good practice guidance and the IPCC good practice guidance for LULUCF, and ensure that appropriate methods are used to estimate emissions from key categories (paragraph 14 (b) of the guidelines for national systems);
- (b) Collect sufficient activity data, process information and emission factors as are necessary to support the methods selected for estimating anthropogenic greenhouse gas emissions

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<sup>4</sup> "Guidelines for the preparation of national communications by Parties included in Annex I to the Convention, Part I: UNFCCC reporting guidelines on annual inventories" contained in FCCC/SBSTA/2006/9.

<sup>5</sup> Available at <<http://www.ipcc-nggip.iges.or.jp/public/gl/invs1.htm>>.

<sup>6</sup> Available at <<http://www.ipcc-nggip.iges.or.jp/public/gp/english/>>.

<sup>7</sup> Available at <[http://www.ipcc-nggip.iges.or.jp/public/gp/lulucf/gp\\_lulucf.htm](http://www.ipcc-nggip.iges.or.jp/public/gp/lulucf/gp_lulucf.htm)>.

by sources and removals by sinks (paragraph 14 (c) of the guidelines for national systems).

14. In addition, the ERT noted that the national system of Romania was unable to comply with the requirements for the preparation of the information required under Article 7, paragraph 1, in particular for LULUCF activities under Article 3, paragraphs 3 and 4, of the Kyoto Protocol, notably paragraph 21 of the annex to decision 16/CMP.1 and paragraph 6 (e) of the annex to decision 15/CMP.1, noting particularly that:

- (a) The method used to estimate emissions and removals for forest management, which activity offsets 23.4 per cent of total national greenhouse gas emissions excluding LULUCF and is a key category, does not properly reflect the national circumstances and does not comply with the IPCC good practice guidance for LULUCF;
- (b) The activity data, processing of information and emission factors were insufficient for the preparation of a complete inventory of emissions and removals for the forest management activity and several pools were not reported.

15. During the hearing, the experts highlighted that the question of implementation raised resulted from a combination of severe unresolved problems across sectors pertaining to language of a mandatory nature with respect to the implementation of the specific functions set out in the guidelines for national systems. In particular, Romania did not apply appropriate higher-tier methods to estimate emissions from most key categories in accordance with the IPCC good practice guidance, a large number of subcategories were not estimated despite the availability of estimation methodologies, and the preparation of information on LULUCF activities under Article 3, paragraphs 3 and 4, of the Kyoto Protocol was not appropriate to national circumstances and did not comply with good practice. Furthermore, the transparency of Romania's submission was insufficient because of lack of documentation and justification of methods or of assumptions underlying the selection of emission factors and activity data, and the ERT had been unable to determine the extent to which the quality assurance/quality control plans were effectively implemented since a report of the implemented procedures and results was not provided. In addition, the experts pointed to the lack of progress in addressing numerous and important recommendations from previous review reports and the lack of provision of concrete information by Romania during the review process.

16. In its written submission and during the hearing, Romania acknowledged that it is facing challenges relating to the improvement of its inventory. Romania presented information on its national system and on the progress it has achieved, initiated and planned to strengthen its national system and improve its national greenhouse gas inventory. It highlighted that its inventory was gradually being improved and that funding for all relevant measures was being fully provided or committed. The measures planned and initiated include legal, institutional and procedural adjustments of the national system, including a significant increase of dedicated staff, as well as five studies to strengthen the national system and establish comprehensive data. Romania also raised a variety of factual and legal arguments relating to the review of Romania's 2010 annual submission and requested that the enforcement branch decide not to proceed further or alternatively refer the question of implementation to the facilitative branch in accordance with paragraph 12 of section IX. In addition, Romania presented additional information in the course of the hearing on how the measures planned and initiated relate to the specific unresolved problems identified by the ERT in the 2010 ARR.

17. Advising on the new information provided by Romania since the finalization of the 2010 ARR, the independent experts acknowledged that the measures planned and implemented and in particular the five studies initiated could potentially address the unresolved issues. However, they were not in a position to assess whether the measures planned and initiated, including these studies, would resolve the problems given the lack of information provided on their design and implementation. The experts also advised that a thorough review of an inventory submission incorporating and reflecting the results of these studies will be required to assess whether Romania's national system is operating in accordance with the guidelines for national systems and that it was difficult to see how the required improvements could be implemented before 2012 and, therefore, could become evident until the review of the 2012 annual submission.

18. After considering the 2010 ARR, the written submission of Romania, the presentation by Romania at the hearing and the presentations and advice received from the invited experts, the enforcement branch appreciated Romania's realization that improvements are required to the national system, the announcement of improvement plans and measures and the commitment shown to improve the national system. However, the enforcement branch noted that unresolved problems remained and that measures to address these unresolved problems were at an early stage of development or implementation. The branch further noted that earlier expert review teams had consistently indicated a need for substantial improvements in the national system of Romania in the reports of the review of the initial report of Romania,<sup>8</sup> the individual review of the greenhouse gas inventories of Romania submitted in 2007 and 2008<sup>9</sup> and the individual review of the annual submission of 2009,<sup>10</sup> but that such improvements have not been effected to date.

19. The enforcement branch took note of the factual and legal issues raised by Romania in relation to the individual review of its 2010 annual submission. With respect to the factual arguments relating to particular paragraphs in the 2010 ARR, the enforcement branch noted that in accordance with the guidelines for review Romania had the opportunity to provide its comments on the draft review report and to raise factual arguments with respect to these paragraphs. The branch further noted that Romania did provide other comments that were appropriately considered and incorporated by the ERT into the final report and that comments, raised for the first time in the written submission, should have been raised before the finalization of the 2010 ARR. With respect to the legal arguments, the branch noted that they failed to take into account the specificities of the legal regime governing the procedures and mechanisms relating to compliance under the Kyoto Protocol.

20. The enforcement branch concludes, based on the information submitted and presented, that the unresolved problems referred to in paragraphs 12 to 14 above resulted in non-compliance with the guidelines for national systems at the time of finalization of the 2010 ARR.

21. While Romania has submitted and presented information on positive steps it has undertaken since the finalization of the 2010 ARR, this information has not enabled the enforcement branch to conclude that the question of implementation has been resolved. The enforcement branch concludes that:

- (a) Romania needs to make further progress in the development and implementation of measures to ensure that the national system performs all the specific functions described in the guidelines for national systems;
- (b) An in-country review of Romania's national system, in conjunction with a review of an annual inventory submission that is generated by this system and reflects substantial progress in the areas of completeness, accuracy and transparency, is required for the enforcement branch to assess compliance with the guidelines for national systems.

22. Furthermore, the enforcement branch concludes that as long as there are unresolved problems pertaining to language of a mandatory nature relating to Romania's national system it is not appropriate to consider referral of the question of implementation to the facilitative branch under paragraph 12 of section IX.

## FINDING AND CONSEQUENCES

23. The enforcement branch determines that Romania is 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). Hence, Romania does not meet the eligibility requirements under Articles 6, 12 and 17 of the Kyoto Protocol to have in place a national system in accordance with Article 5, paragraph 1, of the Kyoto Protocol and the requirements and guidelines decided thereunder.

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<sup>8</sup> FCCC/IRR/2007/ROU.

<sup>9</sup> FCCC/ARR/2008/ROU.

<sup>10</sup> FCCC/ARR/2009/ROU.

24. In accordance with section XV, the enforcement branch applies the following consequences:
- (a) Romania is declared to be in non-compliance.
  - (b) Romania shall develop a plan referred to in paragraph 1 of section XV, in accordance with the substantive requirements of paragraph 2 of section XV and paragraph 1 of rule 25 bis of the rules of procedure, submit it within three months to the enforcement branch in accordance with paragraph 2 of section XV, and report on the progress of its implementation in accordance with paragraph 3 of section XV.
  - (c) Romania's eligibility to participate in the mechanisms is suspended in accordance with the relevant provisions under Articles 6, 12 and 17 of the Kyoto Protocol pending the resolution of the question of implementation.
25. These findings and consequences take effect upon confirmation by a final decision of the enforcement branch.

*Members and alternate members participating in the consideration and elaboration of the preliminary finding:* Mohammad ALAM, Sandea JGS DE WET, René LEFEBER, Mary Jane MACE, Stephan MICHEL, Ainun NISHAT, Sebastian OBERTHÜR, Ilhomjon RAJABOV, Iryna RUDZKO, Oleg SHAMANOV, Mohamed SHAREEF, Wei SU.

*Members participating in the adoption of the preliminary finding:* Sandea JGS DE WET, René LEFEBER, Stephan MICHEL, Sebastian OBERTHÜR, Ilhomjon RAJABOV, Oleg SHAMANOV, Mohamed SHAREEF, Wei SU.

This decision was adopted by consensus in Bonn on 8 July 2011.

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