

FINAL DECISION

Party concerned: Kazakhstan

In accordance with the “Procedures and mechanisms relating to compliance under the Kyoto Protocol”, contained in the annex to decision 27/CMP.1¹ and adopted under Article 18 of the Kyoto Protocol, and the “Rules of procedure of the Compliance Committee” (the rules of procedure),² the enforcement branch adopts the following final decision confirming its preliminary finding (CC-2019-1-5/Kazakhstan/EB).

I. BACKGROUND

1. On 30 April 2019, the enforcement branch adopted a preliminary finding of non-compliance with respect to Kazakhstan.
2. In accordance with paragraph 1 (e) of Section X, the due date for any further written submission from Kazakhstan was 13 June 2019. The secretariat informed the branch that no further written submission had been received from Kazakhstan by that due date.

II. REASONS AND CONCLUSIONS

3. The enforcement branch notes that Kazakhstan has not made a further written submission under paragraph 1 (e) of section X.
4. In the absence of a further written submission, in accordance with paragraph 7 of section IX and paragraph 1 (f) of section X, the enforcement branch is to forthwith adopt a final decision confirming its preliminary finding.

III. DECISION

5. The branch confirms, in accordance with 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 32 of the preliminary finding shall take effect forthwith.

Members and alternate members participating in the consideration and elaboration of the final decision:

Ms. Eva ADAMOVA, Mr. Joseph AITARO, Mr. Mohammad Sa'dat ALAM, Ms. Karoliina ANTTONEN, Mr. Zhihua CHEN, Ms. Rueanna HAYNES, Mr. Gerhard LOIBL, Mr. Leonardo MASSAI, Mr. Sébastien NGUYEN-BLOCH, Mr. Yaw OSAFO, Mr. Ahmad RAJABI, Mr. Orlando REY SANTOS, Ms. Iryna RUDZKO and Mr. Milan ZVARA.

¹ 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.

² 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.

Members participating in the adoption of the final decision:

Mr. Joseph AITARO, Mr. Mohammad Sa'dat ALAM, Ms. Karoliina ANTTONEN, Mr. Zhihua CHEN, Mr. Gerhard LOIBL, Mr. Yaw OSAFO, Mr. Ahmad RAJABI, Mr. Orlando REY SANTOS, Ms. Iryna RUDZKO and Mr. Milan ZVARA.

This decision was adopted unanimously in Bonn on 26 June 2019.

Annex

**PRELIMINARY FINDING ON QUESTIONS OF IMPLEMENTATION WITH RESPECT TO
KAZAKHSTAN**

Party concerned: Kazakhstan

In accordance with the “Procedures and mechanisms relating to compliance under the Kyoto Protocol”, contained in the annex to decision 27/CMP.1 (procedures and mechanisms)¹ and adopted under Article 18 of the Kyoto Protocol and the “Rules of procedure of the Compliance Committee of the Kyoto Protocol” (rules of procedure),² the enforcement branch adopts the following preliminary finding.

I. BACKGROUND

1. Kazakhstan notified the Depositary on 23 March 2000 that, in accordance with Article 4, paragraph 2 (g), of the Convention, it intended to be bound by Article 4, paragraphs 2 (a) and (b), of the Convention. Upon the entry into force of the Kyoto Protocol for Kazakhstan on 17 September 2009, it became a Party included in Annex I for the purposes of the Protocol in accordance with Article 1, paragraph 7, of the Protocol.³ Kazakhstan did not have a commitment inscribed in Annex B to the Kyoto Protocol in the first commitment period but has commitments inscribed in the third column of Annex B in the Doha Amendment as contained in the Annex to decision 1/CMP.8. However, it has not yet ratified the Doha Amendment.

2. On 18 February 2019, the secretariat received questions of implementation indicated in the report of the expert review team (ERT) on the review of the report to facilitate the calculation of the assigned amount for the second commitment period of the Kyoto Protocol of Kazakhstan contained in document FCCC/IRR/2017/KAZ (hereinafter, IRR).

3. On the same day, the secretariat also received questions of implementation indicated in the ERT report of the individual review of the annual submission of Kazakhstan submitted in 2017 contained in document FCCC/ARR/2017/KAZ (hereinafter, 2017 ARR). The 2017 ARR also included a disagreement on whether to apply adjustment.

4. In accordance with paragraph 1 of section VI and paragraph 2 of rule 10 of the rules of procedure, the questions of implementation referred to in paragraphs 2 and 3 above were deemed received by the Compliance Committee on 19 February 2019.

5. The bureau of the Compliance Committee allocated the questions of implementation to the enforcement branch on 28 February 2019 under paragraph 1 of section VII, in accordance with paragraphs 4 to 6 of section V and paragraph 1 of rule 19 of the rules of procedure.

6. On 28 February 2019, the secretariat notified the members and alternate members of the enforcement branch of the questions of implementation, in accordance with paragraph 2 of rule 19 of the rules of procedure, and of their allocation to the enforcement branch.

¹ 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.

² 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 decisions 4/CMP.4 and 8/CMP.9.

³ See also FCCC/KP/CMP/2009/21, paragraph 91.

7. On 14 March 2019, the enforcement branch decided, in accordance with paragraph 2 of section VII and paragraph 1 (a) of section X, to proceed with the questions of implementation (CC-2019-1-2/Kazakhstan/EB).

8. The questions of implementation contained in the IRR relate to compliance with the annex to decision 19/CMP.1⁴ in conjunction with decisions 3/CMP.11⁵ and 4/CMP.11⁶ and the annex to decision 13/CMP.1⁷ in conjunction with decision 3/CMP.11.⁸ In particular, the ERT concluded that the national system of Kazakhstan fails to perform some of the general and specific functions required in accordance with the annex to decision 19/CMP.1⁹ and that the national registry was not established at the time of the submission of the Kazakhstan report to facilitate the calculation of the assigned amount under the Kyoto Protocol or during the review.¹⁰ With regard to the availability of the national registry, the ERT also noted the mandatory requirement set out in paragraph 1(m) of Annex I to decision 2/CMP.8¹¹ that Parties included in Annex I that did not have a quantified emission limitation and reduction target in the first commitment period include the description of the registry reported in accordance with the provisions of decision 15/CMP.1¹² in conjunction with decision 3/CMP.11, in their reports to facilitate the calculation of the assigned amount under the Kyoto Protocol.¹³

9. The questions of implementation contained in the 2017 ARR relate to compliance with the methodological and reporting requirements contained in the decision 2/CMP.8, decision 3/CMP.11 and decision 15/CMP.1.¹⁴ In particular, the ERT concluded that Kazakhstan failed to provide the information to be included in annual greenhouse gas inventories on land use, land use change and forestry (LULUCF) activities under Article 3, paragraphs 3 and 4, of the Kyoto Protocol required under paragraphs 2(b), 2(d), 2(e), 4(a), 4(b), 5(a), 5(b), 5(c) and 5(e) of annex II to decision 2/CMP.8.¹⁵ The ERT also concluded that Kazakhstan did not submit the standard electronic format (SEF) tables for the years 2013-2016 and other related information on accounting of Kyoto Protocol units required under paragraphs 12 to 18 of the annex to decision 15/CMP.1 in conjunction with decision 3/CMP.11 and in decision 3/CMP.11, in particular, paragraph 13.¹⁶

10. The questions of implementation with respect to the annex to decision 19/CMP.1 and the annex to decision 13/CMP.1, both in conjunction with decision 3/CMP.11 and 4/CMP.11, are related to the eligibility requirements referred to in paragraph 31(c) and (d), annex to decision 3/CMP.1,

⁴ Decision entitled “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”.

⁵ Decision entitled “Implications of the implementation of decisions 2/CMP.7 to 4/CMP.7 and 1/CMP.8 on the previous decisions on methodological issues related to the Kyoto Protocol, including those relating to Articles 5, 7 and 8 of the Kyoto Protocol, part I: implications related to accounting and reporting and other related issues”.

⁶ Decision entitled “Implications of the implementation of decisions 2/CMP.7 to 4/CMP.7 and 1/CMP.8 on the previous decisions on methodological issues related to the Kyoto Protocol, including those relating to Articles 5, 7 and 8 of the Kyoto Protocol, Part II: Implications related to review and adjustments and other related issues”.

⁷ Decision entitled “Modalities for the accounting of assigned amounts under Article 7, paragraph 4, of the Kyoto Protocol”.

⁸ See paragraph 5 of the IRR.

⁹ See, in particular, table 3, IDs #15 and 16, of the IRR.

¹⁰ See, in particular, table 3, ID #18, of the IRR.

¹¹ Decision entitled “Implications of the implementation of decisions 2/CMP.7 to 5/CMP.7 on the previous decisions on methodological issues related to the Kyoto Protocol, including those relating to Articles 5, 7 and 8 of the Kyoto Protocol”.

¹² Decision entitled “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol”.

¹³ See, in particular, table 3 ID #18, of the IRR.

¹⁴ Decision entitled “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol”.

¹⁵ See, in particular, table 5, ID #KL.1, of the ARR.

¹⁶ See, in particular, table 5, ID #G14, of the ARR.

paragraph 21(c) and (d) annex to decision 9/CMP.1 and paragraph 2(c) and (d), annex to decision 11/CMP.1. The questions of implementation with respect to decision 2/CMP.8, the annex to decision 15/CMP.1 in conjunction with decision 3/CMP.11, and decision 3/CMP.11 are related to the eligibility requirement referred to in paragraph 31(e), annex to decision 3/CMP.1, paragraph 21(c), annex to decision 9/CMP.1 and paragraph 2(e), annex to decision 11/CMP.1. Consequently, the expedited procedures as contained in paragraph 1 of section X apply to the consideration by the branch of these questions of implementation.

11. In deciding to proceed with the questions of implementation, the enforcement branch decided to seek expert advice on the content and basis of the IRR and the 2017 ARR and on issues related to any decision of the enforcement branch with regard to the indicated questions of implementation and the disagreement whether to apply an adjustment (CC-2019-1-2/Kazakhstan/EB, paragraph 14).

12. On 1 April 2019, the enforcement branch agreed to invite two experts drawn from the UNFCCC roster of experts to provide advice to the branch (CC-2019-1-3/Kazakhstan/EB). One of these experts was part of the ERT which conducted the review of the report to facilitate the calculation of the assigned amount for the second commitment period of the Kyoto Protocol of Kazakhstan and the review of the 2017 annual submission of Kazakhstan.

13. In accordance with the relevant timelines set out in the procedures and mechanisms and the rules of procedure, the questions of implementation contained in the IRR and the 2017 ARR¹⁷ and the notification on the decision to proceed,¹⁸ which included a reminder about the possibility to request a hearing and the deadline for making the written submission,¹⁹ were forwarded to the diplomatic agent of Kazakhstan with a copy to the national focal point of Kazakhstan.

14. No request for a hearing from Kazakhstan under paragraph 1(c) of section X was received by the branch.

15. Kazakhstan did not make a written submission in accordance with paragraph 1 of section IX, paragraph 1(b) of section X, and rule 17 of the rules of procedure. It did, however, subsequently send a communication to the secretariat on 26 April 2019 which contained a part entitled “written submission”.

16. From 29 to 30 April 2019, the enforcement branch held its thirty-third meeting in Bonn to consider the questions of implementation with respect to Kazakhstan as well as to consider the disagreement whether to apply adjustment.²⁰ Kazakhstan did not make an oral statement at the meeting, but the members and alternate members of the branch were able to pose questions to Kazakhstan. During the meeting, the branch also received advice from the two invited experts.

17. At the same meeting, the enforcement branch adopted a decision on whether to apply the adjustment referred to in paragraphs 3 and 11 above as contained in document CC-2019-1-5/Kazakhstan/EB.

18. No competent intergovernmental or non-governmental organization submitted any information under paragraph 4 of section VIII.

¹⁷ Section VI, paragraph 2.

¹⁸ Section VII, paragraph 4.

¹⁹ Section X, paragraph 1(b) and (c).

²⁰ Item 4 of the agenda of the thirty-third meeting of the enforcement branch, contained in document CC/EB/33/2019/1.

II. INFORMATION SUBMITTED, PRESENTED AND CONSIDERED

19. In its deliberations, the enforcement branch considered the review reports referred in paragraphs 2 and 3 above, the advice provided by the invited experts, as well as the information provided by Kazakhstan during the thirty-third meeting of the enforcement branch.

20. In its interventions during the meeting, Kazakhstan provided additional information with regard to the questions of implementation related to the functioning of the national system referred to in paragraph 8 above. In particular, it informed the Committee that some of the modalities for inter-agency relations as well as the challenges related to procurement that led to the delays in the submission of the national inventory reports in the previous years are expected to be addressed through the provisions of the new environmental code due to be adopted in 2020. The representatives of Kazakhstan also noted that most of the data in their national inventory reports are based on the national statistical data, although the data provided by companies and enterprises is improving over the years too. Kazakhstan also noted in its communication referred to in paragraph 15 above that it did not intend to ratify the Doha Amendment in the next years and therefore it only developed a registry that would allow for an internal emissions trading.

III. REASONS AND CONCLUSIONS

21. The enforcement branch recalls that Kazakhstan has inscribed a commitment for the second commitment period of the Kyoto Protocol and recognizes the efforts made by Kazakhstan to start the implementation process at the national level, including by submitting the initial report and annual submissions. Furthermore, the branch notes with appreciation the efforts made by Kazakhstan in this regard to-date, including the current plans to revise some of the legislative and regulatory acts to improve the institutional arrangements to implement the Protocol (see paragraph 20 above).

22. However, the branch also notes that the steps taken so far have not resulted in addressing the issues identified in the questions of implementation, in particular concerning Article 5, paragraph 1, and Article 7 of the Kyoto Protocol. The decisions adopted by the CMP, referred to in paragraphs 8, 9 and 10 above, require any Party which sets out to establish its assigned amount by submitting a report to facilitate the calculation of the assigned amount to reflect the mandatory requirements in the report, including the information on the functioning of the national system and registry. They also require such Parties to have in place a fully functioning national system and national registry at the time of the submission of the report and to submit their national inventory reports within the deadlines set out in the relevant decisions.

23. The branch fully recognizes that it is a prerogative of each State to determine whether and when to ratify a particular treaty or an amendment to a treaty. However, some unresolved problems pertaining to language of a mandatory nature identified in the questions of implementation arise from the provisions of the Protocol which continue to be in force, such as those under Articles 7 and 8. The branch also notes that Kazakhstan submitted its report to calculate the assigned amount as well as annual inventory reports for all the years of the second commitment period and has undergone the review process under Article 8 of the Kyoto Protocol in 2018. Moreover, if the Amendment enters into force for Kazakhstan towards the end of the commitment period, Kazakhstan would need to have in place all the arrangements necessary to demonstrate meeting its commitment inscribed in the Amendment.

IV. FINDINGS

24. The enforcement branch determines that Kazakhstan is not in compliance with the “Guidelines for the preparation of the information required under Article 7 of the Kyoto Protocol” (annex to decision 15/CMP.1 in conjunction with decision 3/CMP.11 and decision 2/CMP.8), the “Guidelines for national systems for the estimation of anthropogenic greenhouse gas emissions by sources and removals by sinks under Article 5, paragraph 1, of the Kyoto Protocol” (annex to decision

19/CMP.1 in conjunction with decision 3/CMP.11), the methodological and reporting requirements contained in the decision 2/CMP.8, decision 3/CMP.11 and decision 15/CMP.1, and the national registry requirements contained in Section II of decision 13/CMP.1 in conjunction with decision 3/CMP.11. Hence, Kazakhstan has not yet met the eligibility requirements under Articles 6, 12 and 17 of the Kyoto Protocol.

25. These findings shall take effect upon confirmation by a final decision of the branch.

V. CONSEQUENCES

26. In accordance with section XV, the enforcement branch applies the following consequences with respect to the unresolved problems referred to in paragraphs 8 and 9 above:

- (a) Kazakhstan is declared to be in non-compliance;
- (b) Kazakhstan 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) Kazakhstan is not eligible to participate in the mechanisms under Articles 6, 12 and 17 of the Kyoto Protocol pending the resolution of the questions of implementation.

27. These consequences shall 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:

Ms. Eva ADAMOVA, Ms. Karoliina ANTTONEN, Mr. Nauman BHATTI, Ms. Rueanna HAYNES, Mr. Gerhard LOIBL, Ms. Marília T. ANTONÍO MANJATE, Mr. Yaw OSAFO, Mr. Ahmad RAJABI, Mr. Orlando REY SANTOS, and Mr. Milan ZVARA.

Members participating in the adoption of the preliminary finding:

Ms. Eva ADAMOVA (alternate member serving as member), Ms. Karoliina ANTTONEN, Mr. Nauman BHATTI (alternate member serving as member), Ms. Rueanna HAYNES (alternate member serving as member), Mr. Gerhard LOIBL, Ms. Marília T. ANTONÍO MANJATE, Mr. Yaw OSAFO, Mr. Ahmad RAJABI, Mr. Orlando REY SANTOS, and Mr. Milan ZVARA.

This decision was adopted by consensus in Bonn on 30 April 2019.

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