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17th Meeting of the Compliance Committee of the Barcelona Convention
and its Protocols

Teleconference, 10-11 June 2021

Agenda Item 2: Adoption of the Agenda and Organization of Work

Report of the 16th Meeting of the Compliance Committee of the Barcelona and its Protocols (Teleconference, 16-18 June 2020 and 27-28 January 2021)

Note of the Secretariat

This Report is the result of intersessional consultation and agreement among Members and Alternate Members of the Compliance Committee following the 16th Meeting of the Compliance Committee of the Barcelona Convention and its Protocols (Teleconference, 16-18 June 2020 and 27-28 January 2021).

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UNEP/MAP
Athens, 2021



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16th Meeting of the Compliance Committee of the Barcelona Convention
and its Protocols

Teleconference, 16-18 June 2020 and 27-28 January 2021

Report of the Meeting

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UNEP/MAP
Athens, 2021

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Report of the 16th Meeting of the Compliance Committee (16-18 June 2020 and 27-28 January 2021)

Session of 16-18 June 2020

Agenda Item 1: Opening of the Meeting

1. The 16th Meeting of the Compliance Committee of the Barcelona Convention and its Protocols was held on 16-18 June 2020, by teleconference. The list of participants is at **Annex I** to this report.
2. Having the Secretariat ascertained the existence of the required quorum, Odeta Cato, Chairperson of the Compliance Committee, welcomed the participants and opened the meeting by pointing out at the broad agenda ahead dictated by the ambitious 2020-2021 Programme of Work of the Compliance Committee adopted by the 21st Ordinary Meeting of the Contracting Parties to the Barcelona Convention (COP 21) (Naples, Italy, 2-5 December 2019).
3. Gaetano Leone, UNEP/MAP Coordinator, welcomed the participants and highlighted that at these challenging times marked by the global COVID-19 pandemic, UNEP/MAP work continues in support of the implementation of the Barcelona Convention and its Protocols, and that the present virtual meeting was an example of adaptation to the extraordinary circumstances dictated by the pandemic. He thanked all participants for their flexibility and informed them that since online interpretation was still in development phase from UN side, the Secretariat would provide linguistic support to assist during discussions as much as possible.
4. The UNEP/MAP Coordinator also referred to COP 21 Decision IG. 24/1 entitled “Compliance Committee”, as instrumental in enhancing compliance with the Barcelona Convention and its Protocols. In this context, he stressed that UNEP/MAP remains as committed as ever to strengthening the enforcement of the Barcelona Convention and its Protocols to ensure the protection of the environment and people in the Mediterranean region. The Naples Ministerial Declaration reaffirms this commitment of the Contracting Parties to the Barcelona Convention, and the Compliance Committee is called upon to play a leading role in this area. In his closing remarks, Gaetano Leone underlined the need to keep on working in that direction by effectively addressing the rich agenda before the Committee.

Agenda Item 2: Adoption of the Agenda and Organization of Work

5. Odeta Cato introduced the Agenda of the meeting, which triggered general observations on how to structure future meetings so that presentations from guests are hosted online, and on the need to explore the possibility of holding a face-to-face meeting to address the points the Compliance Committee deems necessary, before the 17th Meeting of the Compliance Committee and as long as the restrictions imposed by the COVID-19 pandemic permit.
6. The Compliance Committee adopted the Provisional Agenda (UNEP/MED CC.16/1) without amendment and agreed upon the proposed timetable to conduct its work (UNEP/MED CC.16/3). The Agendas of both sessions of the meeting are presented at **Annex II** to this report.
7. In line with the Rules of Procedure of the Compliance Committee (Decision IG. 21/1), the Compliance Committee formally adopted the report of the 15th Meeting of the Compliance Committee (Athens, Greece, 27-29 June 2019) (UNEP/MED CC.16/4).

Agenda Item 3: Election of Officers of the Compliance Committee for the biennium 2020-2021

8. The Compliance Committee was invited to elect a Chairperson and two Vice-Chairpersons from among its officers for the biennium 2020-2021, in accordance with Rule 10 of its Procedures and Mechanisms and Rule 6 of its Rules of Procedure.
9. Gaetano Leone, stressed that, in line with the Procedures and Mechanisms on Compliance and the Rules of Procedure of the Compliance Committee, equitable geographical representation and rotation had informed the election of the Chair of the Compliance Committee since its inception in

2008, making sure that all Groups¹ were represented on a rotational basis. The Secretariat orally informed the meeting that all Groups had had the opportunity to chair for two biennia the Compliance Committee since its first meeting in 2008 as follows: (1) Group II: from the 1st Meeting of the Compliance Committee to the 3rd Meeting of the Compliance, and from the 9th Meeting of the Compliance Committee Meeting to the 11th Meeting of the Compliance Committee; (2) Group I: from the 4th Meeting of the Compliance Committee to the 8th Meeting of the Compliance Committee and, (3) Group III: from the 12th Meeting of the Compliance Committee to the 15th Meeting of the Compliance Committee. The Secretariat highlighted that equitable geographical representation and rotation shall be determining factors in electing the Chair of the Compliance Committee.

10. The Secretariat also pointed out a set of additional considerations for the election process, mainly: (1) that in order to ensure the continuity of the work of the Compliance Committee, when proceeding with the election of its officers, it would be wise to consider at least an officer to hold the tenure beyond COP 22, (2) that it would be equally desirable to strike a balance between experienced Members and new Members, as well as (3) to take into consideration gender parity, in line with the UN Strategy on Gender Parity. The Secretariat orally informed the meeting of the Members of the Compliance Committee elected by COP 21 until COP 23.

11. In the ensuing discussion, the Compliance Committee considered different scenarios ranging: (1) from the current Chair (Group III) and Vice-Chairs (Groups I and II) to continue, (2) to the current Chair (Group III) to continue but electing new Vice-Chairs from Groups I and II, and (3) to electing a new Chair from Group I, so the principle of equitable geographical representation and rotation takes the lead, and Vice-Chairs from Groups II and III. The Committee also considered the expression of interest of members from all Groups to be elected as Chair or Vice-Chairs.

Conclusions and Recommendations

The Compliance Committee elected for the biennium 2020-2021 the following officers:

- **Odetta CATO (Group III) as Chairperson of the Compliance Committee;**
- **Samira HAMIDI (Group I) as Vice-Chairperson of the Compliance Committee; and**
- **Bernard BRILLET (Group II) as Vice-Chairperson of the Compliance Committee.**

Agenda Item 4: 2016-2017 National Implementation Reports under Article 26 of the Barcelona Convention: Status, Key Findings and Recommendations

12. The Secretariat introduced document UNEP/MED CC.16/5, which presented: (a) the status of reporting for the biennium 2016-2017 as of 17 April 2020, (b) key findings identifying general issues of compliance and main difficulties in implementation, and (c) recommendations to promote compliance with the Barcelona Convention and its Protocols.

13. On the status of reporting, the Secretariat referred to document UNEP/MED CC.16/Inf. 2, and informed the meeting that the process of submission through the online Barcelona Convention Reporting System (BCRS) was still on and that at present figures showed that 60 per cent of Parties (13 out of 22) had submitted all their national implementation reports. The Secretariat also informed the meeting that pursuant to COP 21 Decision IG.24/1, whereby Contracting Parties were invited “to submit their national implementation reports for the biennium 2018-2019 using the new online Barcelona Convention Reporting System by December 2020”, a letter had been sent from the Coordinator to MAP Focal Points stressing that the submission of national implementation reports is an obligation under article 26 of the Barcelona Convention, essential for the evaluation of the state of implementation of the Convention and its Protocols. The letter was accompanied by the general guidance to reporting prepared by the 15th Meeting of the Compliance Committee (Athens, Greece, 25-

¹ By COP 15 Decision IG. 17/2, the following three groups were set up for the purpose of establishing the composition of the Compliance Committee. Group I: Southern and Eastern Mediterranean countries (Algeria, Egypt, Lebanon, Libya, Morocco, Syria and Tunisia), Group II: EU Member States which are Party to the Barcelona Convention (Croatia, Cyprus, Greece, France, Italy, Malta, Slovenia, Spain and the EC), and Group III: Other Parties (Albania, Bosnia and Herzegovina, Israel, Monaco, Turkey and Montenegro)

26 June 2019). In closing this point, the Secretariat updated the meeting of the submission of national implementation reports corresponding to the 2012-2013 and 2014-2015 biennia, by pointing out that reports were still pending from Libya and Syria, and that the Secretariat was working with them to facilitate the submission of their national implementation reports step-by-step and as soon as possible.

14. As regards the key findings, the Secretariat explained that they had been drafted taking as basis the Synthesis of the Information Contained in the 2016-2017 National Implementation reports per Contracting Party (UNEP/MED CC. 16/Inf.3) and the General Status of Progress in the Implementation of the Barcelona Convention and its Protocols (UNEP/MED CC. 16/Inf.4). Key findings identify general issues affecting the compliance of a number of reporting Contracting Parties with respect to their obligations under the Barcelona Convention and its Protocols as well as main difficulties in implementation. Regarding the recommendations associated to the key findings, the Secretariat indicated that they addressed many diverse areas of work to promote compliance with the Barcelona Convention and its Protocols, including recommendations aimed at tackling the difficulties reported in implementation.

15. In the ensuing discussion, the following key points were made:

- a. effective action undertaken with the aim to increase reporting rates included letters from the Coordinator to MAP Focal Points encouraging timely and quality reporting, follow-up of the Secretariat and MAP Components with Contracting Parties on an individual basis to support reporting, further simplification of the online BCRS and high-level missions undertaken by the Coordinator with Contracting Parties, in the framework of which reporting issues are addressed, as appropriate. Efforts should continue in that direction in order to achieve 100 per cent submission;
- b. article 26 of the Barcelona Convention establishes the obligation of reporting. As discussed at COP21, the failure to comply with it should lead the Compliance Committee on a case-by-case basis and within its mandate to trigger the compliance mechanism, leading to the consideration of the measures laid down in Section VII of the Procedures and Mechanisms of Compliance;
- c. the key findings and associated recommendations should be understood within the limitations which arise from the fact that not all Contracting Parties have submitted their national implementation reports for the 2016-2017 biennium; the limited number of Contracting Parties to some Protocols, and additionally, the difference in the amount of information submitted by Contracting Parties in their national implementation reports;
- d. before discussing the key findings and associated recommendations to promote compliance corresponding to the 2016-2017 national implementation reports, it would be beneficial to know whether and to what extent Contracting Parties have followed the Compliance Committee recommendations tabled at COP21. Feedback from Contracting Parties in that regard would be of great value in formulating recommendations to COP22, thus enhancing the effectiveness of the Compliance Committee in facilitating and promoting compliance with the Barcelona Convention and its Protocols;
- e. the fact that COP21 only took note of the Compliance Committee's recommendations clearly indicates that there is a need to raise the profile of the work of the Committee, by increasing effectiveness in presenting its recommendations to COP, thus optimizing decision-making discussion. This requires the establishment of communication avenues with Contracting Parties, for instance through the Bureau and MAP Focal Points meetings, in order for the Compliance Committee to obtain first-hand feedback and on that basis to restructure work in preparing recommendations to COP;
- f. there is great value in the Compliance Committee's participation in the Bureau and MAP Focal Points meetings. Strengthening interaction with Contracting Parties is of paramount importance for the Compliance Committee to effectively meet its objective of facilitating and promoting compliance with the Barcelona Convention and its Protocols;
- g. the modalities of engagement through the Bureau and MAP Focal Points should be clearly defined to maximize synergies. It was generally felt that as a point of departure, presenting at the Bureau under the relevant agenda item a strategic document rather than a technical one

seeking feedback on core points would be beneficial for reinforcing the effective functioning of the Compliance Committee;

- h. other avenues that could be potentially explored in the future for the Compliance Committee to reach policy makers at the highest level may include contacting ministries, e.g. Foreign Affairs;
- i. recommendations to promote compliance should address both general compliance issues and specific compliance situations with individual Parties. This would allow a direct interaction with the Contracting Parties concerned on the basis of a “name and explain” approach; and
- j. to provide a higher level of detail about the challenges reported in implementation including specific indication on the kind of support needed by Contracting Parties would be highly beneficial in order to target assistance in key areas. There is a need to articulate cooperation among Contracting Parties and through the Compliance Committee to effectively address difficulties in reporting and implementation.

16. Based on discussion, the Compliance Committee agreed as below.

Conclusions and Recommendations

The Compliance Committee:

- a. welcomed the submission of 2016-2017 national implementation reports, and urged those Contracting Parties who have not yet done to submit their national implementation reports using the on-line Barcelona Convention Reporting System (BCRS) as a matter of priority;**
- b. encouraged Contracting Parties to submit their national implementation reports for the biennium 2018/19 using the BCRS within the deadline of December 2020, as agreed in COP 21 Decision IG.24/1;**
- c. urged Libya and Syria to continue their efforts towards the submission of their national implementation reports for the reporting periods 2012-2013 and 2014-2015 as a matter of priority; and**
- d. agreed on the recommendations to promote compliance with the Barcelona Convention and its Protocols as contained in document UNEP/MAP CC.16/5 and asked the Secretariat to update them in preparation for the 17th Compliance Committee Meeting as new national implementation reports for the biennium 2016-2017 are received from Contracting Parties.**

Agenda Item 5: Results of the Testing of the Draft Criteria for Preliminary Identification of Actual or Potential Cases of Non-Compliance

17. The Secretariat introduced document UNEP/MED CC.16/6, which presented the methodology applied in testing the criteria of submission, timelines, completeness and implementation against a set of 2016-2017 national implementation reports. The testing was conducted following-up on the conclusions of the 15th Meeting of the Compliance Committee (Athens, Greece, 25-26 June 2019), and the results of it per legal instrument and Contracting Party were presented in document UNEP/MED CC. 16/Inf.5.

18. In explaining the methodology used for the testing, the Secretariat indicated that to test completeness, whether or not an answer was provided per each question of the reporting format was checked. In doing so, per each item of the reporting format the answer to the question on status, which requires to tick the box that applies (i.e. “yes”, “no”, “under development” or “not applicable”) was reviewed. Should the box be ticked, the response was considered as complete. Should the box be left blank, a second step was taken by checking whether there was narrative text or reference to information submitted in the previous national implementation reports. In both cases, the information provided was taken into consideration and the response considered as complete. Should all responses be considered as complete, the status would be “fully reported”. To test implementation, per each item of the reporting format covering the sections on the legal and institutional framework, the percentage of “yes” or “not applicable” answers given to the questions on the status of implementation was checked. Should a report contain “yes” and/or “not applicable” responses over 50 per cent, the status as to the concerned legal instrument was considered as “implemented”.

19. In the subsequent discussion, the following points were raised:
- a. the proposed criteria, which take inspiration from the work developed by the Compliance Committees of the General Fisheries Commission for the Mediterranean (GFCM) and the Basel Convention, are a valuable tool for the preliminary assessment of the national implementation reports, allowing for an initial screening as a basis to follow-up with the concerned Contracting Parties from the very first stages of the reporting process;
 - b. the approach by which for the purpose of completeness the status would be “fully reported” only if all questions of the reporting format have been answered should be revisited. This maximalist approach bears a risk, since a single question of the reporting format left blank would lead to the consideration of “reporting incomplete”. It would be wise to set a threshold, so that if over 80 per cent of the questions of the reporting format are answered, for the purpose of completeness the status would be “fully reported”. Setting such a threshold should be understood without prejudice to the target of Contracting Parties to answer all the questions of the reporting format, thus achieving 100 per cent completeness;
 - c. in testing the criterium of implementation, over 50 per cent positive answers to whether the required legal and institutional framework is in place has been equated to “implemented”. This approach would benefit from further refining, as the criterium of implementation is applied to the next set of national implementation reports;
 - d. all sections of the reporting format should be mandatory. Effectiveness should be also explored and linked to future work on legal indicators for the Compliance Committee to have an enriched picture of the status of compliance with the Barcelona Convention and its Protocols;
 - e. there is great value in applying the criteria of submission, timelines, completeness and implementation against the 2018-2019 national implementation reports. This would pave the way for early identification of implementation challenges encountered by Contracting Parties, and for the formulation of recommendations to the COP on the most appropriate and effective measures to address those challenges; and
 - f. as a practical application of the criteria of submission, timelines, completeness and implementation, establishing a classification of Contracting Parties’ performance should be explored for discussion at the 17th Compliance Committee meeting. Parties could be classified within the following categories: (i) complete report submitted on time, (ii) complete report submitted late, (iii) incomplete report submitted on time, (iv) incomplete report submitted late and (v) not reported. This would allow to set a baseline against which to measure progress on reporting and its quality, to recommend associated targets per biennia, to present information on reporting in a more focused way, thus facilitating Parties to identify the areas of highest priority for action, and to raise the profile of national reporting.
20. Based on discussion, the Compliance Committee agreed as follows.

Conclusions and Recommendations

The Compliance Committee:

- a. agreed for the criteria of completeness to set a threshold of over 80% of responses provided for considering a national implementation report as complete; though a 100% of completeness is the target for Contracting Parties;**
- b. agreed on the criteria of submission, timeliness, completeness and implementation to be applied by the Secretariat together with MAP Components for the 2018-2017 national implementation reports in preparation for the 17th Compliance Committee Meeting; and**
- c. asked the Secretariat to explore the classification of Contracting Parties’ performance on the basis of the following categories: (i) complete report submitted on time, (ii) complete report submitted late, (iii) incomplete report submitted on time, (iv) incomplete report submitted late and (v) not reported.**

Agenda Item 6: Cooperation and Synergies with the Compliance Committee of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)

21. Tatjana Hema, UNEP/MAP Deputy Coordinator, introduced Ms. Fiona Marshall, Secretary to the Aarhus Convention, and underlined the active role of the Barcelona Convention Compliance Committee in building synergies with peers, in order to reinforce compliance and enforcement in areas of common interest. She noted that having at the present meeting a representative of the Aarhus Convention Compliance Committee is part of a series of exchanges of good practices and dialogues with other MEAs compliance procedures and mechanisms, which were launched at the 14th Meeting of the Compliance Committee (Athens, Greece, 27-29 June 2018), with the participation of representatives of the Compliance Committees of the General Fisheries Commission for the Mediterranean (GFCM), the Basel Convention and the London Convention.

22. In her presentation, Fiona Marshall explained that on the basis of Article 15 of the Aarhus Convention, by 2002 MOP1 Decision I/7, the Compliance Committee of the Aarhus Convention was established as a non-confrontational, non-judicial and consultative nature body for reviewing compliance with the provisions of the Aarhus Convention, including considering communications from members of the public on matters related to the Aarhus Convention. Since its inception in 2002, the Committee had adopted 72 findings. She indicated that the Compliance Committee consists of nine members, with no alternative members, nominated by Parties, Signatories and NGOs, elected considering geographical distribution and diversity of experience, and serving the Committee in their personal capacity. On the triggering procedures, she pointed out that with 180 cases, public trigger had been fundamental to the Compliance Committee's effectiveness in furthering the Convention's implementation, and that the Secretariat had decided not to trigger the Committee on the grounds of playing its neutral role. She mentioned that to take its work forward, the Compliance Committee meets three or four times per year (5 days per meeting), in addition to holding two or three virtual meetings between each meeting. She elaborated on the grounds for inadmissibility of communications, i.e. anonymous, an abuse of the right to make a communication, manifestly unreasonable or incompatible with the Aarhus Convention or decision I/7, including non-exhaustion of available domestic remedies. In closing her presentation, she referred to the avenues for providing assistance to Parties, mainly through Committee findings, requests from Parties for advice and assistance and follow-up on findings of non-compliance.

23. In the ensuing discussion, the following points were made:

- a. strengthening the synergies and structures of cooperation among compliance mechanisms is key in achieving effective implementation and enforcement in areas of common interest. This line of work has yielded tangible results in the form of *inter alia* draft criteria for the preliminary assessment of national implementation reports and is part of the 2020-2021 Programme of Work of the Compliance Committee. Agenda permitting, work should continue in this direction, by facilitating a fruitful dialogue with other MEAs compliance procedures and mechanisms, including by electronic means;
- b. one of the criteria that the Aarhus Convention Compliance Committee considers in determining the admissibility of a communication from the public is whether domestic remedies have been exhausted. This is also a criterium for the Compliance Committee of the Barcelona Convention to determine the admissibility of communications from the public, according to its Admissibility Criteria (COP20 Decision IG. 23/2);
- c. in the Guide to the Aarhus Convention Compliance Committee, it is pointed out that if no domestic remedies are available or the remaining domestic remedies would be unreasonably prolonged or would not provide an effective or sufficient means of redress, the communicant will need to provide appropriate evidence to the Compliance Committee to establish this fact. Domestic remedies are understood as the remedies provided by the legal system in the Party concerned, and exhaustion is determined by assessing whether the communicant has exhausted all relevant remedies that are available in the Party concerned;

- d. information-based approaches are very effective in promoting compliance. External visibility is of paramount importance for the civil society, including NGOs, to participate in environmental treaty compliance. The Admissibility Criteria contained in COP20 Decision IG.23/2 provide that avenue of participation and should be highlighted in the new UNEP/MAP website;
- e. it would be of great value to explore the development of a step-by-step short guide providing Parties and communicants an overview of the stages of the consideration of a communication by the Compliance Committee of the Barcelona Convention. This should build on experience and may include indications on format for communications; information gathering or the preparation of findings; and
- f. the independence and impartiality of Committee members is key in any compliance mechanism.

24. Based on discussion, the Compliance Committee agreed as below.

Conclusions and Recommendations

The Compliance Committee welcomed the initiative of inviting representatives from other MEAs Compliance Procedures and Mechanisms to participate in its meetings as a way of building synergies on compliance and recommend the Secretariat to continue this practice, potentially exploring online means, as the Agenda permits.

Agenda Item 7: Follow-up on previous Communication to the Compliance Committee under Paragraph 23.bis of the Procedures and Mechanisms on Compliance

25. Following-up on the conclusions of the 15th Meeting of the Compliance Committee (Athens, Greece, 27-29 June 2019), the Secretariat proceed with the notification of the admissibility of the communication to the communicant, i.e. Ecologistas en Acción de la Región Murciana (EARM) in Spain, and the Party concerned, i.e. Spain.

26. The communication from EARM regarding the implementation of the Protocol concerning the Specially Protected Areas and Biological Diversity in the Mediterranean (SPA/BD Protocol) by Spain, was presented in document UNEP/MED CC. 16/7, together with supporting additional information provided by EARM (UNEP/MED CC.15/Inf.5).

27. As per Paragraph 18 of the Admissibility Criteria, Spain was invited to submit written explanations or statements on the matter. The response from Spain to the communication from EARM was presented in document UNEP/MED CC. 16/8, containing two reports: (1) report from the Director General for the Environment in the Region of Murcia (competent authority for the management of the SPAMI) to the Spanish Ministry of Ecological Transition and (2) report from the Spanish Institute of Oceanography (SIO) at the request of the Spanish Ministry of Ecological Transition. Additional documentation submitted by Spain in support of its response was presented in document UNEP/MED CC. 16/Inf.6, which is made up of: (1) a report on the current status of Mar Menor and its causes in relation to nutrients contents, prepared by different Spanish scientific institutions and (2) a summary of a report on the activities, uses and pressures in the Mar Menor by CEDEX, at the request of the Spanish Ministry of Ecological Transition.

28. Orr Karassin, appointed Rapporteur for the communication, presented the communication from EARM and the response from Spain, providing a comprehensive overview of the current state of affairs and the elements to consider by the Compliance Committee in taking further action. In her presentation, the Rapporteur referred to the Admissibility Criteria (COP20 Decision IG. 23/2), summarized the key points of the EARM communication, pointed out to the decision of the 15th Meeting of the Compliance Committee (Athens, Greece, 27-29 June 2019) to confer admissibility of the communication from EARM, outlined the main points of the response from Spain to the EARM communication and invited the Compliance Committee to discuss whether to confirm the admissibility of the communication from EARM as per the Admissibility Criteria.

29. In the ensuing discussion, the following points were made:

- a. the Compliance Committee expressed its appreciation for the work of Orr Karassin, as Rapporteur, in providing the Committee with a detailed summary of the status of the communication at the current stage, in order to facilitate discussion;
 - b. the Compliance Committee is not a judicial body and therefore should not exercise a judicial function. The Procedures and Mechanisms on Compliance are non-confrontational, facilitative in nature and oriented in the direction of facilitating and promoting compliance with the Barcelona Convention and its Protocols. This should frame the discussion of next steps to take;
 - c. the question at hand is whether to confirm the admissibility of the communication from EARM, on the basis of whether domestic remedies have been exhausted. This is a decision which rests with the Compliance Committee and that would benefit from clarification of the point whether exhaustion of domestic remedies should be understood as exhausted by the communicant (EARM) or the Party concerned (Spain);
 - d. as per Paragraph 13 of the Admissibility Criteria, the exhaustion of domestic remedies is one of the criteria for the Compliance Committee to consider when determining admissibility. The criterion allows the Compliance Committee discretion and requires interpretation. Should exhaustion of domestic remedies be interpreted as exhausted by the communicant, the Compliance Committee should assess whether EARM has first attempted to remedy the situation using available and effective remedies in Spain. Whether a remedy is available, effective, sufficient or adequate would depend on the criteria of the Compliance Committee. Should exhaustion of domestic remedies be construed as exhausted by the Party concerned, the Compliance Committee should evaluate whether the substantive response from Spain provides enough ground to conclude so, on the basis of measures taken by Spain to remedy the situation;
 - e. the international rule of exhaustion of local remedies before taking to international remedies is one of the basic rules in international law. It rests on the principle that international bodies should supplement State institutions and should not get involved unless the alleged violation cannot be resolved at the national level. Thus, before submitting a complaint to an international mechanism, individuals or organizations must first attempt to remedy the situation using national proceedings. This is well established in the UN System and international jurisprudence dealing with UN human rights treaties implementation. It would not be prudent at all to depart from UN practice, including practice under the Aarhus Convention, and assessing the exhaustion of local remedies from the perspective of the Party concerned;
 - f. caution should be exercised at this stage of the process by avoiding statements on compliance or non-compliance by Spain, as the Compliance Committee has not yet decided whether to confirm the admissibility of the EARM communication. Confirming admissibility is a *sine qua non* before proceeding with the examination of the substance of the communication in order to determine whether Spain is in a situation of non-compliance. A positive decision on admissibility does not amount to a situation of non-compliance;
 - g. should the Compliance Committee confirm the admissibility of the EARM communication, the next procedural step is to proceed with the examination of the substance of it. This requires the Committee to enter into the proceedings established in Paragraphs 24 to 30 of the Procedures and Mechanisms on Compliance; and
 - h. discussions of the substance of the communication should be held at the 17th Meeting of the Compliance Committee and would benefit from preparatory work in a resumed session of the current meeting. This would facilitate to set the terms of the substantive discussion of the communication, including whether additional information from the parties is needed beforehand and whether under the Procedures and Mechanisms (Paragraph 27) and Admissibility Criteria (Paragraph 22) the communicant is also entitled to participate in the substantive discussions.
30. Based on discussion, the Compliance Committee agreed as follows:

Conclusions and Recommendations

The Compliance Committee:

- a. agreed that the reference to domestic remedies that have been exhausted under Paragraph 13 of the Admissibility Criteria of Relevant Information Sources and Procedures under Paragraph 23.bis of the Procedures and Mechanisms on Compliance should be understood as exhausted by the communicant;
- b. agreed that from the information submitted by Ecologistas en Accion de la Region Murciana (Spain) it can be concluded that domestic remedies have been exhausted;
- c. agreed in line with Paragraph 20 of the Admissibility Criteria to confirm the admissibility of the communication of Ecologistas en Accion de la Region Murciana (Spain) and in line with Paragraph 22 of the Admissibility Criteria to proceed with the examination of the substance of it following *mutatis mutandis* the proceedings established in paragraphs 24 to 30 of the Procedures and Mechanisms on Compliance;
- d. agreed to inform Spain and Ecologistas en Accion de la Region Murciana (Spain) of the outcomes of the decision of admissibility of the 16th Meeting of the Compliance Committee following the resumed session of the 16th Meeting of the Compliance Committee to take place in November or December 2020; and
- e. asked the Secretariat to work with the Compliance Committee, following a resumed session of the 16th Compliance Committee meeting, in order to prepare a letter to Spain and Ecologistas en Accion de la Region Murciana (Spain) notifying the procedures to follow for the substantive discussion and if there is any need to provide additional information in preparation for the 17th Compliance Committee Meeting.

Agenda Item 8: Effective Functioning of the Compliance Committee

31. The Secretariat tabled documents UNEP/MED CC. 16/9 and UNEP/MED CC. 16/10. The former presented a proposal from a former Member of the Compliance Committee to amend the Procedures and Mechanisms of Compliance together with key points identified by the Secretariat for the consideration of the Compliance Committee. That proposal was originally tabled at the 14th Meeting of the Compliance Committee (Athens, Greece, 27-29 June 2018), which agreed to defer it to a later stage due to the heavy workload ahead in preparation of its 15th Meeting and COP21. The latter presented legal advice provided by the UNEP Principal Legal Officer on a number of issues raised by the 14th Compliance Committee Meeting and the 86th Meeting of the Bureau (Teleconference, 11 July 2018) on the interpretation of the Procedures and Mechanisms on Compliance and Rules of Procedure of the Compliance Committee. The legal advice provided by the UNEP Principal Legal Officer was tabled at the 15th Meeting of the Compliance Committee (Athens, Greece, 25-26 June 2019), which concluded to bring to the attention of COP21 a question for clarification regarding the scope of Rule 7 of the Procedures and Mechanism. No specific advice was provided.

32. In the subsequent discussion, the following points were made:

- a. work to enhance the effective functioning of the Compliance Committee must be directed to deliver the 2020-2021 Programme of Work of the Compliance Committee (COP21 Decision IG. 24/1), which identifies the following deliverables for COP22: (1) "To continue work in order to enhance Compliance Mechanisms' and Procedures' effectiveness"; and (2) "To review the Rules of Procedure of the Compliance Committee in order to further clarify a number of outstanding issues and make a proposal as appropriate for adjusting accordingly the Procedures and Mechanism on Compliance for consideration by COP22";
- b. to deliver on the mandate to enhance Compliance Mechanisms' and Procedures' effectiveness, a possible avenue for the meeting to explore would be to prepare a set of recommendations identifying which points of the Procedures and Mechanisms on Compliance may need improvement for COP22 to consider. This should be based on experience gained so far since the establishment of the Compliance Committee, as well as practices and working methods of other compliance mechanisms. The so proposed recommendations may lead to COP22, if so

decides, to provide a mandate for the amendment of the Procedures and Mechanisms through the most appropriate arrangements, including an *ad hoc* working group composed of the Contracting Parties with participation of MAP partners and observers as appropriate or to assign this task to the Compliance Committee. It is for the COP to decide the most adequate modality;

- c. to deliver on the mandate to review the Rules of Procedure of the Compliance Committee, as a point of departure, consideration should be given to whether and how to reflect in the Rules of Procedure the outstanding issues as already identified by the 86th Meeting of the Bureau (i.e. whether the requirement that the Compliance Committee shall not include more than one national of the same State applies to both Members and Alternate Members). Then, consideration should follow on the potential changes to the composition of the Compliance Committee, as well as on the interplay between the Rules of Procedure and the Admissibility Criteria, by addressing points such as the exhaustion of domestic remedies;
- d. to take forward this work, two sub-groups would be set up on Rules of Procedure and on Procedures and Mechanisms respectively to work intersessionally under Terms of Reference to be prepared by the Chair of the Compliance Committee supported by the Secretariat. The Sub-Groups should work in preparing their deliverables to the resumed session of the current meeting to take place in November or December 2020 and the 17th Meeting of the Compliance Committee. The Sub-Groups should be open to those who were not able to attend the meeting; and
- e. a balance should be struck between the level of ambition and resources, by keeping work focused on the fundamentals in order to reinforce the effective functioning of the Compliance Committee. A full review of the Procedures and Mechanisms and the Rules of Procedures of the Compliance Committee is not the goal of the current exercise but rather the identification of key areas for improvement of the Procedures and Rules. Channelling efforts to the essential, would help for a more decisive reaction from COP22.

33. Based on discussion, the Compliance Committee agreed as below:

Conclusions and Recommendations

1. The Compliance Committee agreed to establish the two sub-groups below to work intersessionally with Daniela Addis as facilitator, as follows:

a. Sub-group: Rules of Procedure. It is composed of Odeta Cato, Samira Hamidi, Evangelos Raftopoulos, Selma Osmanagic-Klico, Orr Karassin, Milena Batakovic and Daniela Addis and will work on the Rules of Procedure by addressing outstanding issues as already identified by the Bureau, the discussions that have taken place in the meetings of the Compliance Committee and any other issues that may merit consideration in order to strengthening the effectiveness of the Compliance Committee; and

b. Sub-group: Procedures and Mechanisms. It is composed of Odeta Cato, Xenia Loizidou, Selma Osmanagic-Klico, Ezzedine Jouini-Berzine, Orr Karassin, Daniela Addis, and Evangelos Raftopoulos and will produce a set of recommendations identifying which points of the Procedures may need improvement for COP 22 to consider.

c. As a point of departure, the Chair of the Compliance Committee supported by the Secretariat will work on the ToR for the two sub-groups to conduct their work.

2. The Compliance Committee also concluded to establish a channel of communication with the Bureau and MAP Focal Points for the Compliance Committee to gather feedback on the follow-up of their recommendations and the modalities to be defined by the Working Group.

Agenda Item 9: Place and Date of the 17th Meeting of the Compliance Committee

34. Based on discussion under agenda items 7 and 8, **the Compliance Committee agreed to have a resumed session of the 16th Meeting of the Compliance Committee by either the end of November or beginning of December 2020.**

35. **The Compliance Committee** discussed the place, dates and duration for its next meeting and agreed to hold its 17th Meeting on 10-11 June 2021, in Athens, Greece at the premises of the UNEP/MAP-Coordinating Unit.

Agenda item 10: Other Matters

36. Under this agenda item, Michel Prieur, representative of the Centre International de Droit Comparé de l'Environnement (CIDCE) was invited to introduce the work of CIDCE on the development of legal indicators.

37. In his presentation, Michel Prieur highlighted that legal indicators are a valuable tool to assess the effectiveness of environmental law and elaborated on how the development of legal indicators within the framework of the Barcelona Convention and its Protocols would *inter alia* (1) serve to better reflect the degree of effective compliance by Contracting Parties with their general obligations arising from the Barcelona Convention and its Protocols, (2) assist Contracting Parties in meeting their obligation of reporting under Article 26 of the Barcelona Convention, (3) allow COP to better assess compliance with the Barcelona Convention and its Protocols as per Article 27 of the Barcelona Convention, (4) document strengths and weaknesses in implementing the Barcelona Convention and its Protocols, providing specific information of the difficulties, gaps and progress, (5) provide a solid basis for scientifically measuring the effectiveness levels of the Barcelona Convention and its Protocols and for taking evidence-based decisions, and (6) assist the Compliance Committee to better capture the difficulties in implementing the Barcelona Convention and its Protocols and on that basis to develop appropriate recommendations. In closing his presentation, Michel Prieur further elaborated on avenues to take this work forward by an initial testing of legal indicators within the framework of the Barcelona Convention and its Integrated Coastal Zone Management Protocol and then the scale up of the project to the remaining Protocols by end of 2021.

38. Michel Prieur's presentation triggered discussion of the challenges faced in defining the notion of effectiveness, establishing the causality link between effectiveness and compliance, and in developing international statistics on environmental compliance and enforcement. The meeting thanked Michel Prieur for his detailed presentation and highlighted the importance for the Compliance Committee to create synergies with stakeholders, including MAP Partners, through these dialogue sessions. In that spirit, and in line with the conclusion under agenda item 6, it was agreed that for the 17th Meeting of the Compliance Committee, an invitation can be addressed to the Chair of the Compliance Committee of the UNECE Protocol on Water and Health, to make a virtual presentation of the work and the role of the PWH Committee. Evangelos Raftopoulos offered to facilitate the contact with the Chair of the Compliance Committee of the UNECE Protocol.

Agenda Item 11: Conclusions and Recommendations

39. On the basis of a draft prepared by the Secretariat in consultation with the Chairperson of the Compliance Committee, the Compliance Committee agreed on the Conclusions and Recommendations listed under each Agenda item above.

Agenda item 12: Closing of the Meeting

40. The 16th Meeting of the Compliance Committee was closed by the Chairperson of the Compliance Committee, Odeta Cato, on 18 June 2020.

Session of 27-28 January 2021

Agenda item 1: Opening of the Meeting

41. The Resumed Session of the 16th Meeting of the Compliance Committee of the Barcelona Convention and its Protocols was held on 27-28 January 2021, by teleconference. The list of participants is at **Annex I** to this report.

42. Having the Secretariat ascertained the existence of the required quorum, Bernard Brillet, Vice-Chairperson of the Compliance Committee, acting as Chair of the meeting in the absence of the

Chairperson, welcomed the participants and opened the meeting by highlighting the tight agenda ahead in preparation for the 17th Meeting of the Compliance Committee (Teleconference, 10-11 June 2021).

43. Gaetano Leone, UNEP/MAP Coordinator, welcomed the participants and thanked them for their active involvement in the intense intersessional work leading up to the present meeting, which was reflected in the rich agenda before the Compliance Committee. He highlighted that the meeting agenda showed once again the firm commitment of the Committee to promoting and facilitating compliance with the Barcelona Convention and its Protocols. This chief objective defines the mandate of the Compliance Committee, which is called upon to play a crucial role in contributing to the overall level of compliance in the Mediterranean region more than ever. He noted that despite significant progress, implementation and enforcement remain a central challenge for all Contracting Parties to the Barcelona Convention and its Protocols, and that overcoming that challenge had been one of the key drivers in the development of the upcoming UNEP/MAP Medium-Term Strategy for 2022-2027.

44. The UNEP/MAP Coordinator stressed the opportunity and importance for setting practice in addressing the first ever communication brought before the Compliance Committee by the public and expressed his trust in the Committee to arrive collectively at a balanced agreement on how to conduct successful proceedings at its 17th Meeting within the framework of its Procedures and Mechanisms. In preparation for COP 22, he also pointed out at the need to identify the core areas of the Procedures and Mechanisms to be considered for improvement in order to enhance the effectiveness and functioning of the Compliance Committee, stressing that intersessional work carried out on that matter provided a solid basis to do so. Gaetano Leone wished the participants a fruitful meeting.

Agenda item 2: Adoption of the Provisional Agenda and Organization of Work

45. Bernard Brillet introduced the Provisional Agenda of the meeting and underlined the ambitious agenda ahead of the Compliance Committee as a stepping stone towards its 17th meeting and COP 22. He stressed the need to reach a collective agreement on arrangements for articulating proceedings at the 17th Meeting of the Compliance Committee and also praised the intersessional work undertaken to single out the key areas for improvement of the effectiveness of the Compliance Committee. The Compliance Committee adopted the Provisional Agenda (UNEP/MED CC.16/2/Add.1). The Agendas of both meeting sessions are presented at **Annex II** to this report.

Agenda item 7: Follow-up on previous Communication to the Compliance Committee under Paragraph 23.bis of the Procedures and Mechanisms on Compliance

46. The Secretariat introduced document UNEP/MED CC. 16/11, which was prepared following-up on the conclusions of the 16th Meeting of the Compliance Committee, and in consultation with the Chair of the Compliance Committee, Odeta Cato, and the appointed Rapporteur for the communication, Orr Karassin. The document identified key questions for the Compliance Committee to address with the aim of articulating proceedings at its 17th meeting. Key questions touched upon both substantive and procedural matters of the proceedings laid down in paragraphs 24 to 30 of the Procedures and Mechanisms on Compliance and referred to: (a) whether further information should be requested to clarify the legal background and the factual state of the Lagoon of Mar Menor (Murcia) and to whom, i.e. either the Party concerned or the communicant or both, (b) whether the communicant should be part of the proceedings, and (c) how to articulate the course of the proceedings towards preparing findings, measures and recommendations.

47. In the ensuing discussion, the following points were made:

- a. as per the conclusions of the 16th Meeting of the Compliance Committee, the requested letters to the Party concerned and the communicant should address both the substantive and procedural aspects of the proceedings to be held at the 17th Meeting of the Compliance Committee. The said letters should clearly indicate what is required from their recipients and the structure of the proceedings and be sent by the Chair of the Compliance Committee, through the Secretariat;
- b. proceedings should aim at holding a facilitative discussion towards the identification of a course of action to take in the form of measures. As per section VII of the Procedures and

Mechanisms, measures with a view to promoting compliance can range from providing advice to the Party concerned to assisting the Party concerned to develop an action plan;

- c. the Compliance Committee is facilitative in nature and operates in a manner that is non-adversarial and non-judicial. These defining principles must be at the heart of the proceedings at its 17th meeting. The Committee does not impose any penalties or sanctions, as does not function as an enforcement body but as a body to facilitate and promote compliance;
- d. this is the first communication addressed to the Compliance Committee by the public, and as such, an opportunity for the Committee to set practice on how to handle it, thus paving the way in addressing potential future communications;
- e. the purpose of requesting additional information should be to clarify the legal background and factual aspects of the communication. This would enable the Compliance Committee to prepare a succinct consolidated document summarizing the facts and findings of the current state of Mar Menor, in preparation for the proceedings at its 17th meeting. To this end, a working group facilitated by the Secretariat can be established to work intersessionally;
- f. additional information is needed from the Party concerned but not the communicant. The requested information from the Party concerned should provide an up-to-date summary of the status of implementation of the protection, planning and management measures in place for Mar Menor, as well as indication of the refined coordination mechanisms established at national, regional and local levels to avoid sectoral approaches in managing Mar Menor. More in detail, the response from the Party concerned to the communication, as presented at the 16th Meeting of the Compliance Committee, would benefit from further elaboration as to the adopted nutrient pollution prevention measures at source, the operation of water run-off projects; the detailed contents of the management plan for Mar Menor and its implementation, the enhancement of the institutional coordination mechanisms in place for the effective management of Mar Menor, and the measures taken following-up on the 2019 Periodic Review of the SPAMI. Additional information so requested should be linked to the relevant provisions of the Barcelona Convention, the SPA/BD and ICZM Protocols. Information received from the Party concerned should be forwarded to the communicant;
- g. to keep the length of additional information at a reasonable level, an upper limit of twelve pages in total is recommended. The submission of additional information should be preferably in English to speed up the process of its consideration by the Compliance Committee. The invitation to do so should be formulated in line with rule 23 of the Rules of Procedure of the Compliance Committee, under which the working languages of the Compliance Committee are the official languages of the meetings or conferences of the Contracting Parties, i.e. Arabic, English, French and Spanish;
- h. the deadline of two months in paragraph 23.bis of the Procedures and Mechanisms applies for the Party concerned to submit the requested additional information. Under the said paragraph, the Committee may ask the Party concerned to provide all additional information and “*the Party concerned shall have a period of two months to respond*”;
- i. it would be helpful to further elaborate on the organizational arrangements for holding proceedings at the 17th Meeting of the Compliance Committee, in particular as regards the discussion segment, by determining whether the communicant should be part of the proceedings, and how the Compliance Committee should propose its questions during the proceedings;
- j. as to whether the communicant should be part of the proceedings at the 17th Meeting of the Compliance Committee, different positions were expressed in that regard. Some participants were of the view that only the Party concerned should be part of the proceedings to be held at the 17th Meeting of the Compliance Committee. They pointed out that paragraph 27 of the Procedures and Mechanisms, which reads “*The Party concerned shall be entitled to participate in the discussions of the Committee and present its observations.*”, limits participation in the proceedings solely and exclusively to the Party concerned. Furthermore, they emphasised that holding proceedings with only the Party concerned is a corollary of the nature and mandate of the Compliance Committee, which is a subsidiary body of the Meeting

of the Contracting Parties called to engage with and support Contracting Parties in facilitating and promoting compliance with the Barcelona Convention and its Protocols. On these grounds, they further highlighted that the approach taken for submissions by a Party in respect to another Party' situation of non-compliance (Party-to-Party trigger), under which proceedings are held involving only the Party concerned, should be extrapolated to the handle of the communication at hand. This will ensure a constructive and facilitative discussion with the Party concerned without the involvement of the trigger, i.e. the communicant. By doing so, the Committee will act within its mandate, as established in its Procedures and Mechanisms, which are the legal basis for action. Moreover, they emphasized that Procedures and Mechanisms reflect the specificities of the Compliance Committee of the Barcelona Convention. As such, for instance, they provide for proceedings and not hearings, and are oriented to facilitate discussion with the Party concerned and not to launch a judicial process involving the Party concerned and the triggering party, i.e. the communicant;

- k. other participants were not persuaded, saying that the communicant should also be part of the proceedings to be held at the 17th Meeting of the Compliance Committee. They stressed that the communication at hand was submitted under paragraph 23.bis of the Procedures and Mechanisms, which clearly states that “(...) Paragraphs 24 to 30 and 32 to 34 shall apply *mutatis mutandis* in the case of referral to the Committee on its own initiative”. Consequently, paragraph 27 of the Procedures and Mechanisms should be interpreted as also entitling the communicant to participate in the proceedings. They noted that paragraph 22 of the Admissibility Criteria, which reads “(...) *the communication will be discussed following mutatis mutandis the proceedings established in paragraphs 24 to 30 of the Procedures and Mechanisms of Compliance*”, is drafted along the same lines as paragraph 23.bis. Furthermore, they emphasised that as per paragraph 28 of the Procedures and Mechanisms; “*The Committee shall be guided by the principle of “due process” in order to ensure fairness and transparency*”. In consistency with this key principle, the communicant should be also invited to be present and participate in the proceedings, having a status different from the status of observer. This will guarantee that both the Party concerned, and the communicant are heard on equal footing. In addition, they further stressed that by limiting participation in the proceedings to the Party concerned, the Compliance Committee would departure from the practice followed by other mechanisms, such as the Compliance Committee of the Aarhus Convention, under which hearings are held between the Party concerned and the communicant;
- l. the Secretariat was invited to provide input to the ongoing discussion on the subject matter. As a point of departure, the Secretariat noted that a positive decision on admissibility does not amount to a situation of non-compliance and that it is the role of the Compliance Committee to consider specific situations of actual or potential non-compliance by individual Parties with the provisions of the Barcelona Convention and its Protocols. In doing so, the Procedures and Mechanisms, as adopted by the Contracting Parties, constitute the legal framework within which the Committee must act. The Secretariat emphasized that handling the present communication was being a learning-by-doing process, under which the Committee was setting a practice on how to address communications from the public under its Procedures and Mechanisms, which were adopted well before the Committee articulated an avenue for dealing with communications from the public. In this context, the Secretariat drew the attention of the Committee to the necessity of creating the enabling conditions for having a facilitative and non-adversarial discussion first and foremost with the Party concerned and then, may consider other options, if need be and if the Committee so agrees, including both, i.e. the Party concerned and the communicant in the follow-up of the proceedings at the 17th Meeting of the Compliance Committee;
- m. despite all efforts, the Compliance Committee could not reach consensus on the question whether the communicant should be part of the proceedings at the 17th Meeting of the Compliance Committee. The Vice-Chairperson of the Compliance Committee chairing the meeting put then the question to the vote as per paragraph 16 of the Procedures and Mechanisms. A vote was taken with the result shown in paragraph 48.3 below. Evangelos

Raftopoulos, Member of the Compliance Committee, explicitly supported why he voted against the decision of the Compliance Committee not to extend an invitation to the communicant to participate in the proceedings to be scheduled at the 17th Meeting of the Compliance Committee. He argued that the decision was against the principle of “due process” which informs the proceedings laid down in paragraphs 24 to 30 of the Procedures and Mechanisms. He further highlighted that by limiting participation in the proceedings to the Party concerned, the communicant is given a lesser standing against the Party concerned, undermining the principle of “due process”;

- n. some participants made the point that after the proceedings at the 17th Meeting of the Compliance Committee, the Committee may consider other options, including, if need be and if the Committee so agrees, inviting both the communicant and the Party concerned. In that context, it was suggested that it would be wise to consult with the Party concerned in that regard in order to have a constructive dialogue involving both the Party concerned and the communicant once the Party concerned has been heard first;
- o. there is room for improvement in the handling of communications brought before the Compliance Committee by the public. Speeding up and facilitating processes is crucial for enhanced participation of the civil society in treaty compliance. The current framework should be simplified to straightforward the submissions of communications from the public, including NGOs. Furthermore, further clarity is needed on the time frame for the Compliance Committee to process communications including the dissemination and consideration of additional information. Work underway as regards the Procedures and Mechanisms and the Rules of Procedure opens a window of opportunity for the Committee to strengthen its effectiveness in dealing with communications from the public by building on lessons learned as well as experience from other compliance mechanisms, such as the Compliance Committee of the Aarhus Convention, as appropriate; and
- p. as to how the Compliance Committee should propose its questions during the proceedings, it was generally felt that to facilitate discussion, questions to the Party concerned during the proceedings should be channelled through the Chair of the Compliance Committee supported by the Rapporteur. It would also help to compile the questions in advance of the proceedings to assist the Party concerned to focus its responses. To this end, the working group responsible for preparing the consolidated document on the facts and findings of the state of Mar Menor could also collect the questions to be addressed to the Party concerned during the proceedings. This should be understood without prejudice of the Committee to address through the Chair additional related questions at the time of the proceedings, if need be.

48. Following the conclusions of its 16th meeting (Teleconference, 16-18 June 2020) and based on discussion, the Compliance Committee agreed as follows:

Conclusions and Recommendations

(1) In order to facilitate further consideration of the facts and findings on the current status of the Lagoon of Mar Menor, including contributing factors and causes:

(a) to invite Spain, as the Party concerned, to submit further details related to some of the matters raised in its response to the communication from Ecologistas en Acción de la Región Murciana, Spain (EARM) addressing the following questions:

(i) Which prevention measures at source have been adopted to prevent or minimize the flow of nutrients into the Lagoon of Mar Menor? Please add documentation with regards to the flow of nutrients into the Lagoon of Mar Menor that would enable the Compliance Committee to assess whether there has been a reduction in such flows. This question refers to article 10 of the Barcelona Convention and articles 3.1 and 3.4, 6(b) and 11.1 and 11.2 of the SPA/BD Protocol.

(ii) How successful are the storm water collection or water treatment projects in preventing or reducing run-off water into Mar Menor? This question refers to article 10 of

the Barcelona Convention and articles 3.1 and 3.4, 6(b), and 11.1 and 11.2 of the SPA/BD Protocol.

(iii) What type of implementation and management measures have been taken by the competent authorities with regards to the integrated management plan for Mar Menor and the Mediterranean coastal margins of the Region of Murcia (Decree no. 259/2019 of 10 October)? This question refers to article 7.2 (a) and section D, annex I to the SPA/BD Protocol.

(iv) Please specify efforts that have been taken to enhance the coordination mechanisms between the various competent public authorities in the different administrative services of the national, regional and local levels with regards to the effective management of Mar Menor. This question refers to article 7.2 (a) and section D, annex I to the SPA/BD Protocol and article 7 of the ICZM Protocol.

(v) Which measures, if any, have been taken following the audit of the periodic review of the SPAMI conducted in March 2019? This question refers to article 10 of the Barcelona Convention and articles 3.1 and 3.4, 6(b), 7.2(a) 11.1 and 11.2 and section D, annex I to the SPA/BD Protocol.

(vi) Please provide at your discretion, any other additional information on the efficacy of measures taken with regards to articles 6 and 7 and annex I to the SPA/BD Protocol, if not covered by the specific questions above.

(b) to invite Spain, as the Party concerned, to submit to the Secretariat, as soon as possible but at least within two months of the date of the letter from the Secretariat, the above listed information in one of the working languages of the Compliance Committee, but preferably in English and not exceeding twelve pages in total. Please only submit additional technical information when it deems necessary and preferably in English, and

(c) to invite Spain, as the Party concerned, to participate in the proceedings on the subject matter of the communication to be held at 17th Meeting of the Compliance Committee (Teleconference, 10-11 June 2021).

(2) To establish a working group, composed of Daniela Addis, Orr Karassin, Xenia Loizidou, and the Chair and supported and facilitated by the Secretariat, to work intersessionally for building the proceedings at the 17th Meeting of the Compliance Committee by:

(i) consolidating a document detailing the facts and findings on the current state of Mar Menor, the contributing factors and causes, and

(ii) gathering and consolidating the questions to be addressed to Spain during proceedings under the lead of the Chair of the Compliance Committee, possibly supported by the Rapporteur, on the understanding that flexibility should be allowed for the Compliance Committee to address through the Chair additional related questions to Spain, if need be, during the holding of proceedings at the 17th Meeting of the Compliance Committee.

(3) To the question whether Ecologistas en Accion de la Region Murciana, Spain (EARM) should be invited to participate in the proceedings to be held at the 17th Meeting of the Compliance Committee (Teleconference, 10-11 June 2021), the Committee was not able to reach a decision by consensus. As a result, the Committee resorted to a voting procedure on this issue and by 5 votes against, 2 in favour and none abstentions, decided that, at this stage, it should not extend an invitation to Ecologistas en Accion de la Region Murciana, Spain (EARM) to participate in the proceedings to be scheduled at the 17th Meeting of the Compliance Committee.

(4) To write a letter to Ecologistas en Accion de la Region Murciana, Spain (EARM) communicating the outcome of the 16th Meeting of the Compliance Committee and its resumed session.

(5) On the following organizational arrangements for the proceedings to be held at 17th Meeting of the Compliance Committee (Teleconference, 10-11 June 2021):

- a) Opening segment: Introduction and opening of the discussion by the Chair of the Compliance Committee,**
- b) Presentation by the Rapporteur of the non-disputed facts and findings on the state of the Lagoon of Mar Menor (Murcia) and causes and contributing factors,**
- c) Presentation segment: Presentation by the Party concerned (Spain)**
- d) Discussion segment: Discussion with the Party concerned (Spain), and**
- e) Closure of the proceedings by the Chair of the Compliance Committee.**

Agenda item 8: Effective Functioning of the Compliance Committee

49. Following-up on the conclusions of the first session of the 16th Meeting of the Compliance Committee (Teleconference, 16-18 June 2020), two Sub-groups were set up to work intersessionally with Daniela Addis as Facilitator. The two Sub-groups on the Rules of Procedure of the Compliance Committee (RoP) and the Procedures and Mechanisms on Compliance (P&M) respectively, worked under agreed Terms of Reference (ToRs) and the outcome of their work was presented in detail by the Facilitator as contained in document UNEP/MED CC. 16/12. In her presentation, the Facilitator referred to the agreed ToRs, by framing work carried out by the Sub-groups within the Programme of Work of the Compliance Committee for the biennium 2020-2021, as adopted by COP21 (Decision IG. 24/1). That programme tasked the Committee with: (a) enhancing Compliance Mechanisms' and Procedures' effectiveness and, (b) reviewing the Rules of Procedure of the Compliance Committee in order to further clarify a number of outstanding issues and make a proposal as appropriate for adjusting accordingly the Procedures and Mechanisms on Compliance for consideration by COP22.

50. The two Sub-groups met four times by teleconference (14 July, 11 and 23 September and 13 November 2020) to discuss the amendments to the P&M and the RoP. The Facilitator presented the amendments to both instruments, as proposed by the Sub-Groups, focusing on those amendments to specific areas of the P&M and RoP identified by the Sub-Groups as key to improve the effectiveness of the Compliance Committee. These areas encompassed: (a) membership to the Compliance Committee, (b) nomination and election of candidates to the Compliance Committee, (c) criteria for the selection of candidates to the Compliance Committee, and (d) enhancement of synergies. The Compliance Committee's attention was drawn in particular to the proposed amendments touching upon the membership to the Compliance Committee. The Facilitator explained that the proposal from the Sub-group was for the Committee to be made up exclusively of Members, the number of which, within the options of seven, nine or fourteen, needs to be determined.

51. In closing her presentation, the Facilitator reminded the Committee of the need to agree on the core areas of the P&M and RoP to amend in order to improve the effectiveness of the Compliance Committee, with the aim to present a proposal to COP22. This would enable COP22 to provide a mandate to the Compliance Committee for the amendment of the P&M, as appropriate.

52. The meeting thanked the Facilitator and the Sub-Groups for the solid work carried out and pointed out that in addressing the key areas of the P&M and RoP for amendment, points made under agenda item 7 should be considered. Time constraints prevented the meeting from entering into detailed discussion on the matter and decided to defer it to the 17th Meeting of the Compliance Committee. In preparation for that meeting, it would be recommendable to articulate an avenue for collecting inputs to document UNEP/MED CC. 16/12, in order to hold an in-depth and focused discussion at the 17th Compliance Committee meeting.

53. Based on discussion, the Compliance Committee agreed as follows:

Conclusions and Recommendations

- (1) In order to facilitate in-depth discussion and rapid adoption of decisions, to send by email comments and proposals in track changes on the document UNEP/MED CC.16/12 to the Secretariat and the Facilitator, at least 4 weeks before the 17th Meeting of the Compliance Committee (Teleconference, 10-11 June 2021);**

(2) In particular, to confirm the identified key areas (a. Membership to the Compliance Committee, b. Nomination and election of candidates to the Compliance Committee, c. Criteria for the selection of candidates to the Compliance Committee, d. Enhancement of synergies) or to include more/other areas;

(3) Due to time constraints, to defer discussion and decisions to further enhancing Compliance Mechanisms' and Procedures' effectiveness to the first day of the 17th Meeting of the Compliance Committee (Teleconference, 10-11 June 2021).

Agenda item 10: Other Matters

54. No other matters were raised at the meeting.

Agenda item 11: Conclusions and Recommendations

55. On the basis of a draft prepared by the Secretariat in consultation with the Vice-Chairperson of the Compliance Committee chairing of the meeting, the Compliance Committee agreed on the Conclusions and Recommendations listed under each Agenda item above.

Agenda item 12: Closing of the Meeting

56. The Compliance Committee expressed its warm and depth gratitude to Gaetano Leone, UNEP/MAP Coordinator who is retiring, for his instrumental contribution in strengthening the role of the Committee in the UNEP/MAP system and for strategically guiding the Committee to enhance its effectiveness during his tenure.

57. The resumed session of the 16th Meeting of the Compliance Committee was closed by the Vice-Chairperson of the Compliance Committee chairing the meeting, Mr. Bernard Brillet, on 28 January 2021.

Annex I
List of Participants

**List of Participants / Liste des participants
(Session of 16-18 June 2020)**

Members / Membres titulaires

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Director of the Legal Department
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List of Participants / Liste des participants
(Session of 27-28 January 2021)

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**SECRETARIAT TO THE BARCELONA CONVENTION
COORDINATING UNIT OF THE MEDITERRANEAN ACTION PLAN
(Session of 16-18 June 2020 and Session of 27-28 January 2021)**

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Coordinator

Ms. Tatjana Hema
Deputy Coordinator

Mr. Ilias Mavroeidis
Programme Management Officer

Ms. Luisa Rodriguez-Lucas
Legal Officer

Annex II

Agenda

Agenda
(Session of 16-18 June 2020)

- Agenda Item 1:** Opening of the Meeting
- Agenda Item 2:** Adoption of the Agenda and Organization of Work
- Agenda Item 3:** Election of Officers of the Compliance Committee for the biennium 2020-2021
- Agenda Item 4:** 2016-2017 National Implementation Reports under Article 26 of the Barcelona Convention: Status, Key Findings and Recommendations
- Agenda Item 5:** Results of the Testing of the Draft Criteria for Preliminary Identification of Actual or Potential Cases of Non-Compliance
- Agenda Item 6:** Cooperation and Synergies with the Compliance Committee of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)
- Agenda Item 7:** Follow-up on previous Communication to the Compliance Committee under Paragraph 23.bis of the Procedures and Mechanisms on Compliance
- Agenda Item 8:** Effective Functioning of the Compliance Committee
- Agenda Item 9:** Place and Date of the 17th Meeting of the Compliance Committee
- Agenda Item 10:** Other Matters
- Agenda Item 11:** Conclusions and Recommendations
- Agenda Item 12:** Closing of the Meeting

Agenda
(Session of 27-28 January 2021)

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