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MEDITERRANEAN ACTION PLAN

Eight meeting of the Compliance Committee

Athens, Greece, 21 – 22 October 2013

NON SUBMISSION OF REPORTS BY CONTRACTING PARTIES DRAFT RECOMMENDATION OF THE COMPLIANCE COMMITTEE

Report of activity of the Compliance Committee for biennial period 2012-2013

Conclusions and Recommendations on non-compliance with obligations regarding submission of reports provided for in Article 26 of the Barcelona Convention

I. Legal basis of proceedings before the Compliance Committee

1. At its 17th meeting in Paris in February 2012, the Contracting Parties to the Barcelona Convention on the protection of the marine environment and coastal region of the Mediterranean and its protocols, in Decision IG.20 / 1, brought to the attention of the Compliance Committee established by Decision IG 17/2, the examination of the general issues related to comply with obligations, "in particular the recurring problems of non-compliance of these obligations". On this basis, the Compliance Committee, at its 6th session in January 2013, its 7th session in June 2013 and its 8th session in October 2013, became aware of the Party States' situation in the light of the obligation to submit reports to the Organisation in accordance with Article 26 of the Convention.

2. As regards the issue of the reports, the Compliance Committee has been specially instructed by the 17th meeting of the Contracting Parties to analyze the issues of non-compliance with obligations on the basis of the national reports submitted for the biennial periods 2008-2009 and 2010-2011 as formulated in the work programme of the Compliance Committee for the biennial period 2012-2013 (Annex II paragraph 2(b) of Decision IG 20/1). In examining the question of non-submission of the reports, at the request of the meeting of the Contracting Parties, the Compliance Committee is involved on the basis of the Article 17(b) of Decision IG 17/2 as was precisely indicated in the mandate given to the Compliance Committee by Decision IG.20 / 1 of the 17th meeting of the Contracting Parties.

3. It is on this basis that the Compliance Committee continued the examination of the question of non-submission of reports during its 6th, 7th and 8th session, and decided to take one of the measures provided for in Article 32 (d) of Decision IG 17/2 in order to settle the case of non-compliance, by making this recommendation addressed to the next meeting of the Contracting Parties to be held in Istanbul in December 2013.

4. Although these conclusions and recommendations are not in paragraph V "Procedure" of Decision IG.17/2, since it is not a referral made by the Contracting Parties, the Compliance Committee has nevertheless decided that the parties concerned by these draft conclusions and recommendations should be able to acquaint themselves with them prior to the Decision of the Meeting of the Contracting Parties. Therefore, the Compliance Committee requests the Secretariat to notify in writing the present conclusions and recommendations to the parties concerned. They shall have the opportunity to submit their comments in writing, to the Compliance Committee and via the Secretariat, not later than one month before 3 December 2013, the date of the 18th meeting of the Contracting Parties in Istanbul.

II. Summary of the facts

5. In accordance with Article 26-2 of the Convention, the meetings of the Contracting Parties have decided on the form and frequency of the reports. Thus, since the 2002-2003 biennium, national reports have been regularly required. The 15th meeting in 2008 required reports for the period 2006-2007. The 16th meeting in 2009 required national reports for the biennium 2009-2010, and the 17th meeting in 2012 required national reports for the biennium 2010-2011. On the basis of Decision IG.17 / 3 of the 15th meeting of the Parties in Almeria in

2008, a new form of report was adopted and became a requirement for the 2006-2007, 2008-2009 and 2010-2011 reports.

6. The Secretariat, the recipient of these national reports, observed that several Contracting Parties had not sent their report at all and that others had submitted it late. In the latter case, the Secretariat most often issued reminders.

7. Concerning the 2006-2007 biennium, the 15th meeting of the Contracting Parties, in its Decision IG. 17/3, had set the sending deadline as the end of November 2008. Seven States have not sent reports (Algeria, Cyprus, Egypt, Italy, Lebanon, Malta, and Tunisia).

8. Concerning the 2008-2009 biennium, the 16th meeting of the Contracting Parties had set a deadline for sending at 31 December 2010. During its 5th session on 5 July 2011, the Compliance Committee requested the Secretariat to send a reminder letter to the late senders. This letter, dated 13 July 2011, was followed by a further reminder letter dated 9 May 2012. In the absence of reply, the 6th session of the Compliance Committee, on 30 January 2013, requested its President to intervene. The latter, in a letter dated 6 March 2013, asked the interested parties (Albania, Lebanon, Libya, Montenegro and Slovenia) the reasons for their failure to submit their report for the 2008-2009 biennium, requesting a response before 30 April 2013. For the 7th session of the Compliance Committee, the Secretariat compiled a table of national reports submitted by the Contracting Parties under Article 26 of the Barcelona Convention (UNEP (DEP) / MED Compliance Committee.7 / inf3). On 26 June 2013, in the absence of a reply to all the previous letters, including that of the President of the Compliance Committee, there are still six cases of non-submission of reports for 2008-2009, that is, 3 years after the deadline and despite sending three successive reminders in 2011, 2012 and 2013 (Albania, Lebanon, Libya, Malta, Montenegro, Slovenia). However, Libya, which did not accept the 1995 amendments until 12 January 2009, does not have the obligation to report for 2008-2009.

9. Concerning the biennium 2010-2011, the 17th meeting of the Contracting Parties, in its decision IG.20 / 3, had set a deadline for sending "by December 2012 at the latest". The Compliance Committee, during its 6th session, invited the Secretariat to reiterate their obligations to the Contracting Parties who had not yet sent their report, and granted an extension until 31 March 2013. In a letter of 15 February 2013 sent to the focal points of the Contracting Parties, the Secretariat recalls that non-submission of the reports "will be considered to be a case of non-compliance" by the Compliance Committee. On 26 June 2013 the Table of the Secretariat, cited in 5 above, identified 11 cases of non-submission of reports for 2010-2011, that is, seven months after the deadline and four months after the February 2013 reminder (Albania, Algeria, Croatia, Lebanon, Libya, Malta, Monaco, Slovenia, Syria, Tunisia and Turkey). Turkey has since submitted its report for the 2010-2011 biennium, on 12 July 2013.

10. The Compliance Committee, at its 6th session in January 2013, observed that 5 Contracting Parties have repeatedly failed to send their national reports for two successive biennia: both for 2008-2009 and for 2010-2011 (Albania, Lebanon, Libya, Malta, Slovenia). The same observation was made at the 7th session of the Compliance Committee in June 2013.

11. Finally, the Compliance Committee observes that the manifest and repeated case of non compliance of Article 26 of the Convention concerns two States, which for three successive biennia, did not sent any of the reports required for 2006-2007, 2008-2009 and 2010-2011 (Lebanon and Malta).

III. Legal basis for non-compliance

12. The Compliance Committee notes that the submission of national reports is a direct obligation of the Contracting Parties clearly imposed by Article 26 of the Barcelona Convention. It requires a report on the measures taken in application of the Convention and also under the protocols and recommendations adopted by the meeting of the Contracting Parties. Certain Protocols reiterated the obligation to submit reports, specifying their content (Art. 13 of Protocol on protection of the Mediterranean Sea against pollution from sources and activities located on land and Art. 23 of Protocol on specially protected areas and biological diversity of the Mediterranean). The reporting obligation is subject to form and frequency requirements as decided by the meetings of the Contracting Parties. The Compliance Committee notes, in this respect, that the missing reporting were actually required and programmed by the 16th and 17th meetings of the Contracting Parties.

13. The Contracting Parties implemented in paragraphs 5, 6, 7 and 8 above all deposited their instruments of ratification and became parties after its entry into force. Article 26 of the Convention is applicable and enforceable against them (Albania, Algeria, Cyprus, Egypt, Italy, Lebanon, Libya, Malta, Monaco, Slovenia, Syria and Tunisia).

IV. General remarks

14. Non-respect of Article 26 of the Barcelona Convention constitutes a major obstacle to the implementation of the Convention and its protocols, since, despite its aspect of purely formal obligation, it gives rise to a whole series of consequences that impede the effectiveness of the Convention and the WFP. For this reason, several meetings of the Contracting Parties have particularly stressed the need for a Member State to comply with the requirement to provide the national reports in due time.

15. The reports of the Contracting Parties shall be the key element of the implementation of the Barcelona Convention and its protocols. In the eyes of the Compliance Committee they are initially essential to be able to legally exercise the following functions:

- allow the meeting of the Contracting Parties to “study” the reports in accordance with Article 18-2-(ii) of the Convention. In the absence of reports, the meeting of the Parties cannot fulfill its mission,
- assess the conformity of the measures taken at national level with the Convention and its protocols, and allow application of Article 27 of the Convention,
- measure the effectiveness of the measures taken and the problems encountered in application of the Convention and its protocols in accordance with Article 26 of the Convention,
- enable the Committee to fulfill the obligations to comply the mandate entrusted to it by the Contracting Parties to “facilitate and promote compliance with the obligations in the context of the Barcelona Convention and its Protocols” (1. Objective, Decision IG.17/2),
- allow the Secretariat to send the Contracting Parties the reports under Article 17 (II) of the Convention,
- allow the Secretariat to report to the Contracting Parties on the implementation of the Convention and Protocols under Article 17 (VI) as pointed out in decision IG.20 / 3 which itself refers to Decision IG.17/3.

16. In addition, the Compliance Committee considers that the reports also play an important political and technical role, by:

- facilitating the monitoring over time of the progress made in the implementation of the Convention and its protocols, at both national and regional level,
- providing regular information to facilitate the effective application of the Convention and its protocols,
- allowing the Secretariat to make a credible summary, in the possession of all the relevant information available,
- allowing the condition of the Mediterranean to be assessed,
- identifying the challenges faced by all the residents in the Mediterranean area,
- sharing between the Contracting Parties and WFP partners the information contained in the reports and the experience concerning the efforts made for the implementation,
- contributing to higher visibility and transparency of the WFP in the region through publication of the reports on websites or other channels as recommended by Decision IG.17/3,
- formulating the general obligations of the Contracting Parties with regards to their regional cooperation,
- preventing the introduction of difference of treatment and obligations between those making the effort to complete the reports, and the others.

V. The Contracting Parties' diligence in complying with their obligations relating to the submission of reports.

17. The Compliance Committee underlines that, beyond the formal obligation to submit reports in due time as formulated specifically by Art. 26 of the Convention, the Contracting Parties have repeatedly stressed the urgent need to comply with this obligation in the common interest of the Contracting Parties and in order to meet the objectives of the Convention and its protocols.

18. The Compliance Committee, confining itself to involvement in the meetings of the Parties concerning the reports for the 2008-2009 and 2010-2011 biennia, reiterates the following decisions:

- Decision IG. 17 / 2: the 15th meeting of the Contracting Parties, in 2008, asked the Compliance Committee to examine 'the problems of non-compliance with reporting obligations',
- Decision IG. 19 / 17, appendix 1, paragraph 4, page 9: the 16th meeting of the Contracting Parties in 2009, in approving the WFP work programme for 2010-2014 with regard to the entry into force of legal instruments considers '... it a priority to contribute and to ensure that the new texts are implemented at the Parties' level. The system of reports and the mechanism of surveillance and the compliance with obligations shall expand rapidly and allow greater transparency'. Regarding governance, one of the three priorities identified deals with implementation of the Convention and its protocols in respect of which the "search

for effectiveness will be a priority (...) the reputation of the Barcelona Convention is partly linked to the attention to be paid to its effective enforcement'. For the Compliance Committee, there can be no effective application if not all Contracting Parties submit their national reports within the time limits.

- Decision IG.19 / 17, appendix 2, page 27: the 16th meeting of the Contracting Parties in 2009, in approving the work programme and 2010-2011 budget, reaffirms: "an effective system of reporting and a mechanism of compliance with obligations are essential to promote the effective implementation of the Convention and its protocols and the effectiveness and overall visibility of the WFP".

- Decision IG. 19/1, Preamble: the 16th meeting of the Contracting Parties in 2009, in approving the rules of procedure of the Compliance Committee, stressed "the fact that it is important for the contracting parties to respect the time limits for their requested report obligations," urged "the Contracting Parties who have not done so to submit their reports as soon as possible", and called on 'the Compliance Committee (...) to discuss repeated problems of compliance with obligations in general '.

- Decision IG. 19/1, Annex II, Para. 2 (e): the 16th meeting of the Contracting Parties in 2009, in approving the work programme of the Compliance Committee for 2010-2011, considered that the focus should be "placed in particular on the reasons for the Contracting Parties not respecting their obligations to report '.

- Decision IG. 20/1: the 17th meeting of the Contracting Parties in 2012, by amending the procedures and mechanisms of compliance with obligations, set out the following considerations: "forcefully pointing out the need for the Contracting Parties to discharge their submission obligations within the deadlines of the reports on the measures taken in application of the Barcelona Convention and of the Protocols"; "urges the Contracting Parties which have not yet done so to submit their reports as soon as possible"; "requests the Compliance Committee, in accordance with paragraph 17 (b) of the Procedures and mechanisms of compliance with obligations, to examine general questions related to compliance with obligations, including the recurring problems of non-compliance with those obligations".

- Decision IG. 20/3: the 17th meeting of the Contracting Parties, in a decision specially devoted to the problem of reports, clearly indicated in 2012 its concern at the number of Contracting Parties which still had not submitted their reports: "showing its concern that seven Contracting Parties have not submitted their biennial reports on the measures taken in application of the Convention and its protocols and that some of the reports were not received in time".

VI. Conclusions

19. In the light of the foregoing, the Compliance Committee shall adopt the following conclusions in order to bring to the attention of the meeting of the Contracting Parties, with a view to official adoption, under paragraphs 31, 32, 33 and 34 of the Decision IG. 17/2.

20. The Compliance Committee considers that the submission of reports as provided for in Article 26 of the Convention is a fundamental requirement, with no possible exceptions. It represents the procedural minimum which must be required. It is a precondition for:

- the effectiveness of the whole WFP and its legal instruments,

- it allows all contracting parties to regularly assess legal, administrative or other measures taken by them and problems encountered in their application,

- it is essential for the functioning of the compliance mechanisms. The reports are therefore beneficial for those which compile them and also for all the Contracting Parties who can find examples of good or bad practices within them. Without the reports, the Convention is only a useless scrap of paper.

21. The Compliance Committee underlines that the transmission of reports to the Secretariat was compulsory as soon as the original Convention of 16 February 1976 (Article 20) came into force, i.e. on 12 February 1978. In other words, for the Party States to the Convention at the outset. This means that submitting reports has been a requirement for 35 years. In fact, it was not until later that this obligation was given specific expression by the meeting of the Contracting Parties. A specimen detailed report on marine pollution was adopted by the Contracting Parties at their 11th ordinary meeting in 1999, Recommendation IIa a) b) 4) under the critical situation protocol (pollution reporter system or POLREP). However, it was the 12^o meeting of the Contracting Parties (Monaco, 14-17 November 2001) that adopted the forms of reports for the Convention and its protocols and established a pilot phase requesting voluntary participation of the Contracting Parties agreeing to draw up these reports. At the time, there were 7 volunteers (Algeria, Croatia, Spain, Libya, Monaco, Tunisia and Turkey). It was only after this year that the 13th meeting of the Contracting Parties, in Catania in November 2003, imposed regular reports. Therefore, the obligatory phase of application of the reports system did not begin until the 2002-2003 biennium by deciding to "start applying Article 26 of the Barcelona Convention from the 2002-2003 biennial period based on the updated reporting formats as indicated in the document UNEP (DEC) / med wg.228 / 9' (Decision I.a.1.4 in UNEP (DEC) / MED IG 15 / 11, Annex III, page 2). It also should be considered that the contracting parties have had ample time to become accustomed to this formality. Therefore, the Compliance Committee now considers that strict compliance with this requirement shall be clearly reaffirmed in the interest of the Mediterranean Sea environment. This also applies to the reputation and credibility of the Barcelona Convention, considered rightly as a pioneer and model in regional sea matters.

22. The Compliance Committee is well aware of the heavy burden on the Contracting Parties, who are often required to respond to several questionnaires concerning their participation in several international conventions on the environment. The ability of the parties concerned, and the limited means often devoted to the environment in many countries, and exceptional political circumstances, may explain some delays.

23. However, the Compliance Committee considers that as this is a formal obligation, the minimum which can be expected of the Contracting Parties is to return the Questionnaire with brief replies. This task is usually facilitated in the said Questionnaire by simply requiring the ticking of boxes. Admittedly, summary responses are not satisfactory because they do not allow the Secretariat, or the Compliance Committee, to fulfill the tasks entrusted to them of checking that the obligations have been respected. Therefore, the Compliance Committee wishes to clearly distinguish two separate cases of non-compliance with regards to reporting:

- non-compliance resulting from non-transmission or late transmission of reports, which is a formal requirement,

- non-compliance resulting from reports that are inadequate or incomplete or reveal a breach of the Convention or its protocols or of recommendations adopted by the meeting of the Contracting Parties, which is a substantial requirement.

24. In view of all these considerations, and given that a deadline had been set by the meeting of the contracting Parties, that further time had been granted and that the

Secretariat had clearly offered assistance and advice to Contracting Parties in difficulties (see in this respect decision IG.20/3 and Secretariat's letter of 15 February 2013), the Compliance Committee generally considers that non-submission of reports constitutes a manifest case of non-compliance with the Convention and its protocols.

25. In the eyes of the Compliance Committee, this case of non-compliance is in itself particularly serious because of its consequences on the proper functioning of the whole WFP and its conventions. The Compliance Committee notes, in addition, a real and continuous deterioration resulting from the reduced number of reports submitted since the 2002-2003 biennium. Indeed, the table of national reports submitted by the Contracting Parties (UNEP (DEPI) / MED Compliance Committee.7 / INF 3, 26-28 June 2013) indicates that the number of reports submitted decreased from 19 in 2003 to 17 in 2005, 15 in 2007, 16 in 2009 and 12 in 2011. It is essential to end this decrease of the reports in contravention of the repeated exhortations of the meeting of the Contracting Parties. Therefore, the Compliance Committee decides to alert the Contracting Parties to ensure express recognition of non-compliance, aiming at the defaulting parties.

26. For the application of paragraph 32 of Decision IG. 17/2 concerning the measures that the Compliance Committee may take, the Committee considers that, in view of the formal non-compliance found, it is not, in this case and in the immediate, appropriate or useful to provide advice and assistance, it having already been offered without success by the Secretariat. Therefore, the Compliance Committee decides to apply (d) of paragraph 32 of Decision IG. 17/2, considering that non-compliance due to absence of reports must be addressed by the meeting of the Contracting Parties and by submitting this recommendation to the meeting of the Contracting Parties.

27. The Compliance Committee, wanting to facilitate compliance with the obligations, and taking into account the capacity of the Contracting Party concerned and factors such as the cause, nature, degree and the frequency of non-compliance as provided for in paragraph 32 of Decision IG. 17 / 2, decided not to treat in the same way the different Contracting Parties concerned by the non-compliance arising through non-submission of reports as referred to in paragraphs 6, 7, 8 and 9 above.

28. Situations of non-compliance prior to the 2008-2009 biennium, although declared, will be considered exceptionally by the Compliance Committee as no longer justifying intervention of the meeting of the Contracting Parties in the light of the age of the information that these reports should contain.

29. For the 2008-2009 biennium, despite reminders from the Secretariat and e-mail from the President of the Compliance Committee, no report was sent to the Secretariat by the Albania, Lebanon, Malta, Montenegro and Slovenia. The Compliance Committee considers that such behavior constitutes a case of non-compliance. The Compliance Committee invites the meeting of the Contracting Parties, under paragraphs 33 (a) and 33 (b) of Decision IG. 17 / 2 to recommend that these parties submit their reports 2008-2009 within a time limit of one month and at their request, provide the necessary assistance where required.

30. For the 2010-2011 biennium, despite reminders from the Secretariat, no report was sent by Albania, Algeria, Lebanon, Libya, Malta, Slovenia, Syria or Tunisia. The Compliance Committee considers that such behavior constitutes a case of non-compliance. The Compliance Committee invites the meeting of the Contracting Parties, under paragraphs 33 (a) and 33 (b) of Decision IG. 17/2, to recommend that these parties submit their 2010-2011 reports within a time limit of one month and at their request, provide the necessary assistance where required.

31. Although the non-transmission of a single report may occasionally be explained by the special circumstances of the case, provided however that the party concerned explains in good time to the Secretariat and Compliance Committee, the non-transmission of several successive reports is aggravated and therefore a case of non-compliance. For this reason, Decision IG. 17/2 on the procedures and compliance mechanisms expressly stipulates the hypotheses of “repeated” non-compliance (paragraph 17 (b)) and cases of “persistent, serious or repeated situations of non-compliance” (paragraph 34). Non-compliance can thus lead to a special scheme at the discretion of the meeting of the Contracting Parties, in application of paragraph 34 of the decision IG. 17/2/.

32. The Compliance Committee considers that the fact of not sending reports for several successive biennia without providing any explanation and without replying to the various reminder letters constitutes persistent, serious and repeated non-compliance. This is the case for the 2008-2009 and 2010-2011 biennia for Albania, Lebanon, Malta and Slovenia,. The Compliance Committee notes that for Lebanon and Malta, the non-compliance is aggravated because of the absence of reports for three successive biennia since 2006-2007. The Compliance Committee considers that such behavior constitutes a case of serious and repeated non-compliance and invites the meeting of the Contracting Parties:

- to decide to apply paragraph 33 (d) of Decision IG.17/2 by publishing these instances of non-compliance;
- to issue a warning under (a) of paragraph 34 of Decision IG. 17/2;
- to ask these five Parties to submit their reports within a time limit of one month, offering them, at their request, such necessary assistance as is required.

33. The Compliance Committee:

- considering the debates of the 17th meeting of the Contracting Parties concerning Decision IG.20/1, according to which “in future the parties should receive information on the reasons why the countries have not submitted reports” (paragraph 48, UNEP (DEPI) MED IG 20/8),
- wanting to facilitate compliance with the obligations in view of the specific situation of each contracting party, especially those of developing countries,
- wishing to help resolve the difficulties encountered by the Contracting Parties who have not submitted a report,
- wishes the meeting of the Contracting Parties to request these Parties to officially call on the Compliance Committee, regarding their own actual situation of non-compliance under paragraph 18 (a) of Decision ig.17 / 2.

VII. Recommendations

34. The Compliance Committee recommends that the meeting of the Contracting Parties:

A. Approves the conclusions of the Compliance Committee according to which:

- Algeria, Croatia, Libya, Monaco, Syria and Tunisia have not complied with their obligations under Article 26 of the Convention;
- Albania, Lebanon, Malta and Slovenia have shown serious and repeated non-compliance with their obligations under Article 26 of the Convention, and receive a warning under

paragraph 34 (a) of Decision IG.17/2 and shall be the subject of a publication of non-compliance with Article 26 of the Convention under paragraph 33 (d) of Decision IG.17/2.

B. Calls on the Governments of Algeria, Croatia, Libya, Monaco, Syria and Tunisia to submit their 2010-2011 report within the time limit of one month and asks them, if need be, to request assistance for the compilation of the reports.

C. Calls on the Governments of Albania, Lebanon, Malta and Slovenia to send their 2008-2009 and 2010-2011 reports within the time limit of one month and asks them, if need be, to request assistance for compilation of the reports.

D. Requests the governments of Albania, Algeria, Croatia, Lebanon, Libya, Malta, Monaco, Slovenia, Syria and Tunisia to call, if necessary, on the Compliance Committee under paragraph 18 (a) of Decision IG. 17/2 for it to examine precisely the difficulties and obstacles encountered by these parties in complying with the obligations of Article 26 of the Barcelona Convention.