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Meeting of the MAP Focal Points

Istanbul, Türkiye, 12-15 September 2023

Agenda Item 5: Specific Matters for Consideration and Action by the Meeting, including Draft Decisions

Draft Decision 26/1: Compliance and Reporting

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UNEP/MAP
Athens, 2023

Note by the Secretariat

The present draft decision is prepared by the Secretariat on the basis of its mandate regarding the governance aspects of the implementation of Decisions IG.17/2, IG.20/1 and IG.21/1 on Compliance Procedures and Mechanisms under the Barcelona Convention and its Protocols as well as on Reporting under Article 26 of the Barcelona Convention and other relevant Articles of the Protocols on reporting requirements. A number of paragraphs of the present draft decision have been prepared and/or agreed by the Compliance Committee or are in the process of consultation with the Compliance Committee.

The present draft decision addresses the following main elements:

1. Amendments to Procedures and Mechanisms on Compliance and Status of Reporting

The 22nd Meeting of the Contracting Parties (Antalya, Türkiye, 7-10 December 2021) reviewed the proposed amendments by the Compliance Committee to the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols. Decision IG 25/2, entitled “Compliance Committee” requested the Secretariat “to undertake a consultation process as soon as possible and not later than January 2023 with the Contracting Parties to review the proposed amendments and report on the outcome at COP 23” (UNEP/MED IG 25/27).

The consultation meeting was held via teleconference on 31 January 2023 and the final version of the revised Compliance Procedures and Mechanisms as agreed by the Meeting are presented as Annex 1 of the present draft decision. The Secretariat has provided a number of clarifications as footnotes to facilitate the review of the proposed amendments and their discussion during the MAP Focal Points meeting to be held in September 2023.

For ease of reference, the Secretariat has maintained the numbering of paragraphs in Annex I, as agreed by the consultation meeting of 31 January 2023, and will be updated with sequential paragraph numbering after the review by MAP Focal Points Meeting, and as appropriate COP 23.

It should be noted that there are 13 square brackets in Annex I, to be discussed by the Meeting. The main issues covered include the number of members of the Compliance Committee, the quorum, the maintenance or not of the alternate members, the reference to developing countries, the application of the “due process” not only in the Compliance Committee’s objectives but also in the way it operates, as well as the discussion for a possible expansion of the competence of assigning work to the Compliance Committee also to the Secretariat and individual Contracting Parties, while at the moment this competence is strictly given to the COP only.

The present draft decision also contains consideration and provisions about the status of reporting and on non-timely reporting.

2. Activity report of the Compliance Committee during the biennium 2022-2023 and Draft 2024-2025 Programme of Work of the Compliance Committee

The present draft decision contains provisions and two annexes, one on the 2022-2023 Activity Report by the Compliance Committee that should be submitted directly to COP23 (not yet finalized) and the Programme of Work of the Compliance Committee for 2024-2025 attached as Annex 3.

The draft Programme of Work is structured around three sections addressing:

- a) Specific submissions under Section V of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocol: This covers submissions and referrals under Paragraphs 18 to 23.bis of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols;

- b) General issues of compliance under the Barcelona Convention and its Protocols: This deals with Paragraph 17 of the Procedures and Mechanisms on Compliance; and
- c) Enhanced effectiveness: This covers activities a) facilitating coordinated assistance to Contracting Parties to address difficulties in implementation as well as actual or potential non-compliance situations; b) reinforcing synergies with other Compliance Committee's Multilateral Environmental Agreements (MEAs), including holding joint sessions where appropriate, as well as c) working in assessing the effectiveness of measures taken by the Contracting Parties for the implementation of the Convention and its Protocols.

At a later stage the present draft decision will be completed with the Annex IV which would contain the proposed nominations of candidates to sit in the Committee as members and/or alternate members. It has to be noted that the Secretariat will share with the MAP Focal Points an information document explaining the situation of the membership of the current members/alternate members to the Compliance Committee in relation to the different scenarios agreed in principle with regards to the number and functions of its composition (document UNEP/MED WG.568/Inf.20).

The implementation of this decision is linked to all Outcomes of the Foundational Programme 5 on "Governance" of the MTS and of the proposed Programme of Work 2024-2025. It has budgetary implications on MTF and external resources, reflected in the proposed budget for activities 5.1.1, 5.1.3 and 5.2.4.

[Decision IG. 26/1]**Compliance and Reporting**

The Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention) and its Protocols at their 23rd Meeting,

Recalling the United Nations General Assembly resolution 70/1 of 25 September 2015, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”,

Recalling also the United Nations General Assembly resolution 67/296 of July 2022, entitled “Our Ocean, Our future, Our responsibility”,

Recalling decision IG.25/2 of COP 22 (Antalya (Türkiye), 7-10 December 2021) requesting the Secretariat to undertake a consultation process as soon as possible and not later than January 2023 with the Contracting Parties with a view to review the proposed amendments to procedures and mechanisms on compliance and report on the outcome at COP 23,

Having regard to the Barcelona Convention, in particular Articles 26 and 27 thereof, about reports and compliance control, respectively, and the relevant articles of its Protocols,

Recalling Decision IG.17/2 of the 15th Meeting of the Contracting Parties (COP 15) (Almeria, Spain, 15-18 January 2008) on Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols, as amended by Decision IG.20/1 of the 17th Meeting of the Contracting Parties (COP 17) (Paris, France, 8-10 February 2012) and Decision IG.21/1 of the 18th Meeting of the Contracting Parties (COP 18) (Istanbul, Türkiye, 3-6 December 2013),

Emphasizing the Compliance Committee’s unique role in facilitating and promoting compliance by the Contracting Parties with the obligations under the Barcelona Convention and its Protocols,

Stressing the importance of the timely submission of national implementation reports by the Contracting Parties, for the COP to keep under review the implementation of the Barcelona Convention and its Protocols,

Appreciating the progress made by Contracting Parties in implementing the Barcelona Convention and its Protocols, acknowledging at the same time the challenges and difficulties faced in this complex process,

[Noting with concern that several Contracting Parties continue their recurrent practice of non-submission of national implementation reports for the last three biennia],

Aware of the need to ensure that, in coordination with MAP components, where appropriate, adequate action is taken to facilitate and promote compliance through capacity building activities with regards to submissions of the National Implementation Reports as resources allow,

Appreciating the work carried out by the Compliance Committee during the biennium 2022-2023 in addressing general and specific cases of difficulties in the implementation of the Barcelona Convention and its Protocols,

Having regard to the report of the Consultation Meeting of the Contracting Parties held on 31 January 2023, on the proposed amendments to the Procedures on Mechanisms of Compliance,

[Having considered the reports of the 18th and 19th meetings of the Compliance Committee and its Activity report for the biennium 2022-2023,]

1. *Adopt* the amendments to the Procedures and Mechanisms on Compliance, set out in Annex I to this present Decision,

[2. *Adopt* the Activity Report of the Compliance Committee for the Biennium 2022-2023, including its findings and recommendations, set out in Annex II to this present Decision,]

3. *Adopt* the Programme of Work of the Compliance Committee for the Biennium 2024-2025, set out in Annex III to the present Decision,

4. *Urge* the those Contracting Parties who have not yet submitted their national implementation reports for the biennium 2018-2019 (8 Contracting Parties) and the biennium 2020-2021 (13 Contracting Parties) to do so, as soon as possible by 2nd April 2024 at the latest,

[5. *Appreciate* the actions taken by Spain to implement the findings and recommendations by the Compliance Committee for the case of Mar Menor and further *encourages* their efforts to achieve full compliance with the requirements and obligations of the Barcelona Convention and its Protocols following recommendations of the Compliance Committee and report.]

6. *Elect* the candidates nominated by the Contracting Parties listed in Annex IV to this present Decision [as members and alternate members of the Compliance Committee respectively].]

Annex I

Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols

I. Objective and Principles

1. The objective of the compliance mechanism is to facilitate and promote compliance with the obligations under the Barcelona Convention and its Protocols, taking into account the specific situation of each Contracting Party **[in particular those, which are developing countries.]**

1.bis. The compliance procedure shall be facilitative, non-adversarial, dispute-preventing and cooperative in nature and its operation be guided by the principles of transparency, fairness, expedition as well as by equitable principles.

1ter. The compliance procedure shall be conducted by the principles of “due process” and “due diligence” in order to ensure fairness and transparency.

II. Compliance Committee

2. A compliance committee, hereinafter referred to as “the Committee”, is hereby established.

3. The Committee shall consist of [seven] **[nine]** members elected by the Meeting of the Contracting Parties before the end of each Ordinary Meeting of the Contracting Parties from a list of candidates nominated by the Contracting Parties. **[For each member of the Committee, the Meeting of the Contracting Parties shall also elect an alternate member from the above-mentioned list.]¹**

4. A full term of office commences at the end of an Ordinary Meeting of the Contracting Parties and runs until the end of the second Ordinary Meeting of the Contracting Parties thereafter. **[For the principle of continuity of functions, the term of office of the Chair and two Vice-Chairs of the Compliance Committee is extended as appropriate until their successors are elected at an Ordinary Meeting of the Compliance Committee.]²**

5. At the Meeting of the Contracting Parties at which the decision establishing the mechanism is adopted, the Meeting shall elect three members and their alternates for half a term and four members and their alternates for a full term. At each ordinary meeting thereafter, the Contracting Parties shall elect for a full-term new members **[and alternates]** to replace those whose period of office is about to expire.

6. Members **[and alternates members]** shall not serve on the Committee for more than two consecutive terms.

7. The members of the Committee shall be nationals of Parties to the Barcelona Convention. The Committee shall not include more than one national of the same State.

8. Nominated candidates shall be persons of recognized competence in the matters dealt with by the Barcelona Convention and its Protocols and in relevant scientific, technical, socioeconomic, legal or other fields. Each nomination shall be accompanied by the curriculum vitae of the candidate. Contracting Parties may consider the nominations of candidates from civil society and academia. While nominating their candidates Contracting Parties shall also give due consideration to avoid every possible conflict of interest.

9. In electing members of the Committee **[and their alternates]**, the Meeting of the Contracting Parties shall take into consideration equitable geographical representation, shall ensure rotation in order to secure the participation of nominated individuals from all Contracting Parties as members of the Committee within a reasonable period of time. To the extent possible, they shall also take into consideration a balance of scientific, legal and technical expertise.

¹ Note by the Secretariat: This will only apply to the option of 7 members.

² Note by the Secretariat: Other compliance procedures do not regulate this aspect. This is usually regulated through the Rules of Procedure of the Compliance Committee. Within the UNEP/MAP system, this amendment reflects the current practice.

10. The Committee shall elect its officers – a Chairperson and two Vice-Chairpersons – on the basis of equitable geographic representation and rotation.

11. Members of the Committee **[and their alternates]** shall serve in their individual capacities and shall act objectively in the interests of the Barcelona Convention and its Protocols for the protection of the Mediterranean Sea and its coastal area avoiding any conflict of interest.

III. Meetings of the Committee

12. The Committee shall meet at least once a year. The Committee may decide to hold additional meetings, in particular in conjunction with those of other Convention bodies.

13. The Secretariat shall inform all Contracting Parties of the date and venue of the meetings of the Committee. Unless the Committee or the Party whose compliance is in question (hereinafter “the Party concerned”) decides otherwise, the meetings of the Committee will be open to:

- (a) Parties to the Convention, which shall be treated as observers in accordance with the Rules of Procedure for meetings and conferences of the Contracting Parties for the purpose of their participation in the Committee; and
- (b) observers, in accordance with Article 20 of the Convention and the Rules of Procedure for the meetings and conferences of the Contracting Parties

14. **[In the absence of a member from a meeting, the respective alternate shall serve as the member]³**

15. For each meeting, a quorum of **[seven] [nine]** members is required.⁴

16. The Committee shall make every effort to reach agreement by consensus on its findings, measures and recommendations. If all efforts to reach consensus have been exhausted, the Committee shall as a last resort adopt its findings, measures and recommendations by at least a three-fourths majority of the members present and voting. “Members present and voting” means members present and casting an affirmative or a negative vote.

IV. Role of the Compliance Committee

17. The role of the Committee shall be to consider:

- (a) specific situations of actual or potential non-compliance by individual Parties with the provisions of the Convention and its Protocols;
- [(b) at the request of the Meeting of the Contracting Parties, general compliance issues, such as recurrent non-compliance problems, including in relation to reporting, taking into account the reports referred to in Article 26 of the Convention and any other report submitted by the Parties; and**
- (c) any other issues as requested by the Meeting of the Contracting Parties or a Contracting Party or the Secretariat if related to the Compliance Committee mandate and its Programme of Work as adopted by the Ordinary Meeting of the Contracting Parties.]**

17.bis In assessing and verifying information provided and the actual situation on the ground, the Committee may be assisted by the Secretariat including MAP components.

³ Note by the Secretariat: The final text would depend on the outcome of paragraph 3.

⁴ Note by the Secretariat: The original text is better placed to avoid any interference in the direct relationship between the Compliance Committee and the Conference of Parties which is the ultimate body assigning tasks and responsibilities to the Compliance Committee.

V. Procedure

1. Submissions by Parties

18. The Committee shall consider submissions by:

- (a) a Party in respect of its own actual or potential situation of non-compliance, despite its best endeavours; and
- (b) a Party in respect of another Party's situation of non-compliance, after it has undertaken consultations through the Secretariat with the Party concerned and the matter has not been resolved within three months at the latest, or a longer period as the circumstances of a particular case may require, but not later than six months.

19. Submissions as referred to in paragraph 18 concerning the alleged non-compliance of a Party shall be addressed in writing to the Committee through the Secretariat, supported by substantiating information setting out the matter of concern and the relevant provisions of the Barcelona Convention and its Protocols.

20. The Secretariat shall, within two weeks of receiving a submission in accordance with paragraph 18 (b), send a copy of that submission to the Party concerned.

21. The Committee may decide not to proceed with a submission that it considers to be

- anonymous,
- de minimis or
- manifestly ill founded.

22. The Secretariat shall inform both the Party concerned and the Party indicated in paragraph 18(b) about the Committee's findings under paragraph 21 within two weeks of the date of the findings.

2. Referrals by the Secretariat

23. If the Secretariat becomes aware from the periodic reports referred to in Article 26 of the Convention and any other reports submitted by the Parties that a Party is facing difficulties in complying with its obligations under the Convention and its Protocols, the Secretariat shall notify the Party concerned and discuss with it ways of overcoming the difficulties. If the difficulties cannot be overcome within a maximum period of three months, the Party concerned shall make a submission on the matter to the Compliance Committee in accordance with paragraph 18 (a). In the absence of such a submission within six months of the date of the above-mentioned notification, the Secretariat shall refer the matter to the Committee.

2.bis. Referral to the Committee on its own initiative

23.bis. The Committee may examine, on the basis of the biennial activity reports or in the light of any other relevant information, any difficulties encountered by a Contracting Party in the implementation of the Convention and its Protocols. The Committee may ask the Party concerned to provide all additional information. The Party concerned shall have a period of two months to respond. Paragraphs 24 to 30 and 32 to 34 shall apply, *mutatis mutandis*, in the case of referral to the Committees on its own initiative.

3. Proceedings

24. The Party concerned may present information on the issue in question and present responses and/or comments at every stage of the proceedings. At the invitation of the Party concerned, the Committee may undertake on-site appraisals.

25. The Committee may:

- (a) ask the Party concerned to provide further information, including an assessment of the reasons

(b) why the Party may be unable to fulfil its obligations; and with the consent of the Party concerned, gather information in the territory of that Party, including on-site appraisals.

26. In its deliberations, the Committee shall take into account all the available information concerning the issue in question, which shall also be made equally available to the Party concerned.

27. The Party concerned shall be entitled to participate in the discussions of the Committee and present its observations. The Committee may, if it considers it necessary in a particular case of non-compliance, ask the Party concerned to participate in the preparation of its findings, measures and recommendations.

28. **[The Committee shall be guided by the principle of “due process” in order to ensure fairness and transparency.]⁵**

29. The Committee shall, through the Secretariat, notify the Party concerned of its draft findings, measures and recommendations in writing within two weeks from the date of their completion. The Party concerned may comment in writing on the draft findings, measures and recommendations of the Committee within a period of time determined by the Committee.

30. The Committee, any Party or others involved in its deliberations shall protect the confidentiality of information transmitted in confidence by the Party concerned.

VI. Committee reports to the Meetings of the Contracting Parties

31. The Committee shall prepare a report on its activities.

- (a) The report shall be adopted in accordance with paragraph 16. Where it is not possible to reach agreement on findings, measures and recommendations by consensus, the report shall reflect the views of all Committee members and provide the reasoning for its findings, measures and recommendations.
- (b) As soon as it is adopted, the Committee shall submit the report through the Secretariat, including such recommendations on individual and general issues of non-compliance as it considers appropriate to the Parties for consideration at their next meeting.

VII. Measures

32. The Committee may take one or more of the following measures with a view to promoting compliance and addressing cases of non-compliance, taking into account the capacity of the Party concerned, **[in particular if it is a developing country,]** and also factors such as the cause, type, degree and frequency of non-compliance:

- (a) provide advice and, as appropriate, facilitate assistance;
- (b) request or assist, as appropriate, the Party concerned to develop an action plan to achieve compliance within a time frame to be agreed upon between the Committee and the Party concerned;
- (c) invite the Party concerned to submit progress reports to the Committee within the time frame referred to in subparagraph (b) above on the efforts it is making to comply with its obligations under the Barcelona Convention and its Protocols; and
- (d) make recommendations to the Meeting of the Contracting Parties on cases of non-compliance, if it finds that such cases should be handled by the Meeting of the Contracting Parties.

33. The Meeting of the Contracting Parties may decide, upon consideration of the report and any recommendations of the Committee, taking into account the capacity of the Party concerned, **[in**

⁵ Note by the Secretariat: In the view of the Secretariat this paragraph is not redundant but complementary since it addresses the due process while in paragraph 1 addresses the objective of the procedures and mechanisms therefore.

particular if it is a developing country,] and also factors such as the cause, type and degree of non-compliance, appropriate measures to bring about full compliance with the Convention and its Protocols, such as:

- (a) facilitate implementation of the advice from the Committee and facilitate assistance, including, where appropriate, capacity-building measures, to an individual Party;
- (b) make recommendations to the Party concerned;
- (c) request the Party concerned to submit progress reports on achievement of compliance with the obligations under the Convention and its Protocols; and
- (d) publish cases of non-compliance.

34. In the event of a serious, ongoing or repeated situation of non-compliance by a Party, the Meeting of the Contracting Parties, where appropriate, may:

- (a) issue a caution;
- (b) issue a report of non-compliance regarding that Party; or
- (c) consider and undertake any additional action that may be required for achievement of the purposes of the Convention and the Protocols.

VIII. Review of procedures and mechanisms

35. The Meeting of the Contracting Parties shall regularly review the implementation and effectiveness of the compliance mechanism and take appropriate action.

IX. Relationship with Article 28 of the Convention (Settlement of Disputes)

36. These procedures and mechanisms shall operate without prejudice to the settlement of disputes provisions of Article 28 of the Convention.

X. Enhancement of synergies

37. In order to enhance synergies with mechanisms of compliance under other relevant multilateral environmental agreements, the Committee may consult with those mechanisms and invite them to attend its meetings. The Committee shall report back to the Meeting of the Contracting Parties, including with recommendations as appropriate.

XI. Secretariat

38. The Coordinating Unit shall serve as the Secretariat of the Committee. It shall, inter alia, arrange and service the meetings of the Committee.

Annex II

Activity Report of the Compliance Committee for the biennium 2022-2023

Annex III

Draft Programme of Work of the Compliance Committee for the biennium 2024-2025

Draft Programme of Work of the Compliance Committee for the biennium 2024-2025		
Activity	Lead/Who	Timetable/When
Specific submissions under Section V of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocol		
1. To consider any submissions and/or referrals in accordance with Section V of the Procedures and Mechanisms on Compliance	Compliance Committee	20 th and 21 st Compliance Committee Meetings
General issues of compliance under the Barcelona Convention and its Protocols		
2. To consider specific situations of actual or potential non-compliance by individual Parties in accordance with Section IV of the Procedures and Mechanisms on Compliance	Compliance Committee	20 th and 21 st Compliance Committee Meetings
3. At the request of the Meeting of the Contracting Parties, to consider general compliance issues in accordance with Section IV of the Procedures and Mechanisms on Compliance	Compliance Committee	20 th and 21 st Compliance Committee Meetings
4. To consider any other issues as requested by the Meeting of the Contracting Parties in accordance with Section IV of the Procedures and Mechanisms on Compliance	Compliance Committee	20 th and 21 st Compliance Committee Meetings
Enhanced effectiveness of the compliance mechanism		
5. To facilitate assistance, in coordination with MAP components, to address non-compliance situations	CU, MAP Components, Compliance Committee	20 th and 21 st Compliance Committee Meetings
6. Revise the Rules of Procedures for the Compliance Committee Meetings based on the approved compliance procedure mechanism by COP 23 for adoption by COP 24	CU, Compliance Committee	20 th and 21 st Compliance Committee Meetings
7. Develop follow-up mechanism for the implementation of the decisions of the CC, regulation of the flow of work between 2 meetings of the CC as well as inputs for communication purposes of the work of the CC and its outcome, including dissemination.	Compliance Committee,	20 th and 21 st Compliance Committee Meetings
8. Develop a mechanism to assess the effectiveness of the implementation of measures taken by the Contracting Parties under the Barcelona Convention, including indicator-based approaches	Compliance Committee;	20 th and 21 st Compliance Committee Meetings
9. To continue building and strengthening synergies, with other Compliance Committee's Multilateral Environmental Agreements (MEAs), including holding joint sessions.	Compliance Committee	20 th and 21 st Compliance Committee Meetings
10. Undertake reflection on ways and means to promote implementation of Article 15 (on public information and participation) of the Barcelona Convention considering the procedures and the best practices under other multilateral environmental agreements		

Annex IV

List of Candidates of Compliance Committee members and alternates