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Introduction

1. This note intends to assist in the discussions in developing a full compliance mechanism for adoption by the 15th Meeting of the Contracting Parties. It provides information for each section of the draft text for a compliance mechanism.

2. The structure of the document follows the structure of the document submitted to the 14th Meeting of the Contracting Parties (UNEP(DEC)/MED WG270/7). Where new sections or paragraphs are suggested to be included, the original numbering has been kept. All “new” text (i.e. text which has not yet been discussed by the Working Group at its second meeting) is in bold and underlined.

I. Objective

3. This text has already been discussed at the second meeting of the Working Group and was included in document UNEP(DEC)/MED WG270/7.

II. Compliance Committee

4. This text has already been discussed at the second meeting of the Working Group and was included in document UNEP(DEC)/MED WG270/7.

IIbis. Meetings of the Committee

5. This section deals with the number of meetings to be held by the Committee, the quorum necessary to conduct meetings, the “decision-making” in the Committee as well as the possibility to undertake its activities through electronic communications.

Paragraph 1: A question can be raised on whether not only the members, but also their alternates should be invited to the meetings of the Committee. The presence of all members of the Committee and their alternates is not only a question of timing, but also of expenses. The presence of the alternates would double the costs of the Committee meetings. On the other hand the presence of all might have the advantage that also the expertise of alternates might be used by the Committee when discussing submissions. An alternative solution – to have the expertise of the alternates – would be to provide them electronically with the documentation and ask them for comments before the Committee’s meetings. Thus the Committee would have additional expertise when discussing specific submissions. It should be noted that alternates will not be able to participate in the decision-making process of the Committee, unless the member is not present at the meeting (or does not participate in the activities when conducted by electronic communication).

Paragraph 2: This paragraph provides for a minimum quorum for the meetings of the Compliance Committee. If a member is not able to participate, the alternate member shall be invited. Once a submission is discussed by the Committee and a member has not been able to participate at the first meeting when the issue was raised and the alternate participated, the alternate would continue to be the person responsible to continue with this submission. Thus, a speedy solution should be envisaged to address a specific submission and assist in solving non-compliance situations.

Paragraph 3: Most of the compliance procedures provide for a decision-making process that – if all efforts to reach a solution by consensus have failed – permit the adoption of the recommendation by majority vote. Those mechanisms which do not provide for such a majority decision are composed of Parties and not of elected individuals. Majority decisions

are at general seen as strengthening the compliance mechanism. It should be noted that Section IVbis on "Committee Reports to the Meetings of the Parties" provides that "the report shall reflect the views of all the Committee members." Thus, also the views of those which did not support a specific recommendation or expressed different views shall be included in the report, presenting a full picture of the Committee's consideration of a specific issue. The draft suggests to use the terms "findings" and "recommendations" to express what the Committee undertakes. It first establishes the facts and then recommends what should be done.

Paragraph 4: This paragraph is to provide the possibility to make use of electronic means of communication. It is to be seen as additional to meetings of the Committee and not as replacing them. As the experience of other compliance committees shows that the recommendation concerning a "specific" submission might not be fully agreed at a meeting of the compliance committee, but only a few issues remain open which could be discussed and agreed between the members by electronic means. Such a possibility will not only enhance a speedy solution to a case of non-compliance, but will also ensure the most economic use of available resources.

Section III Role of the Committee

6. The title of this section has been kept from the earlier draft text, but its contents has been reshaped taking into account other compliance procedures. In other mechanisms this section is entitled "Functions of the Committee".

7. Subparagraph (a) restates what has already been discussed in Section IV paragraph 1 in regard to submissions addressing specific cases of "non-compliance" and is contained in document UNEP(DEC)/MED WG270/7.

8. Subparagraph (b) states that the Meeting of the Contracting Parties may request the Compliance Committee to address general issues on compliance with or implementation of the commitments under the Convention and its Protocols. Thus not specific cases of non-compliance are to be addressed, but the Committee should look at the implementation and compliance in a general manner and identify general issues which need to be discussed by the Meeting of the Contracting Parties. In doing this the Committee will take into account the reports by the Parties submitted in accordance with Article 26 of the Convention. If the Working Group wishes the role of the Committee concerning reports by Parties to be enhanced, e.g. by giving it the mandate "to monitor, assess and facilitate the implementation and compliance with the requirements under Article 26 of the Convention." It is not common that the Compliance Committee is given the task to analyse the reports by Parties as this would put the focus of the work of the Committee on identifying issues of (potential) non-compliance itself.

Section IV Procedure

9. Paragraph 1 is included in document UNEP(DEC)/MED WG270/7. The different options have to be discussed by the Working Group. As options were discussed in the previous meetings of the Working Group, this proposal tries to provide a way forward to reach a consensus on the question concerning which sources might be used by the Committee.

10. Paragraph 2: Provisions concerning confidentiality and on the process adopting decisions have been added. They follow the example of other compliance procedures and suggest a balance between confidentiality and transparency (subparagraphs 10 and 12). Moreover they provide for a right of the Party concerned to make comments before the final

text is adopted by the Committee (subparagraph 11), thereby finding a solution which is also seen by the Party concerned to be in its favour.

11. These provisions are to be seen as increasing the trust of the Parties and the public in the compliance procedure, as they ensure the involvement of all concerned.

Section IVbis Committee Reports to the Meeting of the Contracting Parties

12. This section is based on the experience of other compliance committees. The compliance committee is to report on its activities and the recommendations made to Parties. Furthermore, the report should also contain – as annexes – recommendations which should be made to the Meeting of the Contracting Parties for their consideration. This report shall also inform the Meeting on the considerations within the Committee and whether consensus has been reached. If this was not possible the views of all members shall be reflected. It is the common practice of all compliance committees to make their reports available to the public.

Section V Measures

13. This text has already been discussed at the second meeting of the Working Group and was included in document UNEP(DEC)/MED WG270/7.

Section VI Review of the procedures and mechanisms

14. This text has already been discussed at the second meeting of the Working Group and was included in document UNEP(DEC)/MED WG270/7.

Section VIbis Relationship with Article 28 of the Convention (Settlements of Disputes)

15. This section follows the example of all established compliance procedures. It underlines that dispute settlement procedures and compliance procedures have different objectives. The compliance procedures aim at ensuring that a situation of non-compliance which exists is to be rectified for the future. Dispute settlement procedures have a different task: to deal with questions of international law which are disputed between subjects of international law. Thus, compliance procedures are future-oriented: their main task it to provide recommendations that the provisions are fulfilled in the future by the Parties.

Section VII Secretariat

16. This text has already been discussed at the second meeting of the Working Group and was included in document UNEP(DEC)/MED WG270/7.