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15th Meeting of the Compliance Committee of the Barcelona Convention and its Protocols

Athens, Greece, 25-26 June 2019

Agenda item 5: Draft Criteria for Identification of Actual or Potential Cases of Non-Compliance on the Basis of the National Implementation Reports Submitted under Article 26 of the Barcelona Convention

Draft Criteria for the Preliminary Assessment of National Implementation Reports Submitted under Article 26 of the Barcelona Convention to Identify Actual or Potential Cases of Non-Compliance

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Note by the Secretariat

1. The 14th Meeting of the Compliance Committee (Athens, Greece, 27-29 June 2018) considered the results of the testing of the draft Guidelines for the Preliminary Assessment of Reports to Identify Actual or Potential Cases of Non-Compliance against three national implementation reports (Israel, Montenegro and Morocco) for the biennium 2014-2015, as agreed by the 12th Meeting of the Compliance Committee (Athens, Greece, 24-25 January 2017).
2. The Compliance Committee concluded that there was a need to refocus the work to respond to the revised reporting format, as adopted by COP 20 (Decision IG.23/1), and in that sense to explore a set of more general criteria building on the experience gained from the testing of the draft Guidelines. The Committee further concluded that work in that direction should be carried out following the *“Guidelines for the Compliance Committee to consider/review the information submitted on the received national implementation reports for 2014-2015 and provide key findings and recommendations for COP 21”* (UNEP/MED CC.15/4, Annex III). In particular, the Secretariat in consultation with the General Fisheries Commission for the Mediterranean (GFCM) would draft a proposal on the set of criteria and the related matrix, if applicable, to be discussed at the 15th Meeting of the Compliance Committee (Athens, Greece, 25-26 June 2019).
3. The 14th Meeting of the Compliance Committee agreed on consultation with GFCM following the presentation at that meeting of the work of the GFCM Compliance Committee in assessing the status of implementation of GFCM decisions on the basis of six criteria, i.e. implemented, partly implemented, implementation in progress, not implemented, not applicable, not reported. At the same meeting, the work of the Compliance Committee of the Basel Convention on the classification of compliance performance based on timelines and completeness was also introduced. The 14th Meeting was an opportunity to strengthening cooperation and synergies with GFCM and the Basel Convention Secretariats on the basis of long-standing collaboration, in particular within the Memorandum of Understanding with the GFCM, under which compliance is one of the areas of cooperation.
4. Following-up on the conclusions of the 14th Meeting of the Compliance Committee, in consultation with the GFCM and the Basel Convention Secretariats, and in collaboration with Daniela Addis, a member of the Compliance Committee, the Secretariat has prepared a set of draft criteria for the identification of actual or potential cases of non-compliance, and its associated matrix.
5. The proposed draft criteria are presented below in table form and cover four aspects to assess when determining for the Barcelona Convention and its Protocols whether there are cases of actual or potential non-compliance. These are: (1) submission, (2) timeliness, (3) completeness and (4) implementation. The associated matrix shows how the information could be presented per Contracting Party and legal instrument following the assessment of the four draft criteria.
6. The Compliance Committee is expected to consider the draft criteria and, if appropriate, recommend their adoption to COP 21.

DRAFT CRITERIA FOR THE IDENTIFICATION OF ACTUAL OR POTENTIAL CASES OF NON-COMPLIANCE

Draft Criteria to be assessed per legal instrument	Status	Suggested action to take
1. Submission <i>Definition: This criterium seeks to determine whether the Contracting Party has submitted its national implementation report for the concerned legal instrument as per Article 26 of the Barcelona Convention</i>	Submitted <i>Definition: The national implementation report for the concerned legal instrument has been submitted</i>	None
	Not Submitted <i>Definition: The national implementation report for the concerned legal instrument has <u>not</u> been submitted</i>	(1) The Secretariat to follow-up with the concerned Contracting Party to facilitate through guidance and assistance the submission of the outstanding national implementation report(s) (2) The non-submission of national implementation reports for more than two consecutive biennia¹ should lead the Compliance Committee on a case-by-case basis and within its mandate: (a) in a first phase, to take action through a request to the concerned Contracting Party to provide information on the difficulties that have hampered the submission of the outstanding national implementation report(s). The request should not amount to an identification of non-compliance and draw the attention of the concerned Contracting Party on the need to respond within a precise deadline; (b) in a second phase, based on the information provided by the concerned Contracting Party to the request of information, to either closing the ongoing procedure or triggering the compliance mechanism

¹ At its 87th Meeting (Athens, Greece, 6-7 November 2018), the Bureau recommended that “the Compliance Committee develops a mechanism under which the non-submission of national implementation reports under Article 26 of the Barcelona Convention for more than two consecutive biennia will be construed as a situation of non-compliance, leading to the consideration by the Compliance Committee of the measures laid down in Section VII of the Procedures and Mechanisms of Compliance” (UNEP/MED BUR 87/7 §47.b)

Draft Criteria to be assessed per legal instrument	Status	Suggested action to take
		leading to the consideration of the measures laid down in Section VII of the Procedures and Mechanisms of Compliance.
2. Timeliness <i>Definition: This criterium seeks to determine whether the Contracting Party has submitted its national implementation report for the concerned legal instrument not later than [insert number of months]² after the agreed deadline by COP</i>	Submitted on time <i>Definition: The national implementation report for the concerned legal instrument has been submitted not later than [insert number of months] after the agreed deadline by COP</i>	None
	Submitted late <i>Definition: The national implementation report for the concerned legal instrument has been submitted later than [insert number of months] after the agreed deadline by COP</i>	The Secretariat to follow-up with the concerned Contracting Party to identify the reasons behind the late submission of the national implementation report(s) and explore preventive actions for future
3. Completeness <i>Definition: This criterium seeks to determine whether the Contracting Party has answered all the questions and filled out all the tables of the reporting format, with the exception of those questions and tables that are designed optional therein for the concerned legal instrument. This criterium refers to both whether the Contracting Party has submitted all information and data requested, i.e. non-quantitative and quantitative information</i>	Fully reported <i>Definition: The Contracting Party has answered all the questions and filled out all the tables of the reporting format</i>	None
	Reporting incomplete <i>Definition: The Contracting Party has <u>not</u> answered all the questions or filled out all the tables of the reporting format</i>	The Secretariat to follow-up with the concerned Contracting Party to identify the reasons why the Party has not fully reported, and on that basis to take the necessary steps within available resources for facilitating the submission of outstanding information and/or data
	Not reported <i>Definition: The Contracting Party has <u>not</u> provided any information or data,</i>	The Secretariat to follow-up with the concerned Contracting Party to identify the reasons why the Party has not fully reported, and on that basis to take the

² Average calculation to be based on the number of months taken for at least 50% of the 22 Contracting Parties to submit their national implementation reports. For the submission of the national implementation reports corresponding to the 2016-2017 biennia through the new Barcelona Convention Reporting System (BCRS), the deadline set by COP20 was December 2018 (Decision IG.23/1). As of 1 May 2019, seven Contracting Parties had submitted their national implementation reports.

Draft Criteria to be assessed per legal instrument	Status	Suggested action to take
	<i>i.e. the reporting format has been left blank</i>	necessary steps within available resources for the Party to fully report. If the situation persists, this 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
4. Implementation <i>Definition: This criterium seeks to determine whether for the concerned legal instrument the Contracting Party has put in place the necessary legal, administrative or policy measures as well as the corresponding institutional structures to implement them. This assessment should be based on the analysis of the information contained in the national implementation reports</i>	Implemented <i>Definition: The Contracting Party reported having put in place the legal framework and/or institutional structures required as per the Barcelona Convention and/or relevant Protocol</i>	None
	Implementation in progress <i>Definition: The Contracting Party reported that the legal framework and/or institutional structures required as per the Barcelona Convention and/or relevant Protocol are under development</i>	The Secretariat to follow-up with the concerned Contracting Party to facilitate within available resources to put fully in place the legal measures and/or institutional arrangements required
	Not Implemented <i>Definition: The Contracting Party reported <u>not</u> to have put in place the legal framework and/or institutional structures required as per the Barcelona Convention and/or relevant Protocol</i>	The status of “not implemented” should lead the Compliance Committee on a case-by-case basis and within its mandate to: (a) in a first phase, take action through a request of clarification to the concerned Contracting Party to provide information on any particular difficulties that have hampered the implementation of relevant legal instrument. The request should not amount to an identification of non-compliance and draw the attention of the concerned

Draft Criteria to be assessed per legal instrument	Status	Suggested action to take
		Contracting Party on the need to respond within a precise deadline; (b) in a second phase, based on the information provided by the concerned Contracting Party to the request of information, to either closing the ongoing procedure or triggering the compliance mechanism leading to the consideration of the measures laid down in Section VII of the Procedures and Mechanisms of Compliance

ASSOCIATED MATRIX

Contracting Party: [XX]	Barcelona Convention (Tick the box that applies)	Dumping Protocol (Tick the box that applies)	Prevention and Emergency Protocol (Tick the box that applies)	LBS Protocol (Tick the box that applies)	SPA/BD Protocol (Tick the box that applies)	Offshore Protocol (Tick the box that applies)	HW Protocol (Tick the box that applies)	ICZM Protocol (Tick the box that applies)
1. Submission	Submitted	Submitted	Submitted	Submitted	Submitted	Submitted	Submitted	Submitted
	Not Submitted	Not Submitted	Not Submitted	Not Submitted	Not Submitted	Not Submitted	Not Submitted	Not Submitted
2. Timeliness	Submitted on time	Submitted on time	Submitted on time	Submitted on time	Submitted on time	Submitted on time	Submitted on time	Submitted on time
	Submitted late	Submitted late	Submitted late	Submitted late	Submitted late	Submitted late	Submitted late	Submitted late
3. Completeness	Fully Reported	Fully Reported	Fully Reported	Fully Reported	Fully Reported	Fully Reported	Fully Reported	Fully Reported
	Reporting Incomplete	Reporting Incomplete	Reporting Incomplete	Reporting Incomplete	Reporting Incomplete	Reporting Incomplete	Reporting Incomplete	Reporting Incomplete
	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported	Not Reported
4. Implementation	Implemented	Implemented	Implemented	Implemented	Implemented	Implemented	Implemented	Implemented
	Implementation in Progress	Implementation in Progress	Implementation in Progress	Implementation in Progress	Implementation in Progress	Implementation in Progress	Implementation in Progress	Implementation in Progress
	Not Implemented	Not Implemented	Not Implemented	Not Implemented	Not Implemented	Not Implemented	Not Implemented	Not Implemented
Comments								