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**Review of the basic elements to be used for the preparation of the new
legally binding text to address land-based pollution (Art. 15 of the
1996 land-based sources Protocol)**

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1. Introduction

During the 14th Meeting of the Contracting Parties to the Barcelona Convention held in Portoroz, Slovenia, in 2005, the Secretariat was asked to submit to an Extraordinary meeting of national MED POL coordinators a draft paper containing "the elements that could serve as a basis to a legally binding text which would include the measures and timetables of implementation as for Art. 15 of the LBS Protocol".

Previously, MED POL coordinators in their meetings have indicated that when the amendments to the LBS Protocol adopted in Syracuse in 1996 would come into force a general updating of the SAP should be avoided but objectives and deadlines should periodically be reviewed especially in the framework of regional plans.

The document attempts to make a critical review of the basic elements that, in the opinion of the Secretariat, should be taken into account in drafting the new legally binding text. Its purpose is to start a process in close cooperation with national authorities aiming at having a basically agreed draft text by the time the 1996 LBS Protocol enters into force.

2. The legal framework of the new legally binding text

The Strategic Action Programme (SAP) aiming at combating pollution from land based activities was prepared immediately after the successful negotiation of the revision of the LBS Protocol, thanks to funding from the Global Environment Fund (GEF); the SAP was adopted at the 10th Ordinary Meeting of the Contracting Parties in Tunis in 1997 on the basis of Arts. 5, 6 and 7 of the 1980 Protocol still in force.

During the adoption of SAP, the Parties indicated that when the amendments to the 1980 Protocol would enter into force, "the SAP would be resubmitted for adoption as per Art. 15 of the revised Protocol". At this stage, the adopted SAP would be revisited to verify the validity of the dates and activities scheduled. In this connection, one should consider those provisions of the revised Protocol which will be applicable to this exercise by reviewing the relevant articles.

The general objective of the Protocol, as indicated in its Art. 1, is to prevent, reduce, combat and eliminate pollution from land-based sources reaching the Mediterranean, either from point or diffuse sources, with priority to eliminate substances that are toxic, persistent and liable to bioaccumulate.

Moreover Art. 5 provides that plans and programmes containing measures and timetables for implementation would be adopted.

These priorities and timetables will be adopted by the Parties by taking into consideration the elements contained in Annex I to the Protocol and will be periodically revised; Annex II lists the sectors of activity, the categories of substances and their characteristics in the environment. In addition, Article 6 of the revised Protocol provides that in the elaboration of regional plans and programmes, in order that a gradual implementation can be carried out, the following elements should be taken into consideration:

- the capacity of the Parties to adapt and convert existing installations,
- the economic capacities of the Parties and their level of development.

Finally, Art. 15 concerns the adoption procedure; it provides for the adoption of a regional plan or programme by the Parties by a two thirds majority, at the latest one year after the entry into force of the amendments to the Protocol.

The above puts in evidence the fact that the LBS Protocol makes no direct mention or reference to the necessity to arrive at a good environmental state for the Mediterranean. It is for this reason that in the current SAP the objectives and the targets adopted refer to the reduction of pollutant inputs and not to the quality of the marine environment.

The combination of the philosophy underlying the Protocol on the one hand and on the other the new orientations, such as the ecosystem approach to the management of human activities and the objective of a good environmental state of the marine environment could be considered as the spirit of the new legally binding text.

3. Lessons learned from the implementation of the LBS Protocol and the current SAP

After the revision of the Protocol in 1996, MED POL has worked intensively in order to develop activities to control pollution from land-based sources; this can be seen especially in:

- the adoption of the SAP by the Contracting Parties in 1997,
- the adoption of sectoral regional plans, e.g. on industrial wastes,
- the inventory of treatment plants for urban sewage, lately updated,
- the adoption by the countries of National Action Plans which aim at implementing the SAP on the basis of national diagnostic analyses while taking into account national specificities,
- the launching of the reflection and work on the agreed application of the principle of joint and differentiated responsibility.

All these actions, and particularly the National Action Plans represent an important step forward for the reduction of pollution from land-based sources.

In the preparation of regional plans and programmes, the Parties, on one hand, should keep in mind the progress accomplished and to be accomplished to reduce pollution affecting the Mediterranean, while taking into consideration the international and regional contexts.

On the other hand, while revisiting the SAP, the Parties should keep in mind the lessons learned from its implementation since 1997 by giving special attention to:

- deadlines and timetables and,
- implementation measures.

4. The evolution of the international context

There have been developments since 1997 which could impact on the preparation of the legally binding text, such as:

- the signing of the Stockholm Convention in 2001 and its entry into force in 2004; this Convention consolidates the priority that the revised Protocol and the SAP had allocated to the progressive elimination of the POPs;
- the international processes on the management of chemical products in the framework of the UNEP Strategic Approach to International Chemicals Management (SAICAM), the UNEP initiative on Mercury and other metals and within the Basel Convention framework, the management of hazardous wastes;

- the adoption of the Millennium Goals for Development that should lead towards greater efforts to sanitation and treatment of wastewater affecting primarily rivers flowing into the Mediterranean Sea;
- the Action Plan adopted at the World Summit in Johannesburg in 2002 that recommends the adoption of the ecosystem approach,
- finally, the Beijing Declaration adopted during the 12th GPA intergovernmental meeting in 2006 that recalls the importance of the implementation of regional protocols and agreements concerning pollution from land based sources.

5. The evolution of the regional, European and Mediterranean contexts

The regional Mediterranean context is at present dominated by the developments of European and Euro-Mediterranean initiatives in three major areas:

- the enlargement of the European Union with three new Mediterranean countries (Malta, Cyprus and Slovenia) and the opening of negotiations for future accession with other Mediterranean countries,
- the adoption by the European Union of a Marine Strategy and its draft Directive;
- finally, the developments in the framework of the Euro-Mediterranean partnership with the adoption in 2006 of the "Horizon 2020" initiative for the depollution of the Mediterranean.

A peer analysis of the previous shows the following:

i. The enlargement of the European Union

As at 2007, seven European Union member States are Parties to the Barcelona Convention. Moreover, negotiations for future accession are on-going with Turkey and Croatia. Other Mediterranean countries could later also enter into accession negotiations with the European Union. Therefore, half of the countries that are Parties to the Barcelona Convention could in the medium term be members of the European Union; it would therefore seem logical to keep a close watch on the evolution of the European policies concerning the marine environment in the formulation of the MAP objectives and programs.

ii. In this spirit, the new legally binding text should be considered in relation with the development of the relevant European legislation.

This issue has an important legal dimension since according to a recent ruling of the court of justice of the European Community, international agreement ratified by the European Community must be applied by the member states and, when the provisions of such an international agreement are clear and operational, they can be applied directly¹. Therefore, the LBS Protocol, like the other legal instruments of the Barcelona Convention, as well as the Action Plans adopted or to be adopted by the Parties for its implementation have a certain legal force in the legal order of the Community which is to be taken into consideration as of now.

¹ It should be recalled that in a recent ruling (2003) concerning the application of the 1980 LBS Protocol by a country of the European Union, the Court of Justice of the European Community rules that the international agreements ratified by the European Community are part of the Community legal order and must therefore be applied by the member states. In this connection, the Court also ruled that when the provisions of such an international agreement are clear and operational they can be applied directly. The Court thus applied directly Art 6.3 of the 1980 protocol which makes discharges into the marine environment conditional on the issue of permits. Furthermore, one should recall that Art 6.1of the revised LBS Protocol concerning permits provides that permits issued by the Parties shall take due account of the provisions of the Protocol and its annex 2 as well as relevant decisions and recommendations of the contracting parties, which obviously include the SAP adopted by the Parties in 1997.

- iii. The draft Directive of the European Parliament and the Council of the EU, which establishes a Community framework in the field of the marine environment, with the title "Strategy for the marine environment" or "European marine strategy" aims at maintaining or restoring the marine environment in good state at the latest by 2021. The draft Directive provides for a precise timetable for the adoption of measures. In particular it provides for:
- the preparation of a report on the state of the marine environment, 4 years after the entry into force of the Directive at the latest,
 - the definition, within the same deadline, of a satisfactory state of the environment,
 - the setting, within a 5-year period, of environmental objectives and corresponding indicators,
 - the establishment and implementation, in 6 years at the latest, of a monitoring programme for the marine environment.

In addition, concerning measures:

- the development by 2016 of a programme of measures to maintain or obtain a good state of the environment
- the commencement of this programme should be prior to 2018.

In all phases of the implementation of the Directive, it is stipulated that the work carried out in the framework of the Regional Seas and, among them, the Barcelona Convention and its protocols, should be taken into consideration.

Furthermore, it should be pointed out that the Commission, in its draft Directive "Strategy for the marine environment", indicated in the preamble that the Directive should contribute to the respect of the obligations of the Community and the member States deriving from several international agreements under which they had contracted important commitments concerning the protection of nature against pollution with a specific mention of the Barcelona Convention and its LBS Protocol. The same text indicated that the Member States should establish and implement programmes and measures aiming at achieving a good environmental state for the targeted waters, while respecting Community and international requirements in force.

It is therefore essential to ensure a coherence between the SAP revision mechanism and the implementation of the European Directive on marine strategy and its timetable.

- iv. Finally, the Euro-Mediterranean initiative to depollute the Mediterranean (Horizon 2020) adopted at the Cairo Conference in November 2006, contains a first timetable of application for the 2007-2013 period validated by the Cairo Declaration.

The Horizon 2020 initiative will also be carried out in cooperation with MAP and will be based particularly on the implementation of National Action Plans prepared and adopted in the SAP framework and also on the depollution objectives set by the Mediterranean Strategy for Sustainable Development (MSSD) adopted in 2005 by the Contracting Parties Conference. In its Art. 18, the Cairo Declaration calls for setting up a mechanism of coordination with the other regional processes, especially "the Strategic Action Plan to combat pollution from land-based sources".

Furthermore, the Cairo Declaration calls for the application of the depollution of the Mediterranean, by ensuring *inter alia* the implementation of the Barcelona Convention and its Protocols.

Therefore, both the European marine strategy and the Horizon 2020 Initiative show that there is an obvious reciprocal interest in fully coordinating timetables and actions between MAP and the European system.

6. The role of National Action Plans

The elaboration of National Action Plans (NAPs) on the basis of national diagnostic analyses and the baseline budget is a substantial accomplishment in terms of the implementation of SAP. Each country, taking into consideration the SAP priorities and objectives, has analysed and indicated its own needs for the reduction of pollution from various sources, particularly domestic and industrial, has set its objectives and prepared lists of investments.

The Horizon 2020 Initiative makes a specific reference to these national documents with a view to preparing investment projects.

MED POL has carried out a comparative analysis of the national objectives included in the NAPs and compiled projects of investment up to the year 2010 and beyond. These documents show the full scope of investments necessary to reduce in each country pollution from land-based sources including treatment plants for urban sewage to be built, renovated, extended or completed, treatment of industrial effluents, treatment of industrial and domestic solid waste and the control of atmospheric emissions, especially in coastal cities.

It is certain that a detailed analysis of the National Action Plans would bring a more realistic and operational character to the objectives of the past to be revised. It is therefore essential to take into consideration the NAPs in the future process. To this end, and in the framework of the Horizon 2020, the European Investment Bank is at present working very closely with MED POL with the aim to have a list of feasible and realistic "bankable" projects.

In conclusion, the process of preparing a new legally binding text should be based on a concise analysis of the processes that have taken place since 1997 (international conventions, development of National Action Plans, European and Euro-Mediterranean contexts); at the same time account should be taken of the new knowledge on pollution in the Mediterranean which has been derived from joint studies MED POL/European Environment Agency; further, use should be made of the national diagnostic analyses carried out by the countries as well as other evaluations at international level.

7. Principles to be considered for the preparation of the new legally binding text

7.1 Setting priorities

When preparing the new text and considering the priorities to be fixed for the reduction of pollution, the amended Protocol, which is a binding document and particularly the priorities indicated in its Annex I, should be taken into account; within this framework, the treatment of urban wastewaters and industrial effluents, the reduction and elimination of substances that are toxic, persistent and likely to bio-accumulate, especially the POPs, should remain priority items in the new legally binding text.

The list of activities in Annex I remains the mandatory framework; the same goes for the characteristics of substances in the environment and the categories of substances. However, the international priorities, the evaluations of the marine environment after 1997 and finally, a detailed analysis of the NAPs should lead to a more specific selection of the priorities.

7.2 Pollution reduction mechanism

The process of preparation of the new text should also take into account:

- reduction rates of polluting inputs at regional level, to be adapted on the basis of experience gained
- reduction timetables of polluting inputs, keeping in mind the process launched at European level and considering the possibility of setting timetables which would be revised periodically
- the modality of the distribution among countries of the obligations to reduce pollutant loads on the basis of a common and differentiated approach in conformity with the principles of sustainable development (principle 7 of the Rio Declaration and, indirectly, Art. 7 of the LBS Protocol)
- the establishment of economic instruments as incentives for actions of prevention/reduction of pollution
- the expected application of the ecosystem approach to the management of human activities and the link between combating land-based pollution and the degree of vulnerability of specific ecosystems
- the list of investments described in the NAPs according to the priorities.

7.3 Implementation tools

The new legally binding text will also have to contain a description of the major implementation tools, such as:

- monitoring mechanisms for the reduction of the pollution sources and the state of the marine environment, to be integrated in the MED POL Phase IV Programme, which could also serve as reference to the implementation of the European marine strategy
- granted access of the public to information on land-based pollution and on the quality of the marine environment, as per Art. 15 §1 of the Convention
- public participation in the decision-making process, as for Art. 15 § 2 of the Convention
- capacity building of human and technical resources in the following fields: public management institutions, particularly the system of permits provided for by the Protocol and inspection systems
- capacity building at national and regional level needed for improving the knowledge and sustainable management of the marine environment
- capacity building for developing infrastructures to combat urban and industrial pollution
- development of public and private partnerships to ensure technical and financial cooperation to prevent and combat land-based pollution.

8. Proposal for the scope of the new legally binding text

The scope of the future text could include the following:

- i. Description of the state of the marine environment and its evolution; contribution of land-based pollution to the state of the marine environment
- ii. Description of legal bases contained in the LBS Protocol
- iii. Description of the international context; reminder of international commitments, binding or not (Stockholm Convention, GPA, Basel Convention), which have an influence on priorities

- iv. Description of the European and Euro-Mediterranean contexts: the European marine strategy and its implementation timetable, the Euro-Mediterranean initiative Horizon 2020
- v. Analysis and synthesis of national priorities as indicated in the national diagnostic analysis and the NAPs
- vi. Setting strategic objectives based on the provisions of the LBS Protocol and taking into account of the experience gained through the implementation of the SAP, the international and European developments and the need for Env.Q.O.s
- vii. Setting objectives and timetables for the reduction of polluting inputs by substance, regrouping them under headings to be selected: e.g. urban waste waters, industrial effluents, solid domestic and industrial waste, pollution of agricultural origin, atmospheric input while taking into account the principle of common and differentiated liability.
- viii. Setting objectives, measures and timetables to adapt the monitoring system for the marine environment and the sources of pollution
- ix. Setting concise objectives with timetables in terms of public governance: reinforcement of public administrations, the system of permits, environmental inspectorates, access to information, participation of the public and development of economic instruments
- x. Regional approach to financing investments.