



**United Nations
Environment
Programme**



UNEP(DEPI)/MED WG.387/Inf.19
20 August 2013
ENGLISH
Original: FRENCH



MEDITERRANEAN ACTION PLAN

Meeting of MAP focal points

Athens, Greece, 10-12 September 2013

**Implementation of the Barcelona Convention and its Protocols at legal
and institutional level for biennium 2010-2011**

1. Introduction

1. Under Decision IG 20/3, the 17th Meeting of the Contracting Parties has asked the Coordinating Unit to analyse the information recorded in the national reports in order to establish a report outlining the general situation of progress made in the region, at legal and institutional level, in implementation of the Convention and its Protocols, to propose new measures where appropriate, and to submit this report to the 18th Meeting of the Contracting Parties.

2. This note constitutes a summary of the conclusions of reports submitted by the Contracting Parties (CP) under Article 26 of the Barcelona Convention and decision IG.7/3 adopted by the 15th Meeting of the Contracting Parties. On 25 July 2013, 12 Contracting Parties¹ have submitted their national reports, 9 of them using MAP's online reporting system.

3. The Secretariat observed on this date that ten Contracting Parties to the Barcelona Convention had not yet delivered their report within the prescribed time limit, i.e. before the December 2012 deadline fixed for the 2010-2011 biennium for the 17th Meeting of the Contracting Parties. The Secretariat recalls in this respect that on the request of the Compliance Committee, it granted an extension to the Contracting Parties concerned, asking them to submit their report no later than 31 March 2013. Moreover, the Secretariat tried to raise awareness on the MAP focal points in a letter of 15 February 2013, reminding them that non-submission of the reports will be considered a case of non-compliance by the Compliance Committee.

4. In the light of this finding, the Secretariat intends to emphasise again that all Contracting Parties shall submit their reports, under Article 26 of the Convention and the relevant provisions of the Protocols, so that the information on the application of these instruments is systematic. The Compliance Committee has concluded that the repeated non-submission of the reports under Article 26 of the Barcelona Convention should be analysed as a case of non-compliance.

2. Application of the Barcelona Convention and its Protocols

Barcelona Convention

5. All Contracting Parties have provided relevant information on the status of the ratifications and clear information on the international, bilateral and multilateral agreements which they have signed and which are related to the Convention. Moreover, most of the Contracting Parties have provided information on the status of signature, ratification or accession of multilateral environmental agreements. The Contracting Parties have made substantial progress in the establishment of appropriate structures for implementation of the Convention and its Protocols. The Contracting Parties have incorporated into their national laws the basic provisions of the Barcelona Convention concerning the following points:

- *Application of the precautionary principle*: 10 Contracting Parties have specified this in their legislation; one Contracting Party does not provide any indication; one Contracting Party indicates that this principle is in preparation while stating that it is included in its national charter for the environment and sustainable development.
- *Application of the "polluter pays" principle*: Most of the Contracting Parties have incorporated the "polluter pays" principle into their legislation: 11 Contracting Parties

¹ Bosnia-Herzegovina, Cyprus, European Union, Egypt, France, Greece, Israel, Italy, Morocco, Montenegro, Spain and Turkey

have included this principle in their national legislation; one contracting party does not provide any information on this point.

- *Environmental impact assessment (EIA)*: 11 Contracting Parties have undertaken environmental impact studies. However, several CPs have declared difficulties linked to shortage of technical capacities and of administrative management.
- *Promotion of the integrated management of coastal zones (Article 4.3.e)*: 9 CPs meet this commitment; one CP indicates that this process is on-going; 1 CP does not give any evidence; 1 CP mentions difficulties linked to policy and regulatory framework, shortage of financial and technical resources and problems of administrative management.
- *Continuous monitoring of pollution / designation of competent authorities (Article 12)*: All CPs apply this Article.
- *Public information on the environmental state (Article 15.1)*: The 12 CPs are positive in this undertaking, one of them however mentioning difficulties linked to administrative management.
- *Public participation in decision-making processes (Article 15.2)*: 11 CPs respond positively to this undertaking; 1 CP does not give a response; 1 CP responds in the negative. Several CPs mentioned difficulties linked to shortage of financial and technical resources and of administrative management.

Protocols

1. Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean

This Protocol with the 1995 amendments was ratified by 9 Contracting Parties that had submitted their report. Examination of the replies gives rise to the following comments regarding implementation by the CPs of the following provisions of the Protocol:

- *Designation of terrestrial coastal areas within the jurisdiction of the party and included in the area of application of the Protocol (Article 2.1)*: 11 CPs designated these areas, 1 CP does not give any indication.
- *Protection and sustainable management of environment of areas with particular natural or cultural value, notably by the establishment of specially protected areas (Article 3.1.a)*: 10 CPs honour this undertaking; 1 CP does not provide any information and 1 other CP indicates that this implementation is on-going. 1 CP underlines difficulties of application relating to administrative management.
- *Protection of threatened species of flora and fauna (Article 3.1.b)*: All CPs honour this undertaking; however 1 CP mentions financial difficulties in the implementation of this Article and 2 CPs mention the political and administrative framework.
- *Protection measures (Article 6)*: 12 CPs comply with all the requirements of this article; some of them highlight problems of administrative management.
- *Planning; management; surveillance and monitoring of specially protected areas, active involvement of local authorities, adoption of financing mechanisms, training of personnel, development of measures to deal with incidents (Articles 7.2 a, b, c, d, f, 7.3, 7.4)*: All CPs comply with the requirements of those Articles, however 1 CP mentions difficulties linked to administrative management and shortage of financial resources.

- *National measures for the protection and conservation of species (11.2 to 11.7):*
 - 11.2: The 12 CPs have adopted the measures; 1 CP indicates difficulties concerning the administrative framework and 1 other a shortage of technical capacities;
 - 11.4: 10 CPs have adopted the measures; 2 CPs have indicated that the process was on-going;
 - 11.6 and 7: 2 CPs gave a negative response;
 - 13: 11 CPs responded positively 1 CP has underlined difficulties encountered at administrative management level.

Negative answers made by the CPs or those indicating specific difficulties mentioned above are not readily useable because they are not accompanied by any explanation or justification.

2. Prevention and Emergency Protocol

This Protocol, amended in 2002, was ratified by six of the Contracting Parties who have submitted their report. The examination of the replies makes it possible to make the following comments regarding the CPs' implementation of the following provisions of the Protocol:

- Implementation of international regulations to prevent, reduce and control pollution of the marine environment from ships 3.1 a: All CPs adopted the measures required, one of them indicating difficulties regarding financial resources;
- Contingency plans and other means of preventing and combating pollution incidents (Article 4):
 - 4.1 and 4.2: 3 CPs have not adopted the measures, mentioning difficulties linked to shortages of financial resources and to administrative management;
- Monitoring in order to prevent, detect and combat pollution and ensure compliance with the applicable national regulation (Article 5): 11 CPs have adopted the measures but 2 CPs mention difficulties linked to technical capacities, and 1 CP responds in the negative;
- Technical and operational measures to prevent and combat marine pollution events (Article 4, 11, 8 and 9): All CPs meet the requirements of those Articles but mention problems linked to administrative management;
- Effectiveness: 5 CPs do not mention anything about effectiveness of the measures taken; 1 CP mentions emergency plans and other national operational plans.

3. LBS Protocol

This Protocol, amended in 2006 has been ratified by eight of the Contracting Parties which have submitted their report. Analysis of the responses on the implementation of the provisions of the Protocol leads to the following findings:

- Legal measures (Articles 5.2 (implementation of action plans and programmes), 6.1 (elaboration of an authorization and regulation system), 6.2 (establishment of system of inspection to assess compliance of authorizations and regulations) and 7 (development of guidelines, standards and criteria):
- 8 CPs have adopted the corresponding measures. Several CPs have not provided information on these Articles or some of them: 6.1, 6.2 and 7, 1 CP gave one negative response out of the 7, invoking the difficulties connected to an inappropriate institutional framework and the overlapping of skills, preventing the adoption of mandatory legal measures;
- Allocation of resources: 10 CPs provided information, 1 CP did not provide any information, and 1 answered in the negative;
- Administrative measures: 2 CPs did not provide information and 4 CPs have not given any information on the effectiveness of the measures adopted under the

national action plans. The information provided by the 6 CPs specifically concerns the number of permits granted in the 28 fields of activities listed by the questionnaire and on the levels tonnage concerning the 16 products listed by it.

The results of the analysis of this Section confirm that the provisions of the LBS Protocol shall be the highest priority for the Contracting Parties as evidenced by the fact that eight Contracting Parties have included a number of these requirements in their national legislation. However, the difficulties and challenges facing the Contracting Parties with regard to the response to certain provisions of the Protocol are not clear and could not be established on the basis of the reports provided, particularly concerning regulation of one-off spills, the establishment of an inspection system, the application of penalties and common measures to control pollution, and the allocation of resources necessary for setting up institutions and monitoring programmes.

4. Dumping Protocol

Eight Contracting Parties of the twelve which have submitted their report have accepted the 1995 amendments to the Protocol.

- Legal measures (art. 4.1 (prohibition of dumping of wastes or other matter), 4.2 (exceptions to the principle of prohibition), 7 (prohibition of incineration at sea), 11a, 11b, 11c (application of measures for application of measures), 12 (reporting incidents)).

Almost all CPs have adopted the measures relating to the implementation of such articles with the following qualifications: 2 CPs have not provided information. Several CPs mention difficulties of policy and administrative framework, and shortage of technical and financial capacity.

- Allocation of resources: 1 CP has not provided information;
- Administrative measures: 2 CPs have not provided information and 5 CPs do not provide any information on the implementation and effectiveness of the measures.

The results of the analysis of this section confirm that the provisions of the Dumping Protocol are incorporated in their national legislation. However, the difficulties and challenges facing the Contracting Parties with regard to the provisions of the Protocol are not clear and have not been specified in the reports submitted.

5. Hazardous Wastes Protocol

Only 2 of the CPs which submitted a report have ratified the Protocol. Analysis of the responses highlights the following points:

- Legal measures (art. 5.2 (measures to prevent, abate and eliminate pollution), 5.3 (measures to reduce to a minimum the transboundary movement of hazardous wastes), 5.4 (prohibition of the export and transit of hazardous wastes to developing countries), 6.3 (obligation of prior notification by exporting State), 7, 5.5 (cooperation measures to prevent illegal traffic), 9 (measures to prevent and suppress illegal traffic):
- 5 CPs have taken steps under all these articles. Regarding the implementation of these articles, the CPs mention difficulties linked to a shortage of technical and financial resources, as well as administrative management;
- Allocations of resources (1) and (2):
- 11 CPs adopted the measures, while emphasising difficulties linked to shortage of financial and technical resources and problems of administrative management. 1 CP did not provide information;
- Effectiveness of measures: 9 CPs did not provide information.

6. Offshore Protocol

Only 2 of the Contracting Parties which submitted a report have ratified the Protocol. No reply was provided by the CPs which have not ratified the Protocol;

- Legal measures (art 4 (obligation of prior authorization), 5 (submission of authorization application file), 6 (detailed authorization application rules), 8 (use of best available techniques), 9 (procedures for use and storage of chemicals), 11 (prohibition of waste water discharge), 12 (prohibition of solid waste discharge), 13 (reception installations, instructions and penalties):
- 3 have taken steps on all these articles, except for Article 9 for 1 CP and Articles 12 and 13 for another PC;
- Allocation of resources: 1 CP has taken steps, 1 CP has not provided information;
- Administrative measures: 1 CP gives information on the effectiveness of the measures adopted.

3. Evaluation

6. This exercise proved relatively difficult and the conclusions remain very piecemeal in so far as the information in Protocols is highly variable. Ten Contracting Parties have not yet submitted reports, and of those that have, some have not yet submitted their reports on all the legal documents.

7. The reports submitted show the Contracting Parties' concern to provide the information available. Certain Contracting Parties only replied to part of the questionnaire and / or did not cover all the legal instruments.

8. Certain reports do not include information on the technical application of Protocols. Certain Contracting Parties have used the system that involves ticking boxes with comments added, some of which were essential, while others have merely ticked boxes without adding comments. Others have not answered.

9. Regarding compliance and the principles specified in the Convention, particularly in paragraphs 4.3 and 4.4 (precautionary principle, "polluter pays" principle, environmental impact studies, principle of informing the public on the state of the environment, principle of public participation in decision-making process, use of best available techniques), most Contracting Parties report progress in implementation. The focus has been placed on the marine environment evaluation programmes, which have been described in detail, and, to a certain extent, the principles regarding access to information. However, the Contracting Parties are facing difficulties in implementing provisions relating to access to information and participation by the public and to the decision-making and EIA procedures in a cross-border context in national law.

10. Several Contracting Parties have provided clear information regarding difficulties in implementing the provisions of the Convention and its Protocols. Several reports stress the difficulties encountered in applying Protocols due to insufficient political and administrative framework, inadequate financial resources which prevents substantial environmental investment, limited technical capacities, insufficient human resources and a lack of horizontal cooperation between the different players involved. More explicitly, certain Contracting Parties have stressed the lack of an environmental policy and strategy at State level and deficient administrative management in the field of environmental protection. These recurring difficulties can also be explained to a large extent by the complex institutional structure and the lack of coordination between sectors and implementation at central level.

11. More specifically, several Contracting Parties stressed difficulties encountered in implementing the Protocol in specially protected areas and on biodiversity in the Mediterranean Sea. These difficulties concern in particular the implementation of the plan for development and management of each specially protected area as well as in setting up projects. They also concern the listing of animal species due to lack of data on marine species. More precisely, the Secretariat is concerned at the replies provided by some Contracting Parties which refer to difficulties that indirectly prohibit implementation of the provisions of the Protocols.

12. Shortcomings in the information in the Questionnaire concern the section on the implementation of the measures adopted by the Contracting Parties and their effectiveness. Almost all the Contracting Parties have failed to provide any information on these points. These are important because the evaluation of the replies would enable the extent the Contracting Parties are complying with their commitments under the Convention and its Protocols to be determined.

13. The Contracting Parties have put forward different types of problems separately, but also, most often, cumulatively. The persistence of these difficulties is problematic because it is likely to affect the implementation of the Protocols to the Barcelona Convention by the Contracting Parties in the long-term. The Secretariat is willing to seek, ways to overcome these difficulties in order to apply the Convention and the Protocols under correct conditions, with any Contracting Party which request this, and with the assistance of the Compliance Committee.

14. To conclude this assessment, a comparison between the two sequences of reporting relating to the 2008-2009 and 2010-2011 biennia, reveals the following strong points:

- a. On one hand there is an increase in ratifications of various legal instruments of the Barcelona Convention. Thus, since the 18th Conference of Parties, several ratifications have occurred concerning two Protocols. Thus, the Offshore Protocol was enriched by a new European Union ratification 29 March 2013. Similarly, two new ratifications, by Morocco (21 September 2012) and Croatia (29 January 2013) have been made concerning the ICZM Protocol;
- b. On the other hand, there is a strengthening in national law of the legal and institutional arsenal created by the Contracting Parties in response to their commitments both in the general requirements defined by the Barcelona Convention and at the level of technical requirements for different Protocols. This translates into increased adoption of the various legislative texts and regulations necessary for applying the provisions of the Barcelona Convention as well as those of the Protocols ratified by the Contracting Parties. This reinforcement is, with regard to the member countries of the European Union, linked to the transposition into national law of Community Directives affecting the fields of activities covered by the Protocols.

4. Proposals

15. The Secretariat wishes to draw the attention of the Meeting of Contracting Parties to the need to improve both the Format of the Questionnaire itself and the way in which the Contracting Parties complete it. It appears that the Reporting Form, for the response by the Contracting Parties, is still too complex and repetitive in its contents. It is appropriate to simplify and at the same time provide necessary explanations where the answer given by the Contracting Party is negative, using content which is more adapted to the allocation of resources heading, and to strengthen and explain the effectiveness heading. The Secretariat is favourable to a draft which is aimed at simplifying this Reporting Form in order to make it more legible and operational being submitted to the 19th Meeting of the Contracting Parties. The Secretariat may carry out an inquiry with the Contracting Parties in this context

but also with the MAP regional activity centres, NGO partners with the PAM and with the Secretariat, to determine what they expect from the reporting exercise.

16. The Contracting Parties must ensure that their report is submitted on the approved date. The current situation does not enable the Contracting Parties to know the actual status of application of the Convention and the Protocols and to take the necessary measures to improve the situation. Firstly, the Secretariat need not make a full report to the Contracting Parties on the implementation of the Barcelona Convention and Protocols under Article 17vi as stressed by Decision IG. 20/3. Secondly, the non-submission of the report does not allow the Compliance Committee to perform the mandate entrusted to it by the Contracting Parties, of facilitating and promoting compliance with the Barcelona Convention and its Protocols.

17. A more uniform presentation of reports is becoming a requirement. Therefore, the Secretariat shall call for all Contracting Parties to use the online report systematically for the next biennium 2014-2015. To date, 9 of the 12 CPs have used the new online report format. This increase compared to the last biennium is encouraging and must continue. This new format of the report improves comparability of information, because it allows a quantitative analysis, unlike the previous reporting system.

18. Guidelines to assist the Contracting Parties to better target the information of the application and to identify certain difficulties linked to incorrect interpretation of questions should be developed. They may take the form of instructions for using the questionnaire format, which could be developed with the assistance of the Compliance Committee.

19. Possible harmonisation of the reporting system is to be sought with other reporting systems already in force in the context of the inforMEA project, to enable the Contracting Parties to draw on other regional or international convention reports to complete the format for the Report of the Barcelona Convention and its Protocols.