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12<sup>th</sup> Meeting of the Compliance Committee of the Barcelona Convention  
and its Protocols

Athens, Greece, 24-25 January 2017

**Agenda item 8: Power of initiative of the Compliance Committee: Setting Admissibility Criteria of Relevant Sources of Information (Paragraph 23bis of Section V, Decision IG.17/2 as amended)**

**Determination of the criteria for admissibility of Relevant Sources of Information (Paragraph 23bis of Section V, Decision IG.17/2)**

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UNEP/MAP  
Athens, 2016

## Note from the Secretariat

1. The present document was submitted at the 11<sup>th</sup> Meeting of the Compliance Committee of the Barcelona Convention and its Protocols (Athens, Greece 22-23 October 2015) under the following numbering: UNEP (DEPI)/MED CC. 11/6. As reflected in the report of that meeting, due to time constraints, the Compliance Committee was not able to discuss document UNEP (DEPI)/MED CC. 11/6. The Compliance Committee then agreed to discuss that document in depth at the next Compliance Committee meeting. Following the wish of the Eleventh Meeting of the Compliance Committee, document UNEP (DEPI)/MED CC.11/6 is submitted for discussion at the present meeting with the following new numbering: UNEP (DEPI)/MED CC. 12/8.

## Power of initiative of the Compliance Committee

2. During its 10th meeting (21-22 May 2015, Athens, Greece), the Compliance Committee, on the basis of prior decisions and discussions, examined the means for the implementation of its power of initiative it is provided with by virtue of Decision IG.21/1. The Compliance Committee has asked the Secretariat to draft a note regarding the setting of acceptability criteria for relevant information to submit for examination at the 11th meeting of the Compliance Committee.

3. The 18<sup>th</sup> meeting of the Contracting Parties (3-6 December 2013; Istanbul, Turkey) approved the addition of paragraph 2a, Section V of Annex III to Decision IG.17/2 about Compliance Procedures and Mechanisms. The new paragraph 23 bis grants the Compliance Committee a power of initiative according to the following modalities:

2. *“The Committee may examine, on the basis of biennial activity reports or in the light of any other relevant information, difficulties encountered by a Contracting Party in the implementation of the Convention and its Protocols. The Committee may ask the concerned Party to provide it with any complementary information. The concerned Party has a two-month deadline to respond.”*

4. The new paragraph 23 bis stipulates that the Committee may examine any difficulty encountered by a Contracting Party in the implementation of the Convention and its Protocols *“in the light of any relevant information”*. This formulation varies from the initial text submitted to the Meeting of the Contracting Parties which has proposed an assessment of the Compliance Committee *“in the light of the information received by the partner NGOs of the MAP (...)”*. The proposition of the Compliance Committee would have helped NGOs to communicate the information by underscoring that it would be sensible to grant this opportunity at least to these organizations which have the status of observer by virtue of Article 20 of the Barcelona Convention. This would have also the advantage of making Decision IG. 19/6 of the 16<sup>th</sup> meeting of the Contracting Parties (3-5 November 2009, Marrakech, Morocco) about cooperation and partnership between MAP and the civil society enter into force.

5. In general, it is noteworthy that the current rules of procedure of the Compliance Committee, unlike the rules of procedures of the other existent Committees targeted in II, do not mentioned the diversity of the Committee’s sources of information. There is undoubtedly a gap to fill because it conditions the system for a procedure upon the initiative of the Committee.

6. Most multilateral conventions<sup>1</sup> on environment which have a Compliance Committee have attributed to this Committee the right to examine, upon its own initiative, non-compliance cases resulting, whether from the States’ reports, from information received by the Committee or from information requested by the Committee itself.

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<sup>1</sup> **Aarhus Convention** (Decision I/7 adopted at the 1<sup>ème</sup> COP of Lucques, on October 23, 2002) para. 18 ; **Espoo Convention** (Decision II/4 adopted at the 2<sup>nd</sup> COP of Sofia in 2001 replaced by Decision III/2 adopted at the 3<sup>rd</sup> COP in 2004) ; **Convention on the protection and the use of transboundary waters and international lakes** (para VII of the Decision of the 6<sup>th</sup> COP in Rome, on November 30, 2012) ; **Protocol on water and health to the Convention of 1992 on the protection and the use of transboundary waters and international lakes**, done in London, on June 17, 1999 ; **Alpine Convention** (para 2-1 of Decision AC XII/A 1 of the 12<sup>th</sup> COP in Poschiavo en 2012.) .

7. The substantive issue is that of the identification of sources of information to which the Committee will have access to be able to act and take a decision about a non-compliance problem. In case of an issue sent back by the Secretariat, Decision IG 17/2 explicitly refers to the information obtained on the basis of reports submitted by the States (para. 23). It is not only about periodical reports stipulated in art. 26 of the Convention, but also «any other report» submitted by the Parties, including reports communicated to the Secretariat by the different bodies of the Convention and its Protocols, particularly those of Regional Activity Centers (RAC). Some of these centers have already communicated to the Compliance Committee reports, such as that of MEDPOL. The same may also apply to reports communicated to the Committee by other Regional Activity Centers, such as REMPEC or RAC/PAP for the integrated management of coastal zones. Relevant information which may be brought to the attention of the Committee may come from various sources: there may be data provided by Contracting Parties in the various reports or documents, by the Regional Activity Centers, or MAP official partners. This information may also come from observers targeted in Article 20 of the Barcelona Convention or communicated by the public as set by Article 3-12 of the Rules of Procedure of the Committee:

8. The content of paragraph 23 bis of Decision IG. 17/2 does not explicitly make reference to the fact that the Compliance Committee has the possibility to officially obtain information from NGOs. Regarding the information sent by NGOs, it may be sensible to give this opportunity at least to the organizations which have the status of observers by virtue of art. 20 of the Barcelona Convention. This would have the advantage of making Decision IG 19/6 of the 16<sup>th</sup> Meeting of Contracting Parties (3-5 November 2009, Marrakech, Morocco) on cooperation and PAM/Civil society partnership enter into force. The Code of Conduct adopted at this occasion targets the effective implementation of Convention and MAP works, particularly the follow-up works and actions (para. 7 of the rights of PAM partners). Para. 5 on the «responsibilities of MAP partners» stipulate that these organizations shall «promote and reinforce compliance with the Barcelona Convention and its Protocols». Para 8. of the «rights of MAP partners» stipulates, consequently, that they may submit to the Secretariat, in written, general or specific comments and suggestions.

9. The treatment of information received by the Committee will have to abide by the admissibility criteria. The sources of information may be different and provide various channels. They may come first from data provided by the Parties in various reports or documents or data provided by the Bureau of the Barcelona Convention. Moreover, information may emanate from official data given by the MAP Regional Activity Centers. Moreover, the Committee may undoubtedly rely on data provided by observers targeted in Article 20 of the Barcelona Convention provided that the latter are officially identified as they are to participate to the meetings of the Convention and that the data provided by the latter come from official documents related to this meeting. Finally, the data provided by the public, in general, i.e. one or several physical and legal entities as stated in Article 3.12 of the Rules of Procedure of the Committee and, by extension, their associations, organizations or groups, may be taken into account by the Committee.

10. The treatment of provided data is subject to meticulous examination by the Committee. The results of this examination will condition the admissibility of the information provided to the Committee. To this end, it will be necessary that any information directly received by the Committee or communicated by the Secretariat is subject to a specific examination. This requires the designation, within the Committee, of a Rapporteur which will be in charge of assessing, in the light of available elements, the admissibility and relevance of provided information within the examination of a real or potential non-compliance case. Relevant information may be transmitted for information to the Secretariat which would also be associated to the verification of their relevance.

11. The formal examination of the admissibility and relevance of information communicated to the Committee will have to rely on the use of the following criteria: 1. The Committee will have first to identify the origin of the information. Any anonymous information or any information the origin of which is uncertain or impossible will be kept aside in the examination of the non-compliance case. 2. Then, the Committee will have to ensure that the information communicated to the Committee is accurately

reported to the Barcelona Convention and/or one of its Protocols and is related to the real or potential non-compliance case for examination by the Committee. 3. Inaccurate and approximate information may not be taken into account by the Committee. Only information elements sufficiently accurate which raise a serious issue regarding non-compliance with some provisions of the Convention or its Protocols in the file submitted to the Committee may be taken into account by the Committee itself. For this purpose, the Committee is bound to undertake an inquiry to obtain, from the source of information, the complementary elements, thus promoting the credibility of its content. Complementary information may be requested by the Rapporteur of the Committee regarding this file from the provider of the contested information and/or before the questioned State Party or State Parties by virtue of Articles 24, 25 and 26 of Decision IG.17/2. Otherwise, the Committee will have to reject such a piece of information.

12. The formal examination of the admissibility and relevance of information communicated to the Committee shall be undertaken in full transparency with the concerned contracting Parties. This means that these questioned contracting parties shall be informed by the Rapporteur of the file for the examination of relevant information received by the Committee.

13. The closure of the examination may lead to two conclusions: either the rapporteur decides not to give effect to the received information, considering that its formal examination does not keep it regarding the handling of the file, or the rapporteur validates the relevance of received information and reaches a referral decision on the substance of the file. This preliminary decision of referral on the basis of the rapporteur's proposition shall be transmitted for information by the President of the Committee to the Secretariat and may be subject to an exchange of views regarding the opportunity of a referral. In this case, the Committee will be able to transmit to the Secretariat the received relevant information so that the latter validates its relevance, without, however, impinging on the power of decision of the Committee within the framework of the power of initiative. The formal referral decision by the Committee by virtue of Article 23 bis of Decision IG. 17/2 will be officially communicated to the concerned Contracting Party, to the Secretariat and to the Bureau of the Convention, as well as to the author of the relevant information by the Compliance Committee.