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21<sup>st</sup> Meeting of the Contracting Parties to the  
Convention for the Protection of the Marine Environment  
and the Coastal Region of the Mediterranean and its Protocols

Naples, Italy, 2-5 December 2019

**Agenda Item 3: Thematic Decisions**

**Draft Decision IG.24/1: Compliance Committee**

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## Note by the Secretariat

The Compliance Committee met twice during the biennium 2018-2019. The 14<sup>th</sup> Meeting of the Compliance Committee was held on 25-26 June 2018 in Athens, Greece, at the premises of the United Nations Environment Programme/Mediterranean Action Plan (UNEP/MAP) Coordinating Unit, and then a resumed session of it was held through electronic means (teleconference) on 30 October 2018 for the election of the officers of the Compliance Committee for the current biennium. The 15<sup>th</sup> Meeting of the Compliance Committee was held on 25-26 June 2019, in Athens, Greece at the premises of the UNEP/MAP Coordinating Unit.

At its 14<sup>th</sup> and 15<sup>th</sup> Meetings, the Compliance Committee went through its Programme of Work for the biennium 2018-2019 and worked on its delivery to the 21<sup>st</sup> Meeting of the Contracting Parties (COP 21) (Naples, Italy, 2-5 December 2019). The outcome of the work of the Compliance Committee is presented in this document in the present Draft Decision, which is structured as follows:

(a) *Activity Report of the Compliance Committee for the biennium 2018-2019*: The Activity Report annexed to the present draft Decision was agreed by the Compliance Committee following its 15<sup>th</sup> Meeting and summarizes work undertaken by the Compliance Committee for the biennium 2018-2019. This ranges from the presentation of key findings identifying general issues of compliance with the Barcelona Convention and its Protocols and their associated recommendations to promote compliance, to the admissibility of the communication from *Ecologistas en Acción de la Región Murciana (EARM) (Spain)*, to the legal analysis of the Regional Plans adopted under the Land-Based Sources Protocol;

(b) *The Programme of Work of the Compliance Committee for the Biennium 2020-2021*: The Programme of Work annexed to the present Draft Decision was agreed by the 15<sup>th</sup> Meeting of the Compliance Committee, and contains a set of activities for the Compliance Committee to carry out within the 2020-2021 timeline;

(c) *Recommendations to Promote Compliance with the Barcelona Convention and its Protocols and Improve their Implementation*. The proposed recommendations are annexed to the present draft decision and were agreed by the 15<sup>th</sup> Meeting of the Compliance Committee. They are the result of the work carried out by the Compliance Committee during the biennium 2018-2019 on the basis of the information contained in the national implementation reports for the biennium 2014-2015, as presented by the Secretariat in the Updated Synthesis Analysis (UNEP/MED CC.15/Inf.3) and Updated General Status of Progress (UNEP/MED CC.15/Inf.4);

*Renewal or Election of the Membership of the Compliance Committee*. The list of Members and Alternate Members of the Compliance Committee as renewed or elected by the 21<sup>st</sup> Meeting of the Contracting Parties (COP 21) (Naples, Italy, 2-5 December 2019) will be finalized at the time of COP 21, once Contracting Parties complete the nomination of candidates following the corresponding procedure launched by the Secretariat and COP 21 consider the election of the candidates so nominated. At the time of writing two nominations have been received from Group I. Meanwhile the consultation is ongoing among the other groups.

The work of the Compliance Committee should be framed within the broader context of UNEP/MAP work in achieving Sustainable Development Goals. The implementation of this decision is linked to Output 1.1.2: Effective legal, policy, and logistic support provided to MAP decision-making process including advisory bodies meetings, of the proposed MAP Programme of Work. It has budgetary implications on the Mediterranean Trust Fund (MTF), reflected in the proposed budget.

The Meeting of the MAP Focal Points (Athens, Greece, 10-13 September 2019) reviewed the draft Decision. At that time, the draft Decision did not include the *Activity Report of the Compliance Committee for the biennium 2018-2019*, as it was under finalization by the Compliance Committee and has to be submitted directly to the COP. All comments, concerns and proposals by the MAP Focal Points Meeting have been conveyed to the Compliance Committee for feedback and agreement.

The proposed Draft Decision and its Annexes have been revised in line with the discussion at the MAP Focal Points Meeting and are submitted for consideration by COP 21 as contained in the present document.

**Draft Decision IG.24/1**

**Compliance Committee**

*The Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols at their 21<sup>st</sup> Meeting,*

*Recalling* the General Assembly resolution 70/1 of 25 September 2015, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”,

*Recalling also* the Environment Assembly resolution UNEP/EA.4/Res.20, of 15 March 2019, entitled “Fifth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme V): delivering for people and the planet”,

*Having considered* Articles 26 and 27 of the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and the relevant provisions of its Protocols,

*Recalling* Decision IG.17/2 of the 15<sup>th</sup> Meeting of the Contracting Parties (COP 15) (Almeria, Spain, 15-18 January 2008) on Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols, as amended by Decision IG.20/1 of the 17<sup>th</sup> Meeting of the Contracting Parties (COP 17) (Paris, France, 8-10 February 2012) and Decision IG.21/1 of the 18<sup>th</sup> Meeting of the Contracting Parties (COP 18) (Istanbul, Turkey, 3-6 December 2013),

*Recalling also* Decision IG.19/1 of the 16<sup>th</sup> Meeting of the Contracting Parties (COP 16) (Marrakesh, Morocco, 3-5 November 2009) on the Rules of Procedure of the Compliance Committee, as amended by Decision IG.21/1 of the 18<sup>th</sup> Meeting of the Contracting Parties (COP 18) (Istanbul, Turkey, 3-6 December 2013),

*Recalling* further Decision IG.23/1 adopted by the Contracting Parties at their 20<sup>th</sup> Meeting (COP 20) by which the Contracting Parties invited the Secretariat to submit to each meeting of the Contracting Parties, on the basis of an analysis of the information contained in the National Reports, report on general advance made in the region, including at the legal and institutional levels, in implementing the Barcelona Convention and its Protocols along with proposal for further measures, as necessary.

*Emphasizing* the facilitative nature of the Compliance Committee in promoting compliance with the Barcelona Convention and its Protocols by providing advice and assisting Contracting Parties, as well as the role of the Compliance Committee in considering specific situations of actual or potential non-compliance by individual Contracting Parties and, at the request of the Meeting of the Contracting Parties, general compliance issues and any other issues,

*Noting with appreciation* the work undertaken by the Compliance Committee during the biennium 2018–2019, in particular ground-breaking work in providing specific and targeted key findings and draft recommendations on the basis of the national implementation reports for the biennium 2014-2015 submitted by the Contracting Parties, with the aim of delivering targeted action to promote compliance with the Barcelona Convention and its Protocols,

*Seeking* to promote the identification, as early as possible, of implementation challenges encountered by Contracting Parties, and the adoption of and recommendations on the most appropriate and effective measures addressing those challenges,

*Stressing* that the submission of national implementation reports by Contracting Parties, as per Article 26 of the Barcelona Convention, is instrumental in providing the Compliance Committee with the resources needed to perform its role in considering specific and general compliance issues,

*Welcoming* the submission of the national implementation reports for the biennium 2016-2017, using the new online Barcelona Convention Reporting System (BCRS), and the progress made by Contracting Parties in implementing the Barcelona Convention and its Protocols,

*Recognizing* the challenges faced by the Contracting Parties in reporting and implementing, and the need to ensure that legal and technical advice is delivered to facilitate their reporting process and that, as resources allow and in collaboration with other Multilateral Environmental Agreements, capacity building initiatives should be explored to enhance implementation of the Barcelona Convention and its Protocols,

*Conscious* of the need to continue enhancing the effectiveness of the compliance mechanisms and procedures, thus strengthening the role of the Compliance Committee in facilitating and promoting compliance with the Barcelona Convention and its Protocols,

*Having considered* the Compliance Committee meeting reports of the biennium 2018–2019,

1. *[Take note* of the Activity Report of the Compliance Committee for the Biennium 2018-2019, set out in Annex I to the present Decision;]
2. *Adopt* the Programme of Work of the Compliance Committee for the Biennium 2020-2021, set out in Annex II to the present Decision;
3. *[Adopt* the Recommendations to Promote Compliance with the Barcelona Convention and its Protocols and Improve their Implementation, set out in Annex III to the present Decision;]
4. *Urge* those Contracting Parties who have not yet submitted their national implementation reports for the biennium 2016-2017 to do so as soon as possible but before December 2019;
5. *Invite* the Contracting Parties to submit their national implementation reports for the biennium 2018-2019 using the new online Barcelona Convention Reporting System by December 2020;
6. *[Elect and/or renew*, in accordance with the Procedures and Mechanisms on Compliance, the membership of the Compliance Committee, set out in Annex IV to the present Decision;]
7. *Request* the Compliance Committee to report to the Contracting Parties at the 22<sup>nd</sup> Meeting of the Contracting Parties (COP 22) on the work it has carried out to fulfil its functions in accordance with paragraph 31 of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols.

**Annex I**

**Activity Report of the Compliance Committee for the Biennium 2018-2019**

## **Draft Activity Report of the Compliance Committee for the biennium 2018-2019**

### **Section 1: Introduction**

1. The role and functioning of the Compliance Committee is governed by Decision IG.17/2 on Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols, as amended by Decisions IG. 20/1 and IG. 21/1 and Decision IG. 19/1 on the Rules of Procedure of the Compliance Committee, as amended by Decision IG. 21/1.

2. The Compliance Committee met twice during the biennium 2018-2019. The 14<sup>th</sup> Meeting of the Compliance Committee was held on 25-26 June 2018 in Athens, Greece, at the premises of the United Nations Environment Programme/Mediterranean Action Plan (UNEP/MAP) Coordinating Unit, and then a resumed session of it was held through electronic means (teleconference) on 30 October 2018 for the election of the officers of the Compliance Committee for the current biennium. The 15<sup>th</sup> Meeting of the Compliance Committee was held on 25-26 June 2019, in Athens, Greece at the premises of the UNEP/MAP Coordinating Unit.

3. At its 14<sup>th</sup> and 15<sup>th</sup> Meetings, the Compliance Committee went through its Programme of Work for the biennium 2018-2019, as adopted by Decision IG. 23/2 of the 20<sup>th</sup> Meeting of the Contracting Parties (COP 20) (Tirana, Albania, 17-20 December 2017) and worked on its delivery to the 21<sup>st</sup> Meeting of the Contracting Parties (COP 21) (Naples, Italy, 2-5 December 2019). The key outcomes of the work of the Compliance Committee are presented in this report in accordance with paragraph 31 of the Procedures and Mechanisms on Compliance.

### **Section 2: General Issues of Compliance under the Barcelona Convention and its Protocols**

#### *Recommendations to Promote Compliance with the Barcelona Convention and its Protocols and Improve their Implementation*

4. The 14<sup>th</sup> Meeting of the Compliance Committee agreed upon “*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). Under the agreed Guidelines, intersessional working arrangements were set up for the Compliance Committee: (a) to prepare key findings on the implementation of the Barcelona Convention and its Protocols identifying main difficulties and general non-compliance issues; (b) to draft recommendations to improve the implementation of the Barcelona Convention and its Protocols to COP 21; and (c) to extract analysis/stock-taking/possible tools on how to improve the methodology for the elaboration of the key findings and recommendations in the future, i.e. when the 2016-2017 reports based on the new reporting format will be available.

5. As tasked under the Guidelines, the Compliance Committee went through the information contained in the national implementation reports for the biennium 2014-2015, as presented by the Secretariat in the Updated Synthesis Analysis and Updated General Status of Progress, as well as national implementation reports as deemed, and collectively delivered a set of key findings, draft recommendations to COP 21 and possible methodological tools, which were tabled at the 15<sup>th</sup> Meeting of the Compliance Committee.

6. At its 15<sup>th</sup> Meeting, the Compliance Committee undertook a prioritization exercise of the draft recommendations to COP 21, by focusing on the recommendations associated with those key findings reflecting a low level of implementation among reporting Contracting Parties. This resulted in a refined set of “*Recommendations to Promote Compliance with the Barcelona Convention and its Protocols and Improve their Implementation*”, which the Compliance Committee agreed to recommend to COP 21 for adoption, as annexed to draft COP 21 Decision IG. 24/1 entitled “*Compliance Committee*”.

7. The proposed recommendations to COP 21 represent a well-rounded set of action-oriented proposals to promote compliance with the Barcelona Convention and its Protocols, targeting Contracting Parties, the Secretariat and/or MAP components. They address both common issues relevant to the Barcelona Convention and its Protocols which need to be tackled across the board, and

specific issues linked to the legal instrument concerned, i.e. the Barcelona Convention and each of its Protocols. Cross-cutting recommendations include those aimed at increasing the submission of national implementation reports and enhancing data collection through a number of actions, including capacity building activities. Specific recommendations cover different areas ranging from Integrated Coastal Zone Management (ICZM) to Environmental Impact Assessments (EIAs).

8. The Compliance Committee also agreed on “*Key Findings and Recommendations to Promote Compliance with the Barcelona Convention and its Protocols and Improve their Implementation*”, as presented in **Appendix I** to this report. This is a comprehensive package of key findings and recommendations, including the prioritized recommendations to COP 21 annexed to the draft COP 21 Decision IG. 24/1, which shows the whole scope of the exercise conducted by the Compliance Committee corresponding to the national implementation reports for the biennium 2014-2015.

9. On the development of key findings and draft recommendations on the basis of the national implementation reports for the biennium 2016-2017, the Compliance Committee requested the Secretariat to do so to facilitate discussion at the 16<sup>th</sup> Meeting of the Compliance Committee.

#### *Status of Reporting under Article 26 of the Barcelona Convention*

10. The Compliance Committee underlined the increasing overall reporting rates since the launching of the Barcelona Convention Reporting System (BCRS) in 2008. A total of 15 Contracting Parties submitted their national implementation reports for the 2008-2009 biennium. That figure was raised to 19 Contracting Parties for the 2014-2015 biennium. As regards the current biennium 2016-2017, the submission of national implementation reports is ongoing, with a total of 15 Contracting Parties having submitted their national implementation reports at the time of writing. The Compliance Committee indicated that efforts should continue in order to further increase the submission rate of national implementation reports and achieve 100% submission.

11. *Biennia 2012-2013 and 2014-2015*: Following-up on the conclusion of the 14<sup>th</sup> Meeting, the Compliance Committee, a letter from the Chair of the Compliance Committee was sent to the MAP Focal Points of Egypt, Libya, Syria and Tunisia, asking these Contracting Parties of the nature of the difficulties encountered in submitting their outstanding national implementation reports in order to look into possible solutions. This action resulted in: (1) the submission of national implementation reports by Tunisia for the biennium 2012-2013 and by Egypt for the biennium 2014-2015, and (2) the confirmation from the remaining Contracting Parties of on-going arrangements to submit their pending implementation reports as soon as possible, i.e. Libya and Syria for 2012- 2013 and 2014-2015, and Tunisia for 2014-2015.

12. At its 15<sup>th</sup> Meeting, the Compliance Committee welcomed the national implementation reports submitted by Egypt and Tunisia, expressed its appreciation for the ongoing effort in Libya, Syria and Tunisia towards the submission of their outstanding national implementation reports for the reporting period(s) 2012-2013 and/or 2014-2015, and urged those Contracting Parties to continue efforts to submit their reports before the MAP Focal Points Meeting. At the time of writing, Tunisia had submitted its national implementation report for the biennium 2014-2015. The Compliance Committee also urged Albania, Greece, Monaco and Slovenia to submit their outstanding national implementation reports for the biennium 2014-2015.

13. *Biennium 2016-2017*: The 15<sup>th</sup> Meeting of the Compliance Committee considered the status of reporting for the biennium 2016-2017 and urged those Contracting Parties who have not yet done so to submit their national implementation reports before the MAP Focal Points Meeting; encouraging all Contracting Parties to continue to work to improve the timeliness and completeness of their national implementation reports.

#### *Criteria for the Identification of Actual or Potential Cases of Non-Compliance*

14. Following-up on the conclusions of the 14<sup>th</sup> Meeting of the Compliance Committee, in consultation with the General Fisheries Commission for the Mediterranean (GFCM) and the Basel Convention Secretariats, and in collaboration with Daniela Addis, a member of the Compliance Committee, the Secretariat prepared a set of draft criteria for the identification of actual or potential

cases of non-compliance. The said criteria cover four aspects to assess against the national implementation reports of the Barcelona Convention and its Protocols: (1) submission, (2) timelines, (3) completeness and (4) implementation, and take inspiration from the criteria developed by GFCM and the Basel Convention.

15. At its 15<sup>th</sup> meeting, the Compliance Committee considered the proposed criteria and concluded by requesting the Secretariat together with MAP Components, to test the draft criteria against the national implementation reports for the biennium 2016-2017 and present the result to the 16<sup>th</sup> Meeting of the Compliance Committee. This would allow to check, firstly, whether and to what extent the proposed criteria capture the most relevant aspects involved in compliance and, secondly, how well they assign different weights to the questions of the national implementation reports.

16. In this context, the Compliance Committee also discussed the development of legal environmental indicators for measuring the effectiveness of the Barcelona Convention and its Protocols as an avenue that should be explored in future.

#### *Legal Analysis of the Regional Plans Adopted under the Land-Based Sources Protocol*

17. As agreed at the 13<sup>th</sup> Meeting of the Compliance Committee (Athens, Greece, 26-27 September 2017), Bernard Brillet and José Juste-Ruiz, members of the Compliance Committee, in coordination with the Secretariat, analyzed for the purpose of assessing compliance the legal nature of the main obligations contained in the Land-Based Sources Protocol (LBS Protocol) related Regional Plans adopted by the Meeting of the Contracting Parties, i.e. (1) the Regional Plans on Persistent Organic Pollutants (POPs); (2) the Regional Plans on the Reduction of BOD<sub>5</sub>; (3) the Regional Plan on the Reduction of Inputs of Mercury; (4) the Regional Plan on Marine Litter Management in the Mediterranean; and (5) the Regional Action Plan on Sustainable Consumption and Production in the Mediterranean.

18. The 14<sup>th</sup> Meeting of the Compliance Committee examined the comprehensive analysis so provided, which touched upon for each of the LBS Regional Plans: (1) the legal basis for the adoption of the regional plans, (2) the general form and terminology employed for the regional plans, and (3) the wording and content of each regional plan specific provision. The Compliance Committee agreed the legal analysis to be presented as an outcome from the 14<sup>th</sup> Meeting of the Compliance Committee to COP 21, and as such it is presented in **Appendix II** to this report.

#### *Explanatory Note to be Associated with the Revised Reporting Format*

19. The 15<sup>th</sup> Meeting of the Compliance Committee examined a short explanatory note providing general guidance to Contracting Parties aimed at improving the quality of reporting by avoiding any potential misunderstanding when considering the information contained in the national implementation reports. The note builds on the experience in examining the national implementation reports submitted by Contracting Parties for the biennium 2016-2017 using the revised reporting format agreed by COP 20. The Compliance Committee requested the Secretariat to disseminate it among Contracting Parties and to expand it as needed as reporting experience is refined over time.

### **Section 3: Specific Submissions under Section V of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols**

#### *Communication from Ecologistas en Acción de la Región Murciana (EARM) (Spain)*

20. At the 14<sup>th</sup> Meeting of the Compliance Committee, the designated Rapporteur, Dr. Orr Karassin, presented the communication from EARM regarding the implementation by Spain of the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean, together with additional supporting documentation provided by EARM. The meeting felt that making a decision on the admissibility of the communication from EARM was premature at that point in time and that an informed decision on the admissibility of the communication required further information.

21. The Compliance Committee then concluded the designated Rapporteur to address, through the Secretariat, EARM, asking them to provide the following additional information: (1) a document identifying the facts of the alleged non-compliance stating how they constitute a case of non-compliance with the Barcelona Convention and/or its Protocols, (2) the specific and circumscribed



request to the Compliance Committee, and (3) documentation showing whether remedies available at national and/or international level have been taken and if so the current status. On that basis and building on the information previously received by EARM, the designated Rapporteur was asked to prepare its findings and a proposal for a draft preliminary decision on admissibility.

22. The designated Rapporteur presented its findings and a draft preliminary decision on the admissibility of the communication from EARM at the 15<sup>th</sup> Meeting of the Compliance Committee. In its presentation, the Rapporteur examined the communication from EARM and supporting information against the minimum requirements (Paragraph 5<sup>1</sup>) and admissibility criteria (Paragraphs 12 and 13<sup>2</sup>) set in the “*Admissibility Criteria of Relevant Information Sources and Procedure under Paragraph 23.bis of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols*” (COP 20 Decision IG.23/2, Annex I), and concluded that in its opinion the communication from EARM should be deemed currently admissible.

23. The Compliance Committee considered the Rapporteur’s findings and draft preliminary decision, focusing on the question at hand whether the communication from EARM was admissible according to the Admissibility Criteria. Discussion was held on whether domestic remedies had been exhausted. For some, further elaboration was needed on what exhaustion means in the context of the Admissibility Criteria and the scope of the action taken in that regard by the Spanish national and/or regional government. For others, the criterion regarding the exhaustion of domestic remedies does not refer only to the factual assessment of what actions have been taken at the domestic level by EARM. This criterion begs the question of whether the Compliance Committee is convinced that EARM could have and should have taken additional actions at domestic level. In addressing this question, the Compliance Committee considered among other factors the concrete characteristics and resources available to EARM and the situation in the SPAMI Mar-Menor.

24. The Compliance Committee welcomed the work of the Rapporteur and on the basis of the Admissibility Criteria of Relevant Information Sources and Procedure under Paragraph 23.bis of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols decided to confer admissibility of the communication from Ecologistas en Acción de la Región Murciana. Following the Admissibility Criteria, the Compliance Committee asked the Secretariat to make arrangements to proceed with the notification of the communication.

25. No other submissions were received under Section V of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols neither at the 14<sup>th</sup> nor the 15<sup>th</sup> Compliance Committee meetings.

#### **Section 4: Cooperation with other Compliance Procedures and Mechanisms of Multilateral Environmental Agreements (MEAs) and awareness raising activities**

26. To strengthen cooperation with the Compliance Procedures and Mechanisms established under other MEAs, representatives of the International Maritime Organization (IMO) London Convention/Protocol, GFCM and the Basel, Rotterdam and Stockholm (BRS) Conventions presented their work, including work on criteria for assessing compliance, at the 14<sup>th</sup> Meeting of the Compliance

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<sup>1</sup> Paragraph 5 of the Admissibility Criteria reads as follows: “The following minimum requirements should be included in any communication addressed to the Compliance Committee:

- (a) name and contact details of the communicant, whether this is a natural or legal person, the communication should be signed and be accompanied by a brief statement of the purpose of the communication. The Compliance Committee will not consider anonymous submission, but it will however respect any request of confidentiality by the communicant;
- (b) clear identification of the Party or Parties concerned;
- (c) it is advisable a one to two-page summary with the main facts of the case;
- (d) a document presenting the facts of the alleged non-compliance, and clearly stating how the facts presented constitute a case of non-compliance with the Barcelona Convention and/or its Protocols;
- (e) indication of whether steps have been taken to use the remedies available at national and/or international level”.

<sup>2</sup> Paragraph 12 of the Admissibility Criteria reads as follows: “When determining admissibility the Compliance Committee will consider whether the communication is: (a) anonymous; (b) de minimis; (c) manifestly ill founded.” Paragraph 13 of the Admissibility Criteria reads as follows: “In addition, the Compliance Committee will consider whether domestic remedies have been exhausted”.

Committee. This initiative is framed within the long-standing collaboration with these organizations, which is articulated through different legal instruments, such as the Memorandum of Understanding (MOU) with the GFCM, under which compliance is one of the areas of cooperation.

27. The Compliance Committee highlighted the value of inviting representatives from other MEAs Compliance Procedures and Mechanisms to participate in its meetings as a way of building synergies on compliance and agreed on the Secretariat to continue with that practice for future meetings and insert the relevant activity in the Programme of Work of the Compliance Committee for the biennium 2016-2017.

28. At its 14<sup>th</sup> Meeting, the Compliance Committee pointed out that information-based approaches, such as public awareness and publicity, could be very effective in promoting compliance, and that from a communication perspective, covering internal and external visibility is key. In this context, an e-leaflet promoting the role and work of the Compliance Committee was prepared and the 15<sup>th</sup> Meeting of the Compliance Committee requested the Secretariat to use the e-leaflet for continuing promoting the role and work of the Compliance Committee.

### **Section 5: Functioning of the Compliance Committee: Procedures and Mechanisms on Compliance and Rules of Procedure of the Compliance Committee**

#### *Election of the Officers of the Compliance Committee for the Current Biennium*

29. Following-up on the discussion at the 14<sup>th</sup> Compliance Committee Meeting and the conclusions of the 86<sup>th</sup> Meeting of the Bureau of the Contracting Parties (Teleconference, 11 July 2018) on the interpretation of Rule 10 of the Procedures and Mechanisms on Compliance<sup>3</sup>, a Resumed Session of the 14<sup>th</sup> Meeting of the Compliance Committee of the Barcelona Convention and its Protocols, was held through electronic means (Teleconference) on 30 October 2018 for the election of the officers of the Compliance Committee for the current biennium.

30. Pursuant Rule 10 of the Procedures and Mechanisms on Compliance, and Rule 6 of the Rules of Procedure of the Compliance Committee<sup>4</sup>, the Compliance Committee elected for the biennium 2018-2019 the following Members: Odeta CATO (Group III: Albania, Bosnia and Herzegovina, Israel, Monaco, Montenegro and Turkey) as Chairperson of the Compliance Committee; Bernard BRILLET (Group II: Croatia, Cyprus, France, Greece, Italy, Malta, Slovenia, Spain and the EU) as Vice-Chairperson of the Compliance Committee; and Ezzedine JOUINI-BERZINE (Group I: Algeria, Egypt, Lebanon, Libya, Morocco, Syria and Tunisia) as Vice-Chairperson of the Compliance Committee.

#### *Legal Interpretation of Procedures and Mechanisms on Compliance and Rules of Procedure of the Compliance Committee*

31. The 15<sup>th</sup> Meeting of the Compliance Committee considered a number of issues for legal interpretation concerning the Procedures and Mechanisms on Compliance and the Rules of Procedure of the Compliance Committee. The issues were raised by the 14<sup>th</sup> Meeting of the Compliance Committee and the 86<sup>th</sup> Meeting of the Bureau and legal interpretation was provided by UNEP Principal Legal Officer.

32. At the meeting:

(a) with regards to the question whether Alternate Members of the Compliance Committee can be elected as Committee officers (i.e. a Chairperson and two Vice-Chairpersons) under Rule 10 of the Procedures and Mechanisms of Compliance, the Compliance Committee agreed that officers are elected from the membership of the Compliance Committee, i.e. the seven members;

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<sup>3</sup> Rule 10 of the Procedure and Mechanisms reads: "The Committee shall elect its officers-a Chairperson and two Vice-Chairpersons-on the basis of equitable geographic representation and rotation."

<sup>4</sup> Rule 6 of the Rules of Procedure of the Compliance Committee reads: "The Committee shall elect a Chairperson and two Vice-Chairpersons for a term two years. No officers shall serve for more than two consecutive terms."

(b) with regards to the question whether Rule 7 of the Procedures and Mechanisms<sup>5</sup> exclusively apply to the members of the Compliance Committee different views were expressed and approaches taken on that matter, which could not lead to a single interpretation. Taking a strict approach, Rule 7 applies exclusively to Members of the Compliance Committee. Taking a flexible approach, Rule 7 applies to both Members and Alternate Members of the Compliance Committee. The Compliance Committee then agreed to bring the matter to the attention of the Meeting of the Contracting Parties (COP 21) for a final decision. Should the decision be that Rule 7 applies equally to Members and Alternate Members of the Compliance Committee, it is advisable to revise Rule 7 of the Procedures and Mechanisms;

(c) the Compliance Committee decided to include in its Programme of Work for the biennium 2020-2021 the following activity: “To review the Rules of Procedure of the Compliance Committee in order to further clarify a number of outstanding issues and make a proposal as appropriate for adjusting accordingly the Procedures and Mechanism on Compliance for consideration by COP 22.”

*Programme of Work of the Compliance Committee for the Biennium 2020-2021*

33. The 15<sup>th</sup> Meeting of the Compliance Committee agreed on its Programme of Work for the biennium 2010-202, as annexed to draft COP 21 Decision IG.24/1 entitled “*Compliance Committee*”. The Programmed of Work is structured around four sections addressing: (1) specific submissions under Section V of the Procedures and Mechanisms on Compliance, (2) General issues of compliance under the Barcelona Convention and its Protocols, (3) enhancement activities and (4) functioning of the Compliance Committee.

**Section 6: Additional Recommendations to COP21 from the Compliance Committee**

34. Given the intensive Programme of Work and workload that committee members face during the meetings and intersessionally, the Compliance Committee stressed the need to be allocated additional time for its meetings as well as additional resources to take forward its Programme of Work for the biennium 2020-2021. At its 15<sup>th</sup> Meeting, the Compliance Committee:

- (a) urged COP 21 to consider favorably the allocation of necessary resources for longer meetings of the Compliance Committee; and
- (b) urged COP 21 and Contracting Parties to allocate additional resources that would allow the Compliance Committee to take forward a Programme of Work for designing and implementing capacity-building measures to improve compliance with the Barcelona Convention and its Protocols and especially reporting by Contracting Parties.

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<sup>5</sup> Rule 7 of the Procedure and Mechanisms reads: “The members of the Committee shall be nationals of Parties to the Barcelona Convention. The Committee shall not include more than one national of the same State”.

## **Appendix I**

### **Key Findings and Recommendations to Promote Compliance with the Barcelona Convention and its Protocols and Improve their Implementation**

**KEY FINDINGS AND RECOMMENDATIONS TO PROMOTE COMPLIANCE WITH THE BARCELONA CONVENTION AND ITS PROTOCOLS AND IMPROVE THEIR IMPLEMENTATION**

1. In order to implement the Barcelona Convention and its Protocols, Contracting Parties need to put the necessary legislative and policy measures in place, and to establish the corresponding institutional structures to implement them, and follow-up and assess the effectiveness of these measures towards a good ecological status of the Mediterranean Sea. Establishing the necessary governance structures and institutions is key for the implementation of the Barcelona Convention and its Protocols. These core institutions have been examined by the Compliance Committee intersessionally, on the basis of the Updated Synthesis Analysis (UNEP/MED CC.15/Inf.3) and the Updated General Status of Progress (UNEP/MED CC.15/Inf.4) prepared by the Secretariat, as well as on the basis of the national implementation reports for the 2014-2015 biennium, as deemed necessary. As a result, presented hereinafter, are the key findings and associated recommendations to promote compliance with the Barcelona Convention and its Protocols and improve their implementation.

2. Key findings identify general issues affecting the compliance of a number of reporting Contracting Parties with respect to their obligations under the Barcelona Convention and its Protocols. In drafting the key findings, the focus has been put on those issues reflecting a low level of implementation among reporting Contracting Parties. Associated recommendations aim at improving the implementation of the Barcelona Convention and its Protocols. This comprehensive package of key findings and recommendations will be annexed to the Activity Report of the Compliance Committee for the biennium 2018-2019 to COP 21.

3. The recommendations highlighted in grey were deemed as high priority issues and therefore the Compliance Committee urges the Contracting Parties to direct efforts and take significant action as detailed. The prioritized recommendations will be annexed to the draft COP 21 Decision IG.24/1 entitled "Compliance Committee".

4. The key findings and associated draft recommendations presented below should be understood within the limitations which arise from the fact that not all Contracting Parties have submitted their national implementation reports for the 2014-2015 biennium; the limited number of Contracting Parties to some Protocols, and additionally, the difference in the amount of information submitted by Contracting Parties in their national implementation reports.

<b>Cross-cutting recommendations to promote compliance with the Barcelona Convention and its Protocols</b>	
<b>Key findings</b>	<b>Recommendations</b>
National implementation reports of the Barcelona Convention and/or its Protocols are still pending from some Contracting Parties	To remind the Contracting Parties concerned that the non-submission of national implementation reports under Article 26 of the Barcelona Convention leads 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.
Challenges with implementation have been reported by all Contracting Parties	To ask the Secretariat to explore the commitment of adequate resources (both financial and other available) and actions to implement measures of capacity building within the Barcelona Convention framework that would also allow the Compliance Committee to take forward a programme of work for designing and implementing capacity-building measures to improve compliance and especially reporting by the Contracting Parties.

Limited and/or lagging data submitted by Contracting Parties	<p>In order to increase the submission rate of national implementation reports under Article 26 of the Barcelona Convention and their completeness, to invite the Compliance Committee Chairperson or other appointed representative to participate, having an active role, at the main Governance meetings of the Barcelona Convention.</p> <p>To enhance data collection through the existing INFO/MAP system and its further development and explore the means and ways to support Contracting Parties in terms of capacity building aiming to ensure coherence at national level and to secure availability and accessibility to necessary infrastructure for providing consistent data management for reporting purposes.</p>
Limited reporting on enforcement measures	To urge the Contracting Parties concerned to report on enforcement measures.

*Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean  
(Barcelona Convention)*

<b>Barcelona Convention</b> <i>(Status of reporting as of 10 May 2019)</i>	
<ul style="list-style-type: none"> <li>• Number of Contracting Parties to the 1976 Barcelona Convention on the 2014/2015 biennium: 22</li> <li>• Number of Contracting Parties to the 1995 Barcelona Convention on the 2014-2015 biennium: 21</li> <li>• Number of reporting Contracting Parties on the 2014-2015 biennium: 17</li> <li>• Number of Contracting Parties that have not submitted yet their reports for the 2014-2015 biennium: 5</li> </ul>	
Key findings	Recommendations
<p><b>Mechanisms of cooperation in transboundary Environmental Impact Assessments (EIAs): Article 4.3.c and d</b></p> <ul style="list-style-type: none"> <li>• 7 reporting Contracting Parties out of 17 have not yet adopted a legal framework for notification, exchange of information and consultation among the parties concerned, when environmental impact assessment (EIA) is undertaken in a transboundary context.</li> <li>• 5 reporting Contracting Parties out of 17 have not yet set up the institutional structures to conduct EIAs or implement the notification process in case of transboundary EIAs</li> </ul>	<p>To urge and recommend the Contracting Parties concerned to establish and improve Environmental Assessment, in particular Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) in the coastal zone as well as in the transboundary context, and to establish cooperation mechanisms in cases of transboundary EIAs by adopting the required legal framework and setting the corresponding institutional arrangements.</p>
<p><b>ICZM: Article 4.3.e</b></p> <ul style="list-style-type: none"> <li>• 3 reporting Contracting Parties out of 17 have not yet integrated ICZM principles into their legal and policy frameworks.</li> <li>• 6 reporting Contracting Parties out of 17 have yet to integrate ICZM into their physical plans for the coastal zone.</li> </ul> <p>4 reporting Contracting Parties out of 17 have not yet developed the institutional structures required for applying ICZM work at national, regional or local level.</p>	<p>To urge and recommend the Contracting Parties concerned to integrate Integrated Coastal Zone Management (ICZM) into the physical planning of their coastal zone; and invite the Priority Actions Programme/Regional Activity Centre (PAP/RAC) to explore how best Contracting Parties could be assisted in this field.</p>
<p><b>Monitoring: Article 12</b></p> <p>4 reporting Contracting Parties out of 17 have not established institutional structures and have not put in place programmes for monitoring marine pollution</p>	<p>To urge and recommend the Contracting Parties concerned to establish the legal framework and institutional structures for monitoring marine pollution, and to consider these as high priority task</p>

	including the allocation of sufficient resources by those countries to achieve these goals.
<p><b>Public participation in final environmental decision-making: Article 15</b></p> <p>7 reporting Contracting Parties out of 17 have not implemented a legal framework to allow for public participation in the process of authorization of proposed activities likely to cause damage to the marine environment and its coastal areas</p>	<p>To urge and recommend the Contracting Parties concerned to establish the required legal framework to ensure public participation in the final decision-making process for authorization of activities likely to cause damage to the coastal and marine environment.</p> <p>To urge and recommend the Contracting Parties concerned to promote the sharing of experience and good practices among them in order to reinforce public participation in decision-making.</p>
<p><b>Use of economic instruments: Article 4.3.b</b></p> <ul style="list-style-type: none"> <li>7 reporting Contracting Parties out of 17 have not adopted in their legal and policy frameworks economic instruments such as taxes, fees, funds, charges, with the aim of promoting the protection of the marine environment, its coastal areas and biodiversity conservation.</li> <li>3 reporting Contracting Parties out of 17 have not established the institutional structures to implement the polluter pays principle</li> </ul>	<p>To urge and recommend the Contracting Parties concerned to put in place the legal framework and institutional structures needed for the application of economic instruments for the protection of the marine and coastal environment.</p> <p>To urge and recommend the Contracting Parties concerned to promote the sharing of information and experience among them to enhance the use of economic instruments in the Mediterranean region.</p>
<p><b>Public access to information: Article 15</b></p> <ul style="list-style-type: none"> <li>4 reporting Contracting Parties out of 17 have not yet carried out measures for public access to information related to activities carried out to implement the Barcelona Convention and its Protocols.</li> <li>3 reporting Contracting Parties out of 17 did not publish periodical assessment reports and data on the state of the marine environment and their coastal areas. Also 3 reporting Contracting Parties out of 17 did not make available to the public environmental data on the state of the environment and their coastal area.</li> </ul>	<p>To urge and recommend the Contracting Parties concerned to adopt measures to ensure public access to information related to activities carried out to implement the Barcelona Convention and its Protocols.</p>

*Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea  
(Dumping Protocol)*

<b>Dumping Protocol</b> <i>(Status of reporting as of 10 May 2019)</i>	
<ul style="list-style-type: none"> <li>Number of Contracting Parties to the 1976 Dumping Protocol on the 2014/2015 biennium: 21</li> <li>Number of Contracting Parties to the 1995 Dumping Protocol on the 2014/2015 biennium: 15</li> <li>Number of reporting Contracting Parties on the 2014-2015 biennium: 14</li> <li>Number of Contracting Parties that have not submitted yet their reports for the 2014-2015 biennium: 7</li> </ul>	
Key findings	Recommendations
<p><b>Enforcement and Effectiveness</b></p> <ul style="list-style-type: none"> <li>9 reporting Contracting Parties out of 13 (not applicable to the EU) have not provided data on enforcement measures</li> <li>10 reporting Contracting Parties out of 13 (not applicable to the EU) have not provided data on effectiveness indicators.</li> </ul>	<p>The Secretariat is requested to explore in collaboration with other Multilateral Environmental Agreements (MEAs) activities to build up enforcement capacities to ensure the effective implementation of the Dumping Protocol. This could take the form of workshops, seminars or training activities.</p>
<p><b>Implementation of Guidelines adopted for wastes or other matter listed in Article 4.2: Article 6</b></p> <p>10 reporting Contracting Parties out of 14 have not provided information on whether in evaluating</p>	<p>To promote the implementation of the technical Guidelines adopted under the Dumping Protocol, the development of regional training activities, sharing of best practices and organizing workshops in</p>

applications for dumping of wastes or other matter listed in Article 4.2 the corresponding Guidelines have been given due consideration	collaboration with relevant MEAs are recommended. The Secretariat is requested to explore this avenue.
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*Protocol Concerning Cooperation in Preventing Pollution from Ships and in Cases of Emergency, Combating Pollution of the Mediterranean Sea  
(Prevention and Emergency Protocol)*

<b>Prevention and Emergency Protocol</b> (Status of reporting as of 10 May 2019)	
<ul style="list-style-type: none"> <li>• Number of Contracting Parties to the 1976 Emergency Protocol on the 2014/2015 biennium: 21</li> <li>• Number of Contracting Parties to the 2002 Prevention and Emergency Protocol on the 2014/2015 biennium: 14</li> <li>• Number of reporting Contracting Parties on the 2014-2015 biennium: 17</li> <li>• Number of Contracting Parties that have not submitted yet their reports for the 2014-2015 biennium: 5</li> </ul>	
Key findings	Recommendations
<p><b>Communication of information and reports concerning pollution incidents: Article 8</b> Only 5 reporting Contracting Parties out of 16 (not applicable to the EU) have reported having taken action to overcome the encountered barriers to ensure the reception, transmission and dissemination of reports and urgent information concerning pollution incidents</p>	<p>To ensure that Parties have an effective system of mechanisms and procedures to manage communication between countries and with REMPEC in case of pollution incidents, action in that regard should be taken within the REMPEC Regional Strategy for Prevention of and Response to Marine Pollution from Ships (2016-2021) (COP19 Decision IG.22/4).</p>
<p><b>Reporting Procedure</b></p> <ul style="list-style-type: none"> <li>• <b>Article 9.1:</b> Only 5 reporting Contracting Parties out of 16 (not applicable to the EU) have reported having taken action to address the encountered difficulties hampering its ships and aircrafts to report on actual or potential oil and HNS incidents to the designated national authority or authorities and the nearest Coastal State; Only 4 reporting Contracting Parties out of 16 (not applicable to the EU) have provided information on accidents and spill incidents</li> <li>• <b>Article 9.6:</b> Only 4 reporting Contracting Parties out of 16 (not applicable to the EU) have reported having taken action to overcome the barriers faced to transmit the required information to REMPEC in case of pollution incidents</li> <li>• <b>Article 9.7:</b> Only 6 reporting Contracting Parties out of 16 (not applicable to the EU) have reported having taken action to address the challenges faced to transmit the required information to those Parties likely to be affected by a pollution incident</li> </ul>	<p>To foster the collection of data on pollution incidents a user friendly and simple online system for reporting should be in place.</p> <p>To encourage Contracting Parties to report pollution incidents under the online Barcelona Convention Reporting System (BCRS).</p> <p>To support the Secretariat in carrying out (at international and regional level) a comparative exercise between already existing reporting procedures and formats.</p>



*Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities  
(LBS Protocol)*

<b>LBS Protocol</b> <i>(Status of reporting as of 10 May 2019)</i>	
<ul style="list-style-type: none"> <li>• Number of Contracting Parties to the 1980 LBS Protocol on the 2014/2015 biennium: 22</li> <li>• Number of Contracting Parties to the 1996 LBS Protocol on the 2014/2015 biennium: 17</li> <li>• Number of reporting Contracting Parties on the 2014-2015 biennium: 17</li> <li>• Number of Contracting Parties that have not submitted yet their reports for the 2014-2015 biennium: 5</li> </ul>	
Key findings	Recommendations
<p><b>Quality of the reports</b></p> <ul style="list-style-type: none"> <li>• The reporting rate for those questions gathering non-quantitative information (e.g. legal measures, monitoring) is high. However, from the analysis of the answers provided by reporting Contracting Parties it seems that there are some uncertainties arising from the formulation of the questions.</li> <li>• The reporting rate for those questions gathering quantitative information (e.g. authorizations for discharge granted, pollutant releases and enforcement measures) is low, coming from half or less than half reporting Contracting Parties.</li> </ul>	<p>To enhance the submission of data and avoid any uncertainty when interpreting data submitted, the Secretariat is requested to continue the work in assisting Contracting Parties to report reliable data on pollutants loads discharged directly and indirectly to the Mediterranean Sea through the existing on-line INFO MAP system (National Baseline Budget-NBB and Pollutant Release and Transfer Register-PRTR) and the work in strengthening the Contracting Parties' capacities for the efficient use of the INFO MAP system.</p> <p>To provide support to the countries to improve the content of the national implementation reports corresponding to the 2016-2017 period, within available resources, using the adopted new reporting format. Support may include:</p> <ul style="list-style-type: none"> <li>(a) preparation "data dictionaries" to facilitate data collection; and</li> <li>(b) assessing the difficulties facing the countries at the sub-regional level and providing solutions to allow them to proceed with quality reporting.</li> </ul> <p>Questions gathering non-quantitative information in the reporting format should be formulated clearly and precisely to avoid any misunderstanding leading to ambiguous or inconsistent responses. The Secretariat should provide the clarification needed of the relevant questions of the new reporting format and invite Contracting Parties to further elaborate on their difficulties in implementation.</p>
<p><b>Quality of LBS Protocol implementation</b></p> <p>There is room for improvement in this area by adopting more precise targets and monitoring in the Mediterranean region; and tackling all pollution hot spots.</p>	<p>To request the Secretariat to continue to support the conception and follow-up of updated (National Action Plans) NAPs and to get ownership from other institutions including International Financial Institutions (IFIs) on depollution projects.</p> <p>MED POL should invite Contracting Parties to provide their existing list of depollution investment projects as well as to define their pollution hot spots, in line with the Secretariat terms of reference for (National Action Plans) NAPs. The Secretariat should provide a map for priority projects and pollution hot spots for the Mediterranean region.</p>
<p><b>Reporting process and compliance</b></p> <ul style="list-style-type: none"> <li>• 5 Contracting Parties have not yet submitted their national implementation reports.</li> </ul>	<p>To strengthen the assessment process of the national implementation reports of the LBS Protocol by supporting Contracting Parties to collect the required</p>

<ul style="list-style-type: none"> <li>The Compliance Committee has to come to draft recommendations covering two key aspects: implementation of LBS Protocol measures and the effectiveness of these measures. The longer the period between the synthesis analysis of the national implementation reports and the drafting of the Compliance Committee recommendations, the more outdated the corrective actions recommended by the Compliance Committee</li> </ul>	<p>data such as to avoid duplication of work with other reporting systems<sup>6</sup>.</p> <p>MED POL meetings should strengthen the process of discussing with Parties the difficulties in the submission of national implementation reports, seeking from them further information or clarification in case of incomplete or ambiguous reports, and identifying concrete actions to overcome difficulties in submission and/or implementation.</p> <p>In addition:</p> <p>(a) for the Compliance Committee to provide a complete assessment of the status of implementation of the LBS Protocol, the analysis of the national implementation reports themselves is necessary, as well as of additional information, including environmental assessments; and</p> <p>(b) the period from the time of the synthesis analysis of the national implementation reports is tabled at the Compliance Committee until the Compliance Committee draft its recommendations to COP should be shortened.</p>
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*Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA/BD Protocol)*

<p style="text-align: center;"><b>SPA/BD Protocol</b> (Status of reporting as of 10 May 2019)</p> <ul style="list-style-type: none"> <li>Number of Contracting Parties to the 1982 SPA Protocol on the 2014/2015 biennium: 21</li> <li>Number of Contracting Parties to the 1995 SPA/BD Protocol on the 2014/2015 biennium: 17</li> <li>Number of reporting Contracting Parties on the 2014-2015 biennium: 19</li> <li>Number of Contracting Parties that have not submitted yet their reports for the 2014-2015 biennium: 3</li> </ul>	
Key findings	Recommendations
<p><b>Planning and management: Article 7</b></p> <ul style="list-style-type: none"> <li><b>Article 7.2.a:</b> Only 5 reporting Contracting Parties out of 18 (not applicable to the EU) have reported having developed management plans for all their SPAs. Challenges in this area are identified, ranging from public participation to technical difficulties.</li> <li><b>Article 7.2.b:</b> 12 reporting Contracting Parties out of 18 (not applicable to the EU) have reported having developed programmes in their SPAs for the observation and scientific monitoring of changes in ecosystems and on the impact of human activities.</li> </ul>	<p>To urge and recommend the Contracting Parties concerned to continue with the identification and establishment of Specially Protected Areas (SPAs) and candidate Specially Protected Areas of Mediterranean Importance (SPAMIs), further embracing open sea areas, including deep seas, which are much underrepresented within the Mediterranean protected areas and SPAMIs as well as to adopt the necessary measures for the full implementation of article 7.2 of the SPA/BD Protocol.</p>
<p><b>Establishment of the List of SPAMIs: Article 8</b> 8 reporting Contracting Parties out of 18 (not applicable to the EU) have reported having established SPAMIs.</p>	<p>The support of RAC/SPA is key in addressing the reported challenges faced by reporting Contracting Parties when developing management actions plans for their SPAs.</p>

<sup>6</sup> The following actions can be taken: (1) to encourage Contracting Parties to provide “NIL reports”, (2) to disseminate “data identity cards” (i.e. data dictionaries) similarly developed under the SEIS Project, and (3) to explore whether and how relevant data sets from other reporting systems (such as, but not limited to, Basel/Rotterdam/Stockholm Convention reporting system, PRTRs Reporting system,) can be utilized/streamlined

<p><b>Conservation of the components of marine and coastal diversity: Article 3.3</b> 9 reporting Contracting Parties out of 19 have reported having inventoried the components of marine and coastal biodiversity.</p>	<p>To urge and recommend the Contracting Parties concerned to proceed with the inventory of the components of marine and coastal biodiversity as per article 3.3 of the SPA/BD Protocol.</p>
<p><b>National measures for the protection and conservation of species: Article 11</b></p> <ul style="list-style-type: none"> <li>• <b>Article 11.6:</b> 5 reporting Contracting Parties out of 19 have reported having developed ex-situ reproduction programmes addressing the conservation of protected species.</li> <li>• <b>Article 11.4:</b> 10 reporting Contracting Parties out of 19 have reported having established multilateral cooperation arrangements for the protection of migrant species.</li> </ul>	<p>To urge and recommend the Contracting Parties concerned to develop ex-situ reproduction programmes addressing the conservation of protected species and establish multilateral cooperation for the protection of migrant species in the Mediterranean area.</p>
<p><b>Regional Action Plans</b></p> <ul style="list-style-type: none"> <li>• <b>RAP on Cartilaginous Fishes</b> Only a reporting Contracting Party out of 19 has reported having developed training programmes on cartilaginous fishes. 5 reporting Contracting Parties out of 19 have reported having developed specific programmes for the protection and conservation of cartilaginous fishes in the context of FAO.</li> </ul>	<p>To enhance the implementation of the RAPs adopted under the SPA/BD Protocol, the Contracting Parties concerned are urged and recommended:</p> <p><u>RAP on Cartilaginous Fishes:</u> to develop specific conservation programmes in the context of the FAO International Plan of Action for Conservation and Management of Sharks, and training programmes on cartilaginous fishes.</p>
<ul style="list-style-type: none"> <li>• <b>RAP on the Introduction of Non-Indigenous Species</b> Only a reporting Contracting Party out of 19 has reported having set up an action plan to control the introduction of non-native marine species 6 reporting Contracting Parties out of 19 have reported having in place mechanisms to monitor and control ballast water discharges into their territorial waters. 7 reporting Contracting Parties out of 19 have reporting having developed awareness raising programmes.</li> </ul>	<p><u>RAP on the Introduction of Non-Indigenous Species:</u> (1) to develop actions plans to control the introduction of non-native marine species, (2) to monitor and control ballast water discharges into their territorial waters, and (3) to develop awareness raising programmes to control the introduction of non-native marine species.</p>
<ul style="list-style-type: none"> <li>• <b>RAP for the Conservation of Bird Species</b> 9 reporting Contracting Parties out of 19 have reported having put in place actions plans for the protection of the bird species listed in Annex II to the SPA/BD Protocol.</li> </ul>	<p><u>RAP for the Conservation of Bird Species:</u> to develop action plans for the protection of the bird species listed in Annex II to the SPA/BD Protocol.</p>
<ul style="list-style-type: none"> <li>• <b>RAP for the Conservation of Cetaceans</b> 5 reporting Contracting Parties out of 19 have reported having developed action plans for the conservation of cetaceans. 9 reporting Contracting Parties out of 19 have reported having established either MPAs or SPAMIs for the protection of cetaceans.</li> </ul>	<p><u>RAP for the Conservation of Cetaceans:</u> to develop action plans for the conservation of cetaceans and designate MPAs or SPAMIs for their protection.</p>
<ul style="list-style-type: none"> <li>• <b>RAP for the Conservation of Marine Vegetation</b> Only a reporting Contracting Party out of 19 has reported having developed an action plan for the conservation of marine vegetation. 11 reporting Contracting Parties out of 19 have reported having established MPAs for protection of marine vegetation.</li> </ul>	<p><u>RAP for the Conservation of Marine Vegetation:</u> (1) to develop action plans for the conservation of marine vegetation, (2) to establish MPAs for the protection of marine vegetation significant to the marine environment, and (3) to conduct studies and scientific research to inventory and map marine vegetation formations that are natural monuments.</p>

10 reporting Contracting Parties out of 19 have reported having conducted studies and scientific research to inventory and map marine vegetation.	
<ul style="list-style-type: none"> <li>• <b>RAP for the Conservation of the Monk Seal</b></li> </ul> 6 reporting Contracting Parties out of 19 have reporting having established protected areas for the conservation of monk seal populations.	<u>RAP for the Conservation of the Monk Seal</u> : to establish protected areas for the conservation of monk seal populations, if deemed appropriate.
<ul style="list-style-type: none"> <li>• <b>RAP for the Conservation of Marine Turtles</b></li> </ul> 8 reporting Contracting Parties out of 19 have reported having taken measures to reduce the incidental by-catch of marine turtles 8 reporting Contracting Parties out of 19 have reported having adopted action plans for the conservation of marine turtles and inventoried turtle nesting beaches.	<u>RAP for the Conservation of Marine Turtles</u> : (1) to establish measures to reduce the incidental by-catch of marine turtles, (2) to adopt action plans for the conservation of marine turtles, and (3) to carry out inventories of turtle nesting beaches.

*Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal  
(Hazardous Wastes Protocol)*

<b>Hazardous Wastes Protocol</b> (Status of reporting as of 10 May 2019)	
<ul style="list-style-type: none"> <li>• Number of Contracting Parties to the 1996 Hazardous Wastes Protocol on the 2014/2015 biennium: 7</li> <li>• Number of reporting countries on the 2014-2015 biennium: 12</li> <li>• Number of Contracting Parties that have not submitted yet their reports for the 2014-2015 biennium: 2</li> </ul>	
Key findings	Recommendations
<b>Transboundary movement and notification procedures: Article 6</b> 8 reporting Contracting Parties out of 12 have reported having put in place the notification procedure for the transboundary movement of wastes	In collaboration with other relevant Multilateral Environmental Agreements (MEAs), with particular focus on the Basel Convention, the Secretariat to explore how to promote coordination and cooperation among Contracting Parties concerning the notification procedure for the transboundary movement of wastes and to strengthen institutional arrangements among to ensure transparency, enforcement and public participation.
<b>Transboundary Movement and Notification Procedures: Article 6</b> <b>Information and Participation of the Public: Article 12</b> 5 reporting Contracting Parties out of 12 have reported having established the institutional arrangements needed to implement Articles 6 and 12 of the Protocol.	
<b>Number of Contracting Parties to the Protocol: 7</b> out of the 22 Contracting Parties to the Barcelona Convention <b>Number of Contracting Parties to the Protocol which have submitted their national implementation reports: 5</b>	To increase both the number of Contracting Parties to the Hazardous Wastes Protocol and the rates of national reporting, it is recommended: <ol style="list-style-type: none"> <li>(a) MED POL National Focal Points to hold discussion on reporting requirements under the Hazardous Waste Protocol (Skype, Conference calls);</li> <li>(b) the Secretariat to develop “data dictionaries” for further precisizing the reporting of needed data regarding the reporting format;</li> <li>(c) the Secretariat to organize informative side-events or side-session on the Hazardous Wastes Protocol, enabling Contracting Parties to exchange experiences and good practices and replicate the success; and</li> </ol>

	(d) to develop a set of indicators measuring progress in implementation
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*Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil  
(Offshore Protocol)*

<b>Offshore Protocol</b> (Status of reporting as of 10 May 2019)	
<ul style="list-style-type: none"> <li>• Number of Contracting Parties to the 1994 Offshore Protocol on the 2014/2015 biennium: 7</li> <li>• Number of reporting countries on the 2014-2015 biennium: 12</li> <li>• Number of Contracting Parties that have not submitted yet their reports for the 2014-2015 biennium: 3</li> </ul>	
Key findings	Recommendations
<p><b>Grating of authorizations: Article 6</b> Only 2 reporting Contracting Parties out of 12 have provided data on offshore authorizations and permits</p>	<p>To give a strong warning to the concerned Contracting Parties with regards to the obligation to provide data on authorizations and permits for offshore activities, the removal of disused installations, inspections and enforcement measures eventually adopted.</p>
<p><b>Removal of installations: Article 20</b> None of the reporting Contracting Parties have provided data on the removal of abandoned or disused offshore installations</p>	
<p><b>Enforcement measures</b> Only 2 reporting Contracting Parties out of 11 (not applicable to the EU) have provided information on inspections.</p>	
<p><b>Garbage: Article 12</b></p> <ul style="list-style-type: none"> <li>• 7 reporting Contracting Parties out of 12 have enacted legal frameworks for the disposal of food wastes as far as possible from land</li> <li>• 9 reporting Contracting Parties out of 12 have enacted legal frameworks for the prohibition of discharges of plastics</li> </ul>	
<p><b>Specially Protected Areas: Article 21</b> 7 reporting Contracting Parties out of 12 have reported having put in place measures to prevent, abate, combat and control pollution from offshore activities in SPA</p>	<p>To give a strong warning to the Contracting Parties concerned on the need to comply with the obligations concerning the disposal of waste food as far as possible from land, the prohibition of disposal of plastics and to prevent pollution in specially protected areas.</p>

*Protocol on Integrated Coastal Zone Management in the Mediterranean  
(ICZM Protocol)*

<b>ICZM Protocol</b> (Status of reporting as of 10 May 2019)	
<ul style="list-style-type: none"> <li>• Number of Contracting Parties to the ICZM Protocol on the 2014/2015 biennium: 9</li> <li>• Number of reporting countries on the 2014-2015 biennium: 12</li> <li>• Number of Contracting Parties that have not submitted their reports yet for the 2014-2015 biennium: 2</li> </ul>	
Key findings	Recommendations
<p><b>Protection and sustainable use of the coastal zone and setback zone: Article 8</b> Setback zones enforcement remains a challenge.</p>	<p>To urge and recommend the Contracting Parties concerned to integrate ICZM into the physical planning of their coastal zone and to enforce the provision on the setback zones as non-building zones may exceeding the Protocol's 100 metres, in particular as regard as factors such as natural risk and climate</p>

	change, and the need to protect natural and landscape heritage.
<p><b>Specific Coastal Ecosystems: Article 10</b> Few reporting Contracting Parties have yet taken positive measures to restore and reactivate the positive role of coastal wetlands (there is room for progress regarding compensation measures) and islands.</p> <p><b>Coastal landscapes: Article 11</b> Specific measures for coastal landscape are still scarce, and landscape protection is generally built on broader landscape protection measures.</p>	To urge and recommend the Contracting Parties concerned to take measures to protect the coastal and marine landscape as well as the characteristics of certain specific coastal ecosystems, in particular to restore and reactivate the positive role in coastal environmental processes of coastal wetlands, estuaries, and islands.
<p><b>National Coastal Strategies, Plans and Programmes, Transboundary Cooperation: Article 18</b> It seems that a common methodology for interpreting the nature or undertaking the assessments of the use and management of the coast is missing. This may be an area for further development.</p>	To urge and recommend the Contracting Parties concerned to adopt national strategies for ICZM to be implemented at appropriate territorial level through coastal plans and programmes, and to develop indicators for evaluating the effectiveness of these strategies, plans and programmes.
<p><b>Economic activities: Article 9</b> The use of indicators to evaluate economic impacts on the coastal zone is limited with very little comprehensive activity in this field.</p>	To urge and recommend the Contracting Parties concerned to define in national legislation specific economic indicators relating to the sustainable use of the coastal zone.
<p><b>Cultural Heritage: Article 13</b> The protection and accessibility of underwater sites is still underdeveloped.</p>	To urge and recommend the Contracting Parties concerned to adopt measures for the protection and accessibility of underwater sites of the cultural heritage.
<p><b>Participation: Article 14</b> There is considerable scope for improvement in this field.</p>	To urge and recommend the Contracting Parties concerned to implement the participatory process in the ICZM field and make provisions for the inclusion of all relevant stakeholders in all ICZM stages, from the beginning of the planning process to the implementation/monitoring phase.
<p><b>Awareness Raising, Training, Education and Research: Article 15</b> There is a lack of actions, but as well of visibility of the actions, at the regional and local levels. There are relatively few dedicated ICZM centres, but many operating in related fields dealing with the subject. There is a continued need for networking research activity.</p>	To urge and recommend the Contracting Parties concerned to implement actions to enhance awareness raising, training, education and research for ICZM, to create and/or strengthen dedicated ICZM centres and networking research activity, and to establish a unique national coastal inventory on resources and activities, as well as on institutions, legislation and planning that may influence coastal zones.
<p><b>Monitoring and Review: Article 16</b> There appears to be little focus on the coastal zones, and there is a lack of unique coastal inventory, both at national and local level.</p>	
<p><b>Economic, Financial and Fiscal Instruments: Article 21</b> Only a small minority of reporting Contracting Parties indicate the use of economic or financial instruments to support ICZM.</p>	To urge and recommend the Contracting Parties concerned to take appropriate measures to adopt relevant economic, financial and/or fiscal instruments intended to support local, regional and national initiatives for the integrated management of coastal zones.
<p><b>Exchange of Information and Activities of Common Interest: Article 27</b> There is a lack of evaluation the effectivity of the ICZM principles implementation, and their effectiveness.</p>	To urge and recommend the Contracting Parties concerned to use the existing IT tools e.g. the ICZM Platform established by PAP/RAC to exchange good practices and information of common interest.

## **Appendix II**

### **Analysis of the Legal Nature of the Main Obligations Contained in the Regional Plans Adopted by the Meeting of the Contracting Parties under the Land-Based Sources Protocol**

## **Analysis of the Legal Nature of the Main Obligations Contained in the Regional Plans Adopted by the Meeting of the Contracting Parties under the Land-Based Sources Protocol**

### Introduction

1. This document provides an analysis of the legal nature of the main obligations contained in the regional plans adopted by the Meeting of the Contracting Parties under the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities Protocol (LBS Protocol) for compliance purposes. This covers the following regional plans:

- (a) Regional Plans on Persistent Organic Pollutants (POPs) (COP Decisions IG.19/8, IG.19/9 and IG.20/8.3);
- (b) Regional Plans on the Reduction of BOD5 (COP Decisions IG.19/7 and IG.20/8.2);
- (c) Regional Plan on the Reduction of Inputs of Mercury (COP Decision IG.20/8.1);
- (d) Regional Plan on Marine Litter Management in the Mediterranean (COP Decision IG.21/7); and,
- (e) Regional Action Plan on Sustainable Consumption and Production in the Mediterranean (COP Decision IG.22/5).

2. In undertaking the present analysis, the following elements have been considered for each of the regional plans listed above: (1) the legal basis for the adoption of the regional plans, (2) the general form and terminology employed for the regional plans, and (3) the wording and content of each regional plan specific provision.

### Analysis

#### *First stage: legal basis for the adoption of the regional plans*

3. In assessing the legal nature of the regional plans main obligations, as a point of departure, the first element to be considered is the relevant Article(s) of the Barcelona Convention and LBS Protocol based on which the regional plan has been adopted. In that respect, the preambular paragraphs of the COP Decisions adopting the regional plans have been examined as follows.

4. For the Regional Plans on Persistent Organic Pollutants (POPs), on the Reduction of BOD5, on the Reduction of Inputs of Mercury and on Marine Litter Management in the Mediterranean, COP Decisions examined refer specifically to the following articles:

- (1) Article 8 of the Barcelona Convention, under which Contracting Parties have the obligation to take all appropriate measures to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea and draw up and implement plans for the reduction and phasing out of substances that are toxic, persistent and liable to bioaccumulate arising from land-based sources;
- (2) Article 5 of the LBS Protocol, which sets out the obligation of the Contracting Parties to undertake to eliminate pollution from land-based sources and activities, in particular to phase-out inputs of the substances that are toxic, persistent and liable to bioaccumulate listed in Annex I to the LBS Protocol. To this end, Contracting Parties shall elaborate and implement national and regional action plans and programmes containing measures and timetables for their implementation; and,
- (3) Article 15 of the LBS Protocol, whereby the meeting of the Parties shall adopt regional action plans and programmes containing measures and timetables for their implementation provided for in article 5 of the LBS Protocol. Paragraph 3 of Article 15 further states that: “[t]he measures and timetables adopted ... *become binding* on the one hundred and eightieth day following the day of notification for the Parties which have not notified the Secretariat of an objection within one hundred and seventy-nine days from the date of notification.” (*emphasis added*)

5. Most COP Decisions examined also recall in their preambles COP 15 Decision IG.17/8, entitled “Implementation of NAPs and the preparation of legally binding measures and timetables required by Art. 15 of the LBS Protocol (*emphasis added*). Therefore, it can be concluded that Articles



5 and 15 of the LBS Protocol provide the legal base under which the Regional Plans on POPs, on the Reduction of BOD5, the Reduction of Inputs of Mercury, and on Marine Litter have been adopted. Furthermore, as clearly stated in Article 15, the measures and timetables contained in regional plans impose binding obligations to the Contracting Parties.

6. As regards the Regional Action Plan on Sustainable Consumption and Production (SCP) Article 4 of the Barcelona Convention provides the legal basis for adoption. Under this Article, Contracting Parties have the general obligation to take all appropriate measures to prevent, abate and combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area and to protect and enhance the marine environment in that Area so as to contribute to sustainable development.

7. This adds to the acknowledgment that the tools and instruments of the SCP Regional Action Plan are well anchored in: (1) Article 5.4 of the LBS Protocol, which provides for the implementation of Best Available Techniques (BAT) and Best Environmental Practices (BEP); (2) Article 5.2 of the Hazardous Wastes Protocol, according to which Parties shall take all appropriate measures to reduce to a minimum, and where possible eliminate, the generation of hazardous wastes; and (3) Article 9 of the Integrated Coastal Zone Management (ICZM) Protocol on the sustainable development of economic activities in the immediate proximity to, or within, the coastal zones. The articles referred to highlight the cross-cutting nature of the SCP Regional Action Plan as a transversal instrument to support the implementation of the Barcelona Convention and its Protocols as well as the Mediterranean Strategy for Sustainable Development.

8. Furthermore, the Decision adopting the SCP Regional Action Plan strongly encourages Contracting Parties “to mainstream SCP in national and local development policies, according to national laws” and “to include information on measures taken implementing the Action Plan” when reporting.

9. The references above put together a picture on the legal basis of the SCP Regional Action Plan that substantially differs from the one for the Regional Plans on POPs, on the Reduction of BOD5, on the Reduction of Inputs of Mercury and on Marine Litter.

*Second stage: general form and terminology employed for the regional plans*

10. In a second stage, it is important to consider the general form and terminology used in drafting the regional plans. In the case of the Regional Plans on POPs, on the Reduction of BOD5, the Reduction on Inputs on Mercury and on Marine Litter, they consciously employ a treaty form and language (“Article”, “shall”, “agree”, “obligations”, “Party” etc.). This gives a strong indication of the binding character of these regional plans, which is explicitly formulated in their entry into force clauses, drafted as follows: “The present regional Action Plan shall enter into force and *become binding* on the 180<sup>th</sup> day following the day of notification by the Secretariat in accordance with Article 15, paragraph 3 and 4 of the LBS Protocol” (*emphasis added*).

11. A quite a different situation emerges as regards the SCP Regional Action Plan, which was developed as a forward-looking framework to complement and work in full synergy with existing national and regional policy frameworks. This responds to the specific mandate from COP 18 to design the SCP Plan “as a dynamic and forward-looking framework, integrating the potential of the different policy instruments and measures addressing targeted human activities which have a particular impact on the marine and coastal environment and related transversal/cross-cutting issues”. Having been developed as a “forward-looking framework”, the implementation of which requires the adoption of specific guidelines, the SCP Regional Action Plan should be seen in the context of soft law.

*Third stage: the wording and content of each regional plan specific provision*

12. In addition to, and this brings us to the third stage of this analysis, in order to further elaborate on the binding content of each regional plan specific provision, it is important to review each relevant provision of the regional plans on the light of the following criteria: (a) wording of the obligations (binding or aspirational terms), (b) content of the obligations (obligation of means or obligation of result), (c) precision of the obligations (specific measures and timetables), and (d) hard law and soft

law considerations. As a practical way forward, this assessment is focused on the provisions listed for each regional plan in the Revised Reporting Format (COP Decision IG. 23/1) as shown below.

*Regional Plans on Persistent Organic Pollutants (POPs)*

- (1) Prohibit and/or take legal and administrative measures necessary to eliminate the production and use, import and export of POPs and their wastes;
- (2) Application of BAT and BEPs for environmentally sound management of POPs; and,
- (3) Take appropriate measures to handle, collect, transport, store and dispose in an environmentally sound manner POPs wastes, including products and articles upon becoming wastes

13. All regional plan provisions on POPs are drafted in mandatory terms: this includes the obligations concerning wastes' reduction and use, application of BAT and BEP and appropriate measures to handle, collect, transport, store and dispose in an environmentally sound manner. The terms used have a clear binding character. In general, the regional plan provisions on POPs are construed as obligations of results rather than obligations of means and they employ categorical terms such as "shall prohibit", "shall ensure", "shall take appropriate measures", "shall report". With respect to application of BAP and BEPs, Art. II, 4 of both Decisions on POPs use the qualifier "shall endeavour" which is the appropriate wording for a procedural obligation. Only in rare cases it is said that Parties "should" act in a given way (such as in identifying to the extent practicable stock piles containing POP wastes in Art.VI of Decision IG.19/8). Timetables and deadlines for implementation are also set forth very precisely in Art. III of both Decisions on POPs.

*Regional Plans on the Reduction of BOD5*

- (1) Adopt National Emission Limit Values (ELV) for BOD5 in urban wastewater after treatment in accordance with the requirements of the Regional Plan (Article III.2 and 3);
- (2) Monitor discharges from municipal wastewater treatment plants to verify compliance with the requirements of the Regional Plan taking into account the Guidelines included in Appendix II to the Regional Plan (Article III.4);
- (3) Ensure that all agglomerations of more than 2000 inhabitants collect and treat urban wastewater before discharging them into the environment (Article III, [1] Appendix I and Appendix III);
- (4) Establishment of ELV and authorization compatible with the operation and the emission discharge values of the urban waste water treatment plan, in case the food sector installation discharges into the sewage system (Article IV.1); and
- (5) Monitor food sector installation discharges into water to verify compliance with the requirements of the Regional Plan taking into account the Guidelines included in Appendix I to the Regional Plan (Article IV.2).

14. The regional plan provisions concerning the reduction of BOD5, both from urban waste water and in the food sector, are drafted in mostly mandatory terms. The words employed are categorical and generally express binding obligations for the Contracting Parties which are formulated using the verb "shall". The obligations established are obligations of result consisting in the reduction of BOD5 wastes but not its outright elimination. This explains why the language used is sometimes less radical than the one used in the POPs decisions. The quantitative limits of discharges permitted are very precise as well as the timetables and deadlines for implementation of the reduction of BOD5. It could be then concluded that all five obligations enumerated above are binding and shall be implemented as indicated in the relevant provisions.

*Regional Plan on the Reduction of Inputs of Mercury*

- (1) Prohibit the installation of new Chlor-alkali plants using mercury cells and vinyl chloride monomer production plants using mercury as a catalyst (Article IV.1 A);

- (2) Ensure that the releases of mercury from the activity of Chlor-alkali plants shall cease by 2020 at the latest (Article IV.A);
- (3) Adopt National Emission Limit Values (ELVs) by 2015 and 2019 for mercury emissions based on values included in the Regional Plan on the Reduction of inputs of Mercury from other than Chlor-alkali industry (Article IV.B);
- (4) Monitor releases of mercury into water, air and soil in order to verify compliance with the requirements of the Regional Plan (Article IV.D);
- (5) Achieve environmental sound management of metallic mercury from the decommissioned plants (Article IV.A);
- (6) Progressively reduce total releases of mercury (to air, water and to products) from existing Chlor-alkali plants until their final cessation with the view not to exceed 1.0g per metric tonne of installed chlorine production capacity in each plant (Article IV.A); and
- (7) Take appropriate measures to isolate and contain the mercury containing wastes (Article IV.D).

15. The wording used in drafting the specific provisions of this Regional Plan range from directly opposable formulations (e.g. “The Parties shall prohibit the installation of new Chlor-alkali plans using mercury cells with immediate effect” (Article IV. A.1), or “The Parties shall neither open new mines nor re-open old mercury mining sites” (Article IV. B. 6), or “The present regional Action Plan shall enter into force and become binding” the 180<sup>th</sup> day after notification of the Decision (Article VIII)) to other gradually looser formulations in terms of effectiveness (e.g. “The Parties shall identify existing sites which have been historically contaminated with mercury ... and take with regard to these sites, environmental management measures.... as appropriate” (Article IV. B. 5) or “The Parties shall take the necessary steps to enforce the above measures” (Article IV. B.8)).

16. In addition, some provisions of the Regional Plan are formulated as obligations of result (e.g. “The Parties shall adopt by 2015 and 2019 National [Emission Limit Values] ELV for Mercury emissions from other than Chlor-Alkali industry” (Article IV B); “The Parties shall ensure the releases of mercury from the activity of Chlor-alkali plants shall cease by 2020 at the latest” (Article IV A. 3), or “The Parties shall ensure that the total releases of mercury (to the air, the water and to the products) from existing Chlor-alkali plants are progressively reduced until their final cessation with a view not to exceed 1.0g per metric tonne” (Article IV A. 3.ii), whereas others are formulated as obligations of means (e.g. “The Parties shall report to the Secretariat by January 2013 on the identified sites [which have been historically contaminated with mercury]”(Article IV B.5.ii) or “The Parties shall ensure that their competent authorities or appropriate bodies monitor releases of mercury into water, air and soil to verify compliance with the requirements of the above table” (Article IV B.7).

17. Based on the analysis above, it can be said that the obligations contained in the Regional Plan on the Reduction of Inputs of Mercury are legally binding. The implementation of the administrative, legal and other measures laid down in the Plan rests on the Contracting Parties, though the Secretariat has a key role in following-up on the implementation of the Plan as reported in the national implementation reports. In so doing, it is key to keep in mind that all the obligations of the Regional Plan (either obligations of means or result) aim at achieving the overall goal of the protection of the coastal and marine environment and human health from the adverse effects of mercury (Article II.2).

#### *Regional Plan on Marine Litter Management in the Mediterranean*

- (1) Reduction of fraction of plastic packaging waste that goes to landfill or incineration (Article 9. Timetable-2019);
- (2) Ensure adequate urban sewer systems, wastewater treatment plants and waste management systems to prevent run-off and riverine inputs of marine litter (Article 9. Timetable 2020);
- (3) Application of cost effective measures to prevent any marine littering from dredging activities (Article 9. Timetable 2020);

- (4) Urban solid waste management is based on reduction at source with the following waste hierarchy: prevention, re-use, recycling, recovery and environmental sound disposal (Article 9. Timetable 2025);
- (5) Enhancement of public awareness and education of pollution and involvement of various stakeholders with regard to marine litter management (Article 16. Timetable: as appropriate);
- (6) Adopt preventive measures to minimize inputs of plastic in the marine environment (Article 9. Timetable 2017);
- (7) Implement programmes on regular removal and sound disposal of accumulations/hotspots of marine litter (Article 10. Timetable 2019);
- (8) Remove existing accumulated litter from Specially Protected Areas of Mediterranean Importance (SPAMI) and litter impacting endangered species listed in Annexes II and III of the SPA and Biodiversity Protocol (Article 10. Timetable 2019);
- (9) Close to the extent possible existing illegal solid waste dump sites (Article 9. Timetable 2020);
- (10) Explore and implement National Marine Litter Cleanup Campaigns, participate in international Coastal Cleanup Campaigns and Programmes, apply Adopt a Beach or similar practices and apply Fishing for Litter practices (Article 10. Timetable 2019) and
- (11) Explore and Implement a No-Special Fee System in port facilities used for implementing the measures provided for in Article 10 of the Regional Plan on removing existing marine litter and its environmentally sound disposal (Article 10. Timetable 2019).

18. In assessing the legal nature of the main obligations contained in the Regional Plan on Marine Litter, consideration shall be given to the fact that its purpose is twofold: i.e., to set up a “strategic framework” for marine litter management and to “control pollution by persistent synthetic materials” in the Mediterranean (3d. preambular paragraph). As a consequence, the provisions of the Regional Plan on Marine Litter combine “measures” and “operational targets” (Part II), which are not all of the same legal nature.

19. This is evidenced by a comparative analysis of Article 9, which uses treaty language (“Contracting Parties”, “shall implement by the year”, etc.), and other articles, such as Article 16, which employ a somewhat more qualified wording (“shall undertake”, “where appropriate”, etc.). The former measures are closer to obligations of results whereas the latter might rather be characterized as obligations of means. But that by itself does not modify its normative character and legally binding force.

20. More in detail, the analysis of the provisions of Article 9 of the Regional Plan on Marine Litter shows that most of the obligations set forth are worded in mandatory terms and shall therefore be implemented by the Contracting Parties within the indicated deadlines. This includes the obligations (1) to (4) listed above. Other provisions of the Regional Plan on Marine Litter establish obligations that are qualified by terms such as “as appropriate”, “to the extent possible” and other similar expressions. Such obligations are nonetheless equally binding in their terms for the Contracting Parties which shall implement the measures concerned within the deadlines established. However, it is equally true that these provisions, which include the obligations (5) to (11) listed above, by being qualified by the terms “as appropriate” or “to the extent possible” provide Contracting Parties with an important degree of flexibility when it comes to their implementation. This should be considered by the relevant bodies when assessing compliance, with particular focus on the reasons provided by the concerned Contracting Party on the level of implementation achieved.

#### *Regional Action Plan on Sustainable Consumption and Production in the Mediterranean*

- (1) Food, Fisheries and Agriculture (FFA): Adoption and implementation of Good Agricultural Practices (GAP) in line with the EcAP ecological objectives and ICZM guidelines;
- (2) Food, Fisheries and Agriculture (FFA): Adoption and implementation of Sustainable Fishing Practices, in line with the EcAP ecological objectives and ICZM guidelines;

- (3) Food, Fisheries and Agriculture (FFA): Establishment of certification schemes (eco-labels) that confirm the sustainable production of food and fisheries products;
- (4) Food, Fisheries and Agriculture (FFA): Adoption of Sustainable Public Procurement (SPP) schemes for food and fisheries products;
- (5) Food, Fisheries and Agriculture (FFA): Adoption of measures in the field of communication and education to promote the consumption of sustainable, healthy and local food;
- (6) Goods Manufacturing: Adoption of measures to implement the waste management hierarchy, develop extended produced responsibility schemes, and encourage circular economy;
- (7) Goods Manufacturing: Development of policy instruments to support the private sector;
- (8) Goods Manufacturing: Adoption and implementation of Sustainable Public Procurement (SPP) in the Goods Manufacturing Sector;
- (9) Goods Manufacturing: Establishment of certification schemes (eco-labels) for manufactured goods and awareness raising among the population on the consumption of eco-labelled goods;
- (10) Tourism: Creation of eco-taxes, eco-charges or fees to internalize externalities of tourism activities;
- (11) Tourism: Revision of the current national tourism legislation to integrate sustainable principle and measures;
- (12) Tourism: Adoption of measures to promote the diversification of the tourism offer from mass tourism to alternative forms of tourism;
- (13) Tourism: Adoption of measures to promote tourism eco-labels and facilitate their award by tourist facilities;
- (14) Housing and Construction: Develop measures to support sustainable coastal urban development and green construction, taking into account the entire life cycle of buildings; and,
- (15) Promote sustainable public procurement in the public housing and construction sector.

21. As drafted, some of the provisions of the SCP Regional Action Plan have the character of public regulation, being therefore legally binding. This includes for instance the general actions aimed at “develop[ing] an institutional framework to encourage integrated national and local decision making” (Action 17, Operational Objective 2.2) or “develop[ing] and encourage[ing] regulatory and incentives policies” (Action 41, Operational Objective 4.2). Other provisions are of markedly technical nature, such as to “[a]dopt Good Agricultural Practices (GAP) schemes” (Action 1, Operational Objective 1.1) or the “[i]mplementation of Environment Management Systems (EMS) and Ecolabels” (Action 21, Operational Objective 2.2).

22. Against this background, it can be concluded that the SCP Regional Action Plan is an instrument of “soft law”, providing mainly for obligations of means. However, the SCP Regional Action Plan is instrumental in achieving the objective of reducing anthropogenic pressures on the Mediterranean, and therefore a necessary condition for achieving the objectives of the Barcelona Convention and maintain the Mediterranean Sea Area in a good state of conservation.

23. The implementation of the SCP Regional Action Plan at both national and local levels rests upon Contracting Parties. In addition, as shown in the operative paragraph of the Decision adopting the Plan, the Coordinating Unit and the MAP components, are requested “to ensure the coordinated delivery of regional actions in support of the countries’ efforts” in implementing the SCP Regional Action Plan. In short, it is up to the Contracting Parties to implement the SCP Regional Action Plan, with the Secretariat to follow-up on its overall implementation. Within this framework, reporting on the national implementation of the Plan becomes fundamental. Firstly, for the Compliance Committee to assess general compliance issues, with particular focus on the measures referred to in paragraph 21 above. Secondly, in undertaking by the Secretariat in 2020 an indicator-based midterm evaluation of the Action Plan implementation.

Concluding remarks

24. As laid down in the Procedures and Mechanisms on Compliance, the objective of the Compliance Committee is to facilitate and promote compliance with the Barcelona Convention and its Protocols. In this context, the role of the Compliance Committee is to consider specific situations of actual or potential non-compliance by individual Parties as well as general compliance issues, at the request of the Meeting of the Contracting Parties. Within that mandate, after considering compliance issues, the Compliance Committee can make recommendations to the Meeting of the Contracting Parties on cases of non-compliance. In this framework, the role of the Compliance Committee in providing advice and impetus is crucial in meeting the objectives of the Barcelona Convention.

25. Although the varying wording and bindingness of the obligations of the regional plans examined before might affect the normative intensity and reach of the measures concerned, this shall not be regarded as an impeachment for the Compliance Committee to exercise its functions as established in its Procedures and Mechanisms

26. It should be stressed that the task of the Compliance Committee is to verify the existence of cases of possible non-compliance and recommend the appropriate remedial cooperative actions to the Meeting of the Contracting Parties. For the purposes of the work of the Compliance Committee, it is sufficient to verify that the measures listed in the reporting format have a normative (prescriptive) character and, therefore, its compliance or non-compliance by Contracting Parties can be assessed and on that basis to decide upon the appropriate measures, including making recommendations to the Meeting of the Contracting Parties.

**Annex II**

**Programme of Work of the Compliance Committee for the Biennium 2020-2021**

<b>Programme of Work of the Compliance Committee for the biennium 2020-2021</b>		
<b>Activity</b>	<b>Lead/Who</b>	<b>Timetable/When</b>
<b>Specific submissions under Section V of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocol</b>		
1. To consider any submissions and/or referrals in accordance with Section V of the Procedures and Mechanisms on Compliance	Compliance Committee	16 <sup>th</sup> and 17 <sup>th</sup> Compliance Committee Meetings
<b>General issues of compliance under the Barcelona Convention and its Protocols</b>		
2. To consider specific situations of actual or potential non-compliance by individual Parties in accordance with Section IV of the Procedures and Mechanisms on Compliance	Compliance Committee	16 <sup>th</sup> and 17 <sup>th</sup> Compliance Committee Meetings
3. At the request of the Meeting of the Contracting Parties, to consider general compliance issues in accordance with Section IV of the Procedures and Mechanisms on Compliance	Compliance Committee	16 <sup>th</sup> and 17 <sup>th</sup> Compliance Committee Meetings
4. To consider any other issues as requested by the Meeting of the Contracting Parties in accordance with Section IV of the Procedures and Mechanisms on Compliance	Compliance Committee	16 <sup>th</sup> and 17 <sup>th</sup> Compliance Committee Meetings
<b>Enhancement activities</b>		
5. To continue work in order to enhance Compliance Mechanisms' and Procedures' effectiveness	Compliance Committee	16 <sup>th</sup> and 17 <sup>th</sup> Compliance Committee Meetings
6. To develop specific legal indicators, both qualitative and quantitative, for effective implementation, and potential simplification of the reporting format	Compliance Committee	16 <sup>th</sup> and 17 <sup>th</sup> Compliance Committee Meetings
7. To continue to identify, promote and strengthen synergies, where appropriate, with other Compliance Committee's Multilateral Environmental Agreements (MEAs)	Compliance Committee	16 <sup>th</sup> and 17 <sup>th</sup> Compliance Committee Meetings
<b>Functioning of the Compliance Committee</b>		
8. To review the Rules of Procedure of the Compliance Committee in order to further clarify a number of outstanding issues and make a proposal as appropriate for adjusting accordingly the Procedures and Mechanism on Compliance for consideration by COP 22.	Compliance Committee	16 <sup>th</sup> and 17 <sup>th</sup> Compliance Committee Meetings



**Annex III**

**Recommendations to Promote Compliance with the Barcelona Convention and its Protocols and  
Improve their Implementation**

## **RECOMMENDATIONS TO PROMOTE COMPLIANCE WITH THE BARCELONA CONVENTION AND ITS PROTOCOLS AND IMPROVE THEIR IMPLEMENTATION**

1. In order to implement the Barcelona Convention and its Protocols, Contracting Parties need to put the necessary legislative and policy measures in place, and to establish the corresponding institutional structures to implement them and follow-up and assess the effectiveness of these measures towards a good ecological status of the Mediterranean Sea. Establishing the necessary governance structures and institutions is key for the implementation of the Barcelona Convention and its Protocols. These core institutions have been examined by the Compliance Committee intersessionally, on the basis of the Updated Synthesis Analysis (UNEP/MED CC. 15/Inf.3) and the Updated General Status of Progress (UNEP/MED CC.15/Inf.4) prepared by the Secretariat, as well as on the basis of the national implementation reports for the 2014-2015 biennium, as deemed necessary. As a result, presented hereinafter, are the proposed recommendations to promote compliance with the Barcelona Convention and its Protocols.
2. The proposed recommendations listed below were deemed as high priority issues and therefore the Compliance Committee urges Contracting Parties to direct efforts and take significant action as detailed. They form part of a comprehensive package of key findings and additional recommendations, which is annexed to the Activity Report of the Compliance Committee for the biennium 2018-2019 to COP 21.
3. The proposed recommendations presented below should be understood within the limitations which arise from the fact that not all Contracting Parties have submitted their national implementation reports for the 2014-2015 biennium; the limited number of Contracting Parties to some Protocols, and additionally, the difference in the amount of information submitted by Contracting Parties in their national implementation reports.

### **Cross-cutting recommendations to promote compliance with the Barcelona Convention and its Protocols**

1. To remind the Contracting Parties concerned that the non-submission of national implementation reports under Article 26 of the Barcelona Convention leads 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;
2. To ask the Secretariat to explore the commitment of adequate resources (both financial and other available) and actions to implement measures of capacity building within the Barcelona Convention framework that would also allow the Compliance Committee to take forward a programme of work for designing and implementing capacity-building measures to improve compliance and especially reporting by the Contracting Parties;
3. In order to increase the submission rate of national implementation reports under Article 26 of the Barcelona Convention and their completeness, to invite the Compliance Committee Chairperson or other appointed representative to participate, having an active role, at the main Governance meetings of the Barcelona Convention;
4. To enhance data collection through the existing INFO/MAP system and its further development, and explore the means and ways to support Contracting Parties in terms of capacity building aiming to ensure coherence at national level and to secure availability and accessibility to necessary infrastructure for providing consistent data management for reporting purposes;
5. To urge the Contracting Parties concerned to report on enforcement measures;

### **Recommendations to promote compliance with the Barcelona Convention**

To urge and recommend the Contracting Parties concerned:

6. To establish and improve Environmental Assessment, in particular Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA) in the coastal zone as well as in the transboundary context, and to establish cooperation mechanisms in cases of transboundary EIAs by adopting the required legal framework and setting the corresponding institutional arrangements;
7. To integrate Integrated Coastal Zone Management (ICZM) into the physical planning of their coastal zone; and invite the Priority Actions Programme/Regional Activity Centre (PAP/RAC) to explore how best Contracting Parties could be assisted in this field;
8. To establish the legal framework and institutional structures for monitoring marine pollution, and to consider these as high priority task including the allocation of sufficient resources by those countries to achieve these goals;

### **Recommendations to promote compliance with the Dumping Protocol**

9. The Secretariat is requested to explore in collaboration with other Multilateral Environmental Agreements (MEAs) activities to build up enforcement capacities to ensure the effective implementation of the Dumping Protocol. This could take the form of workshops, seminars or training activities;

### **Recommendations to promote compliance with the Prevention and Emergency Protocol**

10. To ensure that Contracting Parties have an effective system of mechanisms and procedures to manage communication between countries and with REMPEC in case of pollution incidents, action in that regard should be taken within the REMPEC Regional Strategy for Prevention of and Response to Marine Pollution from Ships (2016-2021) (COP 19 Decision IG.22/4);

### **Recommendations to promote compliance with the LBS Protocol**

11. To enhance the submission of data and avoid any uncertainty when interpreting data submitted, the Secretariat is requested to continue the work in assisting Contracting Parties to report reliable data on pollutants loads discharged directly and indirectly to the Mediterranean Sea through the existing on-line INFO MAP system (National Baseline Budget -NBB and Pollutant Release and Transfer Register-PRTR) and the work in strengthening the Contracting Parties' capacities for the efficient use of the INFO MAP system;
12. To request the Secretariat to continue to support the conception and follow-up of updated (National Action Plans) NAPs and to get ownership from other institutions including International Financial Institutions (IFIs) on depollution projects;
13. MED POL should invite Contracting Parties to provide their existing list of depollution investment projects as well as to define their pollution hot spots, in line with the Secretariat terms of reference for (National Action Plans) NAPs. The Secretariat should provide a map for priority projects and pollution hot spots for the Mediterranean region;

### **Recommendations to promote compliance with the SPA/BD Protocol**

To urge and recommend the Contracting Parties concerned:

14. To continue with the identification and establishment of Specially Protected Areas (SPAs) and candidate Specially Protected Areas of Mediterranean Importance (SPAMIs), further embracing open sea areas, including deep seas, which are much underrepresented within the Mediterranean protected areas and SPAMIs, as well as to adopt the necessary measures for the full implementation of article 7.2 of the SPA/BD Protocol;
15. To proceed with the inventory of the components of marine and coastal biodiversity as per article 3.3 of the SPA/BD Protocol;

**Recommendations to promote compliance with the Hazardous Wastes Protocol**

16. In collaboration with other relevant Multilateral Environmental Agreements (MEAs), with particular focus on the Basel Convention, the Secretariat to explore how to promote coordination and cooperation among Contracting Parties concerning the notification procedure for the transboundary movement of wastes and to strengthen institutional arrangements to ensure transparency, enforcement and public participation;

**Recommendations to promote compliance with the Offshore Protocol**

17. To give a strong warning to the concerned Contracting Parties with regards to the obligation to provide data on authorizations and permits for offshore activities, the removal of disused installations, inspections and enforcement measures eventually adopted;

**Recommendations to promote compliance with the ICZM Protocol**

To urge and recommend the Contracting Parties concerned:

18. To integrate ICZM into the physical planning of their coastal zone and to enforce the provision on the setback zones as non-building zones may exceeding the Protocol's 100 metres, in particular as regard as factors such as natural risk and climate change, and the need to protect natural and landscape heritage;
19. To take measures to protect the coastal and marine landscape as well as the characteristics of certain specific coastal ecosystems, in particular to restore and reactivate the positive role in coastal environmental processes of coastal wetlands, estuaries, and islands.
20. To adopt national strategies for ICZM to be implemented at appropriate territorial level through coastal plans and programmes, and to develop indicators for evaluating the effectiveness of these strategies, plans and programmes.

**Annex IV**

**Renewal or Election of the Membership of the Compliance Committee**

**Members and Alternate Members of the Compliance Committee renewed or elected by the  
21<sup>st</sup> Meeting of the Contracting Parties**

**Group I: Algeria, Egypt, Lebanon, Libya, Morocco, Syria and Tunisia**

[XXX] as a Member of the Compliance Committee for a term of four years, until COP 23

[XXX] as a Member of the Compliance Committee for a term of four years, until COP 23 [XXX] as  
an Alternate Member of the Compliance Committee for a term of four years, until COP 23

[XXX] as an Alternate Member of the Compliance Committee for a term of four years, until COP 23

**Group II: Croatia, Cyprus, France, Greece, Italy, Malta, Slovenia, Spain and the European  
Union**

[XXX] as a Member of the Compliance Committee for a term of four years, until COP 23

[XXX] as an Alternate Member of the Compliance Committee for a term of four years, until COP 23

**Group III: Albania, Bosnia and Herzegovina, Israel, Monaco, Montenegro and Turkey**

[XXX] as a Member of the Compliance Committee for a term of four years, until COP 23

[XXX] as an Alternate Member of the Compliance Committee for a term of four years, until COP 23