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Agenda Item 5: Results of the Testing of the Draft Criteria for Preliminary Identification of Actual or Potential Cases of Non-Compliance

Testing of the Draft Criteria for Preliminary Identification of Actual or Potential Cases of Non-Compliance

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UNEP/MAP
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Testing of the Draft Criteria for Preliminary Identification of Actual or Potential Cases of Non-Compliance

Introduction

1. At its 15th Meeting (Athens, Greece, 25-26 June 2019), the Compliance Committee considered a set of draft criteria for the identification of actual or potential cases of non-compliance (UNEP/MED CC.15/8). Such criteria cover four aspects to be assessed with regards to the national implementation reports of the Barcelona Convention and its Protocols: (1) submission, (2) timelines, (3) completeness, and (4) implementation, and were developed also in consultation with the General Fisheries Commission for the Mediterranean (GFCM) and the Basel Convention Secretariats, following-up on the conclusions of the 14th Meeting of the Compliance Committee (Athens, Greece, 27-29 June 2018).

2. Following discussion on the value of testing the feasibility of the draft criteria before coming to a conclusion for the Meeting of the Contracting Parties (COP) to consider, the 15th Meeting of the Compliance Committee agreed: *“to request the Secretariat, together with MAP Components, to test the draft criteria for the preliminary assessment of national implementation reports submitted under article 26 of the Barcelona Convention, as presented in document UNEP/MED CC. 15/8, against the national implementation reports for the biennium 2016-2017, and present the result to the 16th Meeting of the Compliance Committee, as well as possible suggestions for improving the current methodology”* (UNEP/MED CC. 15/15, §18).

3. As requested, the draft criteria annexed to the present document have been tested against national implementation reports pertaining to the biennium 2016-2017, as submitted by Parties through the new online Barcelona Convention Reporting System (BCRS). For the purpose of this exercise, six Parties were randomly selected from among the three groups established in the Compliance Committee¹ (i.e. two Parties per group). This totaled 42 national implementation reports reviewed for the testing of the draft criteria, the results of which are displayed in table form in document UNEP/MED CC.16/Inf.5., as follows:

- (a) Part I presents an overview of submission, timeliness, completeness and implementation criteria for the Barcelona Convention and its Protocols with a breakdown on a Party basis. This overview builds on Parts II to XV;
- (b) Parts II to VIII present per Party and legal instrument an overview of completeness with a breakdown on a question basis; and
- (c) Parts IX to XV present per Party and legal instrument an overview of implementation with a breakdown on a question basis.

4. The exercise mandated to the Secretariat has been carried out on the understanding that its sole purpose is to test the draft criteria. The testing does not concern the consideration of specific situations of actual or potential non-compliance by individual Parties. The Secretariat has undertaken the testing using in-house resources and by manually looking at the responses provided by each of the six Parties to each question and table of the reporting format for the Barcelona Convention and its Protocols. This is mainly because of three reasons:

(a) the online BCRS does not offer yet the possibility of queries related to the draft criteria, as the draft criteria are on a testing and validation phase;

(b) given the structure of the reporting format, whether a response is considered as complete may require that its content be examined. This is particularly the case when the question on status

¹ By COP 15 Decision IG. 17/2, the following three groups were set up for the purpose of establishing the composition of the Compliance Committee. Group I: Southern and Eastern Mediterranean countries (Algeria, Egypt, Lebanon, Libya, Morocco, Syria and Tunisia), Group II: EU Member States which are Party to the Barcelona Convention (Croatia, Cyprus, Greece, France, Italy, Malta, Slovenia, Spain and the EC), and Group III: Other Parties (Albania, Bosnia and Herzegovina, Israel, Monaco, Turkey and Montenegro)

which requires a “yes”, “no”, “under development” or “not applicable” answer is left blank, however narrative text is provided; and

(c) the reporting format is pre-filled with the information corresponding to the previous biennium (2014-2015) where Parties indicate no changes in the information provided for the said biennium. It has happened that in some cases, no changes in the information provided in the previous biennium are indicated but the response is left blank. In those cases, a check of the answers provided in the reports for the previous biennium was needed to determine whether a response could be considered as complete.

5. In carrying out the testing of the draft criteria, the following methodology has been applied.

(a) Timeliness. National implementation reports submitted within the period from December 2018 to June 2019 have been considered as submitted “on time”. December 2018 was the agreed deadline by COP 20 for the submission of the 2016-2017 national implementation reports using the new online BCRS (Decision IG. 23/1). A six-month period since the deadline has been applied taking into account that smooth transition to and familiarization with any new reporting system takes time and that at the time of writing some Parties are still working towards the submission of their 2016-2017 national implementation reports.

(b) Completeness: The completeness of national implementation reports has been tested on the basis of the responses provided by Parties to all questions (both open and close-ended questions) and tables of the reporting formats, with the exception of those questions and tables that are designated as optional. In doing so, the following approach has been taken:

(i) reporting formats are designed to gather a wide range of information at different degrees of detail as well as data. Therefore, testing the completeness of national implementation reports taking them as compact units would have produced a distorted picture. To avoid this and as need dictated per legal instrument, the different parts of the reporting formats were grouped into similar categories against which completeness has been reviewed. To illustrate the point, for the Dumping Protocol, completeness has been checked separately against the items of the reporting format covering the regulatory and institutional framework (Part I of the reporting format), and against the tables to collect data on permits and monitoring (Parts II, III and IV of the reporting format). This has the advantage to produce a more accurate picture of the degree of completeness of the national implementation reports, should the testing have been conducted against the reporting formats as a whole instead;

(ii) as a point of departure, per each item of the reporting formats the answer to the question on status, which requires to tick the box that applies (i.e. “yes”, “no”, “under development” or “not applicable”), was reviewed. Should the box be ticked, the response was considered as complete. Should the box be left blank, a second step was taken by checking whether there was narrative text or reference to information submitted in the previous national implementation reports for the 2014-2015 biennium. In both cases, the information provided has been taken into account and the response considered as complete. Should all responses be considered as complete, for the purpose of completeness the status would be “fully reported”. Otherwise, “reporting incomplete” or “not reported”, as appropriate. This maximalist approach however bears a risk, since a single question left blank would lead to the consideration of “reporting incomplete”. To illustrate the point, the completeness of the national implementation reports of the Barcelona Convention has been tested separately against the 19 questions covering Parts II, III and IV of the reporting format (legal, institutional and policy measures) and one table corresponding to Part I (signed multilateral agreements). Focusing on the questions, one of the countries selected for the testing has answered 18 out of the 19. This represents a percentage of incomplete responses of 5%, and on that basis the status of completeness as regards Parts II, III and IV has been considered as “reporting incomplete”. As regards the tables, only if all information requested is submitted the table has been considered as complete.

(c) Implementation: Implementation of the concerned legal instrument has been tested on the basis of the responses provided by Parties to the questions of the reporting formats covering the legal and institutional framework, with the aim to determine whether for the concerned legal instrument Parties have put in place the necessary legal, administrative or policy measures as well as corresponding institutional structures to implement it. To check this point, the following approach has been taken:

(i) as with completeness, the answers to the question on status (i.e. “yes”, “no”, “under development” or “not applicable”) were reviewed. Should a report contain “yes” and/or “not applicable” responses over 50%, the status as to the concerned legal instrument was considered as “implemented”. Otherwise, “not implemented” or “implementation in progress”, as appropriate, after checking whether narrative text or reference to the information submitted in the previous national implementation reports for the biennium 2014-2015 was provided;

(ii) for the purposes of testing implementation, a threshold of over 50% of “yes”/“not applicable” responses was set to try to reflect as much as possible the efforts of Parties in putting in place the requested legal and institutional framework. This approach avoids considering a Party as not implementing the concerned legal instrument, should not all responses covering the legal and institutional framework be positive. Despite this element of flexibility, the testing has showed that using a single criterium to capture the most relevant aspects involved in implementation is not without its difficulties. This is particularly true concerning the ICZM national implementation reports, which are entirely structured around open questions. Concerning implementation, the approach followed in elaborating the general status of progress in the implementation of the Barcelona Convention and its Protocols may better serve the needs of the Compliance Committee. This document is prepared by the Secretariat and MAP components on a two-yearly basis and offers a balanced and rich picture on overall implementation.

6. One of the practical applications of working on the criteria of submission, timeliness and completeness is the possibility of establishing classifications of Parties’ performance with their reporting obligation under article 26 of the Barcelona Convention. Taking inspiration from the Compliance Committee of the Basel Convention, in preparing the 17th Compliance Committee meeting work could be explored to classify Parties within the following categories based on the grouping established in the Compliance Committee and as per legal instrument: (i) complete report submitted on time, (ii) complete report submitted late, (iii) incomplete report submitted on time, (iv) incomplete report submitted late and (v) not reported. Statistics per Contracting Party and legal instrument could be elaborated to reflect this classification. This would signal the Secretariat first the Contracting Parties to whom follow-up as a matter of priority and second to discuss with the Contracting Parties concerned the way forward. This course of action would also allow:

- (a) to set a baseline against which to measure progress on reporting and its quality and recommend associated targets per biennia;
- (b) to present information on reporting in a more focused oriented and reader-friendly way, thus facilitating Parties to identify the areas of highest priority for action and allocate resources accordingly; and
- (c) to raise the profile of national reporting.

Action requested

7. The 16th Meeting of the Compliance Committee is expected to consider the points below in light of the information contained in the presented document:

- (a) whether all or some of tested the criteria, i.e. submission, timelines, completeness and implementation, are fit for purpose and if so:
- (b) whether the methodology applied for the testing of the said criteria needs adjustments and should it be the case which ones; and

- (c) whether on the basis of submission, timeliness and completeness work should be explored in order to classify Parties' performance with their reporting obligation under article 26 of the Barcelona Convention for consideration of the 17th Meeting of the Compliance Committee.

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

(Source: UNEP/MED CC. 15/8)

Draft Criteria to be assessed per legal instrument	Status
1. Submission <i>Definition: This criterium seeks to determine whether the Contracting Party has submitted its national implementation report for the concerned legal instrument as per Article 26 of the Barcelona Convention</i>	Submitted <i>Definition: The national implementation report for the concerned legal instrument has been submitted</i>
	Not Submitted <i>Definition: The national implementation report for the concerned legal instrument has <u>not</u> been submitted</i>
2. Timeliness <i>Definition: This criterium seeks to determine whether the Contracting Party has submitted its national implementation report for the concerned legal instrument not later than [insert number of months] after the agreed deadline by COP</i>	Submitted on time <i>Definition: The national implementation report for the concerned legal instrument has been submitted not later than [insert number of months] after the agreed deadline by COP</i>
	Submitted late <i>Definition: The national implementation report for the concerned legal instrument has been submitted later than [insert number of months] after the agreed deadline by COP</i>
3. Completeness <i>Definition: This criterium seeks to determine whether the Contracting Party has answered all the questions and filled out all the tables of the reporting format, with the exception of those questions and tables that are designed optional therein for the concerned legal instrument. This criterium refers to both whether the Contracting Party has submitted all information and data requested, i.e. non-quantitative and quantitative information</i>	Fully reported <i>Definition: The Contracting Party has answered all the questions and filled out all the tables of the reporting format</i>
	Reporting incomplete <i>Definition: The Contracting Party has <u>not</u> answered all the questions or filled out all the tables of the reporting format</i>
	Not reported <i>Definition: The Contracting Party has <u>not</u> provided any information or data, i.e. the reporting format has been left blank</i>
4. Implementation <i>Definition: This criterium seeks to determine whether for the concerned legal instrument the Contracting Party has put in place the necessary legal, administrative or policy measures as well as the corresponding institutional structures to implement them. This assessment should be based on the analysis of the information contained in the national implementation reports</i>	Implemented <i>Definition: The Contracting Party reported having put in place the legal framework and/or institutional structures required as per the Barcelona Convention and/or relevant Protocol</i>
	Implementation in progress <i>Definition: The Contracting Party reported that the legal framework and/or institutional structures required as per the Barcelona Convention and/or relevant Protocol are under development</i>
	Not Implemented <i>Definition: The Contracting Party reported <u>not</u> to have put in place the legal framework and/or institutional structures required as per the Barcelona Convention and/or relevant Protocol</i>