

## **RC-5/8: Procedures and mechanisms on compliance with the Rotterdam Convention**

*The Conference of the Parties,*

*Recalling* Article 17 of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade,

*Mindful* that the procedures and mechanisms called for under Article 17 will help address issues of non-compliance, including by facilitating assistance and providing advice to parties facing compliance issues,

1. *Decides* to consider further at its sixth meeting for adoption the procedures and institutional mechanisms on non-compliance required under Article 17 of the Convention;
2. *Also decides* that the draft text set out in the annex to the present decision shall form the basis for its further work on the procedures and institutional mechanisms at its sixth meeting;
3. *Further decides* that further work on the procedures and mechanisms on compliance with the Convention shall be placed early on the agenda at its sixth meeting, bearing in mind the proposal of the co-chairs of the contact group on compliance as set out in the appendix to the present decision.

### **Annex to decision RC-5/8**

#### **Procedures and mechanisms on compliance with the Rotterdam Convention**

1. A compliance committee (hereinafter referred to as “the Committee”) is hereby established.

##### *Members*

2. The Committee shall consist of 15 members. Members shall be nominated by parties and elected by the Conference of the Parties on the basis of equitable geographical representation of the five regional groups of the United Nations.
3. Members shall have expertise and specific qualifications in the subject matter covered by the Convention. They shall serve objectively and in the best interests of the Convention.

##### *Election of members*

4. At the meeting at which the Committee is established, the Conference of the Parties shall elect eight members of the Committee for one term and seven members for two terms. The Conference of the Parties shall, at each ordinary meeting thereafter, elect for two full terms new members to replace those members whose period of office has expired or is about to expire. Members shall not serve for more than two consecutive terms. For the purpose of the present decision, “term” shall mean the period that begins at the end of one ordinary meeting of the Conference of the Parties and ends at the end of the next ordinary meeting of the Conference of the Parties.
5. If a member of the Committee resigns or is otherwise unable to complete his or her term of office or to perform his or her functions, the party who nominated that member shall nominate an alternate to serve for the remainder of the term.

##### *Officers*

6. The Committee shall elect its own Chair. A vice-chair and a rapporteur shall be elected, on a rotating basis, by the Committee in accordance with rule 30 of the rules of procedure of the Conference of the Parties.

##### *Meetings*

7. The Committee shall hold meetings as necessary and wherever possible in conjunction with meetings of the Conference of the Parties or other Convention bodies.
8. Subject to paragraph 9 below, the meetings of the Committee shall be open to parties and the public unless the Committee decides otherwise.

When the Committee is dealing with submissions [or referrals] pursuant to paragraph 12 [or XXX], the meetings of the Committee shall be open to parties and closed to the public unless the party whose compliance is in question agrees otherwise.

The parties or observers to whom the meeting is open shall not have a right to participate in the meeting unless the Committee and the party whose compliance is in question agree otherwise.

9. Where a submission [or referral] is made with regard to the possible non-compliance of a party, it shall be invited to participate in the consideration of the submission [or referral] by the Committee. Such a party, however, may not take part in the elaboration and adoption of a recommendation or conclusion of the Committee.

10/11. The Committee shall make every effort to reach agreement on all matters of substance by consensus. [Where this is not possible, the report shall reflect the views of all the Committee members. If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall, as a last resort be taken by a two-thirds majority of the members present and voting or by eight members, whichever is greater.] Ten members of the Committee shall constitute a quorum.

12. Submissions may be made in writing, through the Secretariat where subparagraphs (a) and (b) apply, by:

(a) A party which believes that, despite its best endeavours, it is, or will be, unable to comply with certain obligations under the Convention. Such a submission should include details as to which specific obligations are concerned and an assessment of the reason why the party may be unable to meet those obligations. Where possible, substantiating information, or advice as to where such substantiating information may be found, may be provided. The submission may include suggestions for solutions which the party considers may be most appropriate to its particular needs;

(b) A party that is directly affected or likely to be directly affected by another party's alleged failure to comply with the obligations of the Convention. A party intending to make a submission under this subparagraph should before so doing undertake consultations with the party whose compliance is in question. The submission should include details as to which specific obligations are concerned, and information substantiating the submission, including how the party is affected or likely to be affected;

[new paragraph after 12: XXX If the Secretariat, while acting pursuant to its functions under [articles 4, 5[(4)], and 10 of] the Convention, becomes aware of possible difficulties for any party in complying with its obligations under [articles 4, 5[(4)], and 10 of] the Convention provided that the matter has not been resolved within three months by consultation with the party concerned, the Secretariat shall refer the matter to the Committee[.][which, if appropriate, shall consider the matter at the Committee's next meeting.]

13. The Secretariat shall forward submissions made under subparagraph 12 (a) above, within two weeks of receiving such submissions, to the members of the Committee for consideration at the Committee's next meeting.

14. The Secretariat shall, within two weeks of its receiving any submission made under subparagraph 12 (b) [or referring a matter under paragraph XXX above], send a copy to the party whose compliance with the Convention is in question and to the members of the Committee for consideration at the Committee's next meeting.

15. Parties whose compliance is in question may present responses or comments at every step of the proceedings described in the present decision.

16. Without prejudice to paragraph 15 above, additional information, provided by a party whose compliance is in question in response to a submission [or referral], should be forwarded to the Secretariat within three months of the date of receipt of the submission [or referral] by that party, unless the circumstances of a particular case require an extended period of time. Such information shall be immediately transmitted to the members of the Committee for consideration at the Committee's next meeting. Where a submission has been made pursuant to subparagraph 12 (b) above, the information shall be forwarded by the Secretariat also to the party that made the submission.

17. The Committee may decide not to proceed with submissions [or referrals] which it considers to be:

- (a) De minimis;
- (b) Manifestly ill-founded.

*Facilitation*

18. The Committee shall consider any submission [or referral] made to it in accordance with paragraph 12 [or XXX] above with a view to establishing the facts and the root causes of the matter of concern, and to assisting in its resolution. To that end, the Committee may provide a party with:

- (a) Advice;
- (b) Non-binding recommendations;
- (c) Any further information required to assist the party in developing a compliance plan, including timelines and targets.

*Possible measures to address compliance issues*

19. If, after undertaking the facilitation procedure set forth in paragraph 18 above and taking into account the cause, type, degree and frequency of compliance difficulties, including financial and technical capacities of the parties whose compliance is in question, the Committee considers it necessary to propose further measures to address a party's compliance problems, it may recommend to the Conference of the Parties, bearing in mind its ability under Article 18 (5) (c) of the Convention, that it consider the following measures, to be taken in accordance with international law, to attain compliance:

- (a) Further support under the Convention for the party concerned, including facilitation, as appropriate, of access to financial resources, technical assistance and capacity-building;
- (b) Providing advice regarding future compliance in order to help parties to implement the provisions of the Convention and to promote cooperation between all parties;
- (c) Issuing a statement of concern regarding possible future non-compliance;
- (d) Issuing a statement of concern regarding current non-compliance;
- (e) Requesting the Executive Secretary to make public cases of non-compliance;
- (f) Recommending that a non-compliant situation be addressed by the non-compliant party with the aim of resolving the situation.

*Handling of information*

21. (1) The Committee may [only] receive relevant information, through the Secretariat, from:

- (a) The parties
- (b) [Relevant sources[, as it considers necessary and appropriate, with the prior consent of the party concerned or as directed by the Conference of the Parties].]

[(b alt) The Convention clearing-house mechanism and relevant intergovernmental organizations, with the prior consent of the party concerned or as directed by the Conference of the Parties.]

21. (2) The Committee may also request information from the Secretariat, where appropriate in the form of a report, on matters under the Committee's consideration.

22. For the purposes of examining systemic issues of general compliance under paragraph 25, the Committee may:

- (a) Request information from all parties;
- (b) In accordance with relevant guidance by the Conference of the Parties, request relevant information from any reliable sources and outside experts; and
- (c) Consult with the Secretariat and draw upon its experience and knowledge base.

23. Subject to Article 14 of the Convention, the Committee, any party and any person involved in the deliberations of the Committee shall protect the confidentiality of information received in confidence.

*Monitoring*

24. The Compliance Committee should monitor the consequences of action taken in pursuance of paragraphs 18 or 19 above.

*General compliance issues*

25. The Compliance Committee may examine systemic issues of general compliance of interest to all parties where:

- (a) The Conference of the Parties so requests;
- (b) The Committee, on the basis of information obtained by the Secretariat, while acting pursuant to its functions under the Convention, from Parties and submitted to the Committee by the Secretariat, decides that there is a need for an issue of general non-compliance to be examined and for a report on it to be made to the Conference of the Parties.

*Reports to the Conference of the Parties*

26. The Committee shall submit a report to each ordinary meeting of the Conference of the Parties reflecting:

- (a) The work that the Committee has undertaken;
- (b) The conclusions or recommendations of the Committee;
- (c) The future programme of work of the Committee, including the schedule of expected meetings which it considers necessary for the fulfilment of its programme of work, for the consideration and approval of the Conference of the Parties.

*Other subsidiary bodies*

27. Where the activities of the Committee with respect to particular issues overlap with the responsibilities of another Rotterdam Convention body, the Conference of the Parties may direct the Committee to consult with that body.

*Information sharing with other relevant multilateral environmental agreements*

28. Where relevant, the Committee may solicit specific information, upon request by the Conference of the Parties, or directly, from compliance committees dealing with hazardous substances and wastes under the auspices of other relevant multilateral environmental agreements and report on these activities to the Conference of the Parties.

*Review of the compliance mechanism*

29. The Conference of the Parties shall regularly review the implementation of the procedures and mechanisms set forth in the present decision.

*Relationship with settlement of disputes*

30. These procedures and mechanisms shall be without prejudice to article 20 of the Convention.

**Appendix to Annex to decision RC-5/8****[[Co-chairs text**

The annex to this note contains the draft text of procedures and mechanism on compliance prepared by the co-chairs of the contact group on compliance.

In preparing this draft text, the co-chairs introduced the following changes to the draft text reflecting the deliberations of the contact group as at 23 June 2011 afternoon:

- Two introductory paragraphs in the beginning of the text;
- Paragraph 2: Change of the total number of members of the compliance committee, together with the indication of number of members from each UN region;
- Paragraph 10/11: increased threshold of qualified majority for decision-making;
- Paragraph 12 bis: deletion of the Secretariat trigger and insertion of the Committee trigger;
- Paragraph 18: additional facilitation measures;
- Paragraph 19 (a): addition of reference to training, etc;
- Paragraph 21 (1) (b): indication of potential source of information.

- Having made the above changes, paragraph numbers have been adjusted as follows: paragraphs 10/11 is changed to 10, 12 to 11, 12 bis to 12, 21 to 20 (and the subsequent paragraphs).

Subject to the adoption of the compliance mechanism, the following amendment to the financial rules will be adopted:

Insert in paragraph 9 of the financial rules an additional objective of the special trust fund for the implementation of measures under the compliance mechanism, which reads as follows:

“Assistance to parties that are developing countries or countries with economies in transition for the implementation of measures initiated in accordance with the compliance mechanism”.

## **[Annex: Procedures and mechanism on compliance with the Rotterdam Convention**

The objective of these procedures and mechanisms on compliance is to assist parties to comply with their obligations under the Convention and to facilitate, promote, monitor and aim to secure the implementation of and compliance with the obligations under the Convention.

The mechanism shall be non-confrontational, transparent, cost-effective and preventive in nature, and oriented in the direction of helping parties to implement the provisions of the Convention. It will pay particular attention to the special needs of developing countries and countries with economies in transition, and is intended to promote cooperation between all parties.

1. A compliance committee (hereinafter referred to as “the Committee”) is hereby established.

### *Members*

2. The Committee shall consist of 17 members. Members shall be nominated by parties and elected by the Conference of the Parties on the basis of the five regional groups of the United Nations as follows:

- African States: 4;
- Asian and Pacific States: 4;
- Central and Eastern European States: 2;
- Latin American and Caribbean States: 3;
- Western European and other States: 4.

3. Members shall have expertise and specific qualifications in the subject matter covered by the Convention. They shall serve objectively and in the best interests of the Convention.

### *Election of members*

4. At the meeting at which the Committee is established, the Conference of the Parties shall elect eight members of the Committee for one term and nine members for two terms. The Conference of the Parties shall, at each ordinary meeting thereafter, elect for two full terms new members to replace those members whose period of office has expired or is about to expire. Members shall not serve for more than two consecutive terms. For the purpose of the present decision, “term” shall mean the period that begins at the end of one ordinary meeting of the Conference of the Parties and ends at the end of the next ordinary meeting of the Conference of the Parties.

5. If a member of the Committee resigns or is otherwise unable to complete his or her term of office or to perform his or her functions, the party who nominated that member shall nominate an alternate to serve for the remainder of the term.

### *Officers*

6. The Committee shall elect its own Chair. A vice-chair and a rapporteur shall be elected, on a rotating basis, by the Committee in accordance with rule 30 of the rules of procedure of the Conference of the Parties.

### *Meetings*

7. The Committee shall hold meetings as necessary and wherever possible in conjunction with meetings of the Conference of the Parties or other Convention bodies.

8. Subject to paragraph 9 below, the meetings of the Committee shall be open to parties and the public unless the Committee decides otherwise. When the Committee is dealing with submissions pursuant to paragraph 11 or any questions identified in accordance with paragraph 12, the meetings of the Committee shall be open to parties and closed to the public unless the party whose compliance is in question agrees otherwise. The parties or observers to whom the meeting is open shall not have a right to participate in the meeting unless the Committee and the party whose compliance is in question agree otherwise.
9. Where a submission is made with respect to the possible non-compliance of a party or questions are identified in accordance with paragraph 12, it shall be invited to participate in the consideration of the submission by the Committee. Such a party, however, may not take part in the elaboration and adoption of a recommendation or conclusion of the Committee.
10. The Committee shall make every effort to reach agreement on all matters of substance by consensus. Where this is not possible, the report shall reflect the views of all the Committee members. If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall, as a last resort, be taken by a three-quarter majority of the members present and voting or by nine members, whichever is greater. Eleven members of the Committee shall constitute a quorum.
11. Submissions may be made in writing, through the Secretariat where subparagraphs (a) and (b) apply, by:
- (a) A party which believes that, despite its best endeavours, it is, or will be, unable to comply with certain obligations under the Convention. Such a submission should include details as to which specific obligations are concerned and an assessment of the reason why the party may be unable to meet those obligations. Where possible, substantiating information, or advice as to where such substantiating information may be found, may be provided. The submission may include suggestions for solutions which the party considers may be most appropriate to its particular needs;
  - (b) A party that is directly affected or likely to be directly affected by another party's alleged failure to comply with the obligations of the Convention. A party intending to make a submission under this subparagraph should before so doing undertake consultations with the party whose compliance is in question. The submission should include details as to which specific obligations are concerned, and information substantiating the submission, including how the party is affected or likely to be affected;
12. The Committee shall examine the information gathered by the Secretariat while acting pursuant to its functions under articles 4, 5(4), and 10 of the Convention, and identify if there are any questions relating to parties' compliance with the Convention. If such questions are identified, the Committee shall inform the party or parties whose compliance is in question and consider such questions at its next meeting.
13. The Secretariat shall forward submissions made under subparagraph 11 (a) above, within two weeks of receiving such submissions, to the members of the Committee for consideration at the Committee's next meeting.
14. The Secretariat shall, within two weeks of its receiving any submission made under subparagraph 11 (b), send a copy to the party whose compliance with the Convention is in question and to the members of the Committee for consideration at the Committee's next meeting.
15. Parties whose compliance is in question may present responses or comments at every step of the proceedings described in the present decision.
16. Without prejudice to paragraph 15 above, additional information, provided by a party whose compliance is in question in response to a submission, should be forwarded to the Secretariat within three months of the date of receipt of the submission by that party, unless the circumstances of a particular case require an extended period of time. Such information shall be immediately transmitted to the members of the Committee for consideration at the Committee's next meeting. Where a submission has been made pursuant to subparagraph 11 (b) above, the information shall be forwarded by the Secretariat also to the party that made the submission.
17. The Committee may decide not to proceed with submissions which it considers to be:
- (a) De minimis;
  - (b) Manifestly ill-founded.

*Facilitation*

18. The Committee shall consider any submission made to it in accordance with paragraphs 11 or any questions identified in accordance with paragraph 12 with a view to establishing the facts and the root causes of the matter of concern, and to assisting in its resolution. To that end, the Committee may provide a party with:

- (a) Advice;
- (b) Non-binding recommendations;
- (c) Information required to assist the party in developing a compliance plan, including timelines and targets.
- (d) Assistance, upon request, in the review of the implementation of the compliance plan;
- (e) Facilitation of assistance in particular when the party is a developing country or a country with economy in transition, including on how to access financial and technical support, including capacity-building;
- (f) Recommendations and information other than those listed above upon request by the party.

*Possible measures to address compliance issues*

19. If, after undertaking the facilitation procedure set forth in paragraph 18 above and taking into account the cause, type, degree and frequency of compliance difficulties, including financial and technical capacities of the parties whose compliance is in question, the Committee considers it necessary to propose further measures to address a party's compliance problems, it may recommend to the Conference of the Parties, bearing in mind its ability under Article 18 (5) (c) of the Convention, that it consider the following measures, to be taken in accordance with international law, to attain compliance:

- (a) Further support under the Convention for the party concerned, including further advice and the facilitation, as appropriate, of access to financial resources, technical assistance, training and other capacity-building measures;
- (b) Providing advice regarding future compliance in order to help parties to implement the provisions of the Convention and to promote cooperation between all parties;
- (c) Issuing a statement of concern regarding possible future non-compliance;
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- (f) Recommending that a non-compliant situation be addressed by the non-compliant party with the aim of resolving the situation.

*Handling of information*

20. (1) The Committee may only receive relevant information, through the Secretariat, from:

- (a) The parties;
- (b) Relevant sources, as it considers necessary and appropriate, such as intergovernmental organizations, with the prior consent of the party concerned or as directed by the Conference of the Parties.

(2) The Committee may also request information from the Secretariat, where appropriate in the form of a report, on matters under the Committee's consideration.

21. For the purposes of examining systemic issues of general compliance under paragraph 24, the Committee may:

- (a) Request information from all parties;
- (b) In accordance with relevant guidance by the Conference of the Parties, request relevant information from any reliable sources and outside experts; and
- (c) Consult with the Secretariat and draw upon its experience and knowledge base.

22. Subject to Article 14 of the Convention, the Committee, any party and any person involved in the deliberations of the Committee shall protect the confidentiality of information received in confidence.

*Monitoring*

23. The Compliance Committee should monitor the consequences of action taken in pursuance of paragraphs 18 or 19 above.

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*Reports to the Conference of the Parties*

25. The Committee shall submit a report to each ordinary meeting of the Conference of the Parties reflecting:

- (a) The work that the Committee has undertaken;
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- (c) The future programme of work of the Committee, including the schedule of expected meetings which it considers necessary for the fulfilment of its programme of work, for the consideration and approval of the Conference of the Parties.

*Other subsidiary bodies*

26. Where the activities of the Committee with respect to particular issues overlap with the responsibilities of another Rotterdam Convention body, the Conference of the Parties may direct the Committee to consult with that body.

*Information sharing with other relevant multilateral environmental agreements*

27. Where relevant, the Committee may solicit specific information, upon request by the Conference of the Parties, or directly, from compliance committees dealing with hazardous substances and wastes under the auspices of other relevant multilateral environmental agreements and report on these activities to the Conference of the Parties.

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28. The Conference of the Parties shall regularly review the implementation of the procedures and mechanisms set forth in the present decision.

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