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COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY

Fourth meeting
Montreal, 21-23 November 2007
Items 4, 6 and 7 the provisional agenda*

PRELIMINARY SUGGESTIONS AND INFORMATION FOR CONSIDERATION IN RELATION TO ITEMS 4, 6 AND 7 OF THE PROVISIONAL AGENDA

Note by the Executive Secretary

INTRODUCTION

1. The fourth meeting of the Compliance Committee is expected to address, among other things, (i) general issues of compliance that may be identified from the first national reports (item 4 of the provisional agenda); (ii) election of new members at the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (item 6 of the provisional agenda); and (iii) possible structure of the report of the Committee that is expected to be submitted to the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (item 7 of the provisional agenda). The Secretariat has prepared the present document with a view to assisting the Committee in its consideration of these items.

2. Accordingly, section I of the document presents some general issues of compliance as identified through the analysis of the information contained in the first national reports submitted to the Secretariat. Section II contains information on members of the Committee whose term ends by the end of 2008 as well as members who resigned before the end of their term and thus need to be replaced. In section III, the Secretariat forwards suggestions on the possible structure of the report of the Committee on its inter-sessional work, including the Committee's recommendations for submission to the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. Finally, the Secretariat presents, in section IV, some elements of possible recommendations that the Committee may wish to consider for submission to the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

* UNEP/CBD/BS/CC/4/1.

I. GENERAL ISSUES OF COMPLIANCE (*Item 4*)

3. The first regular national reports were due on 11 September 2007, four years after the entry into force of the Protocol, in accordance with paragraph 5 of decision BS-I/9. The Secretariat received, by 16 October 2007, national reports from 50 Parties to the Protocol and two non-Parties. By that date, the number of Parties to the Protocol (including those latest instruments of ratification or accession received by the Depositary) was 143. That means only 35 percent of the Parties have submitted their reports. ^{1/} The submissions were made in accordance with decisions BS-I/9 and BS-III/14 of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

4. The regional distribution of the reports received is: 15 from Africa; 5 from Asia & Pacific; 5 from Latin America and the Caribbean; 11 from Central and Eastern Europe; and 14 from Western Europe and Other States Group.

5. The Secretariat is finalizing the preparation of an analysis of these reports for consideration by the Conference of the Parties serving as the meeting of the Parties to the Protocol as document UNEP/CBD/BS/COP-MOP/4/13. However, an advance draft version of the analysis document is made available for the present meeting of the Compliance Committee with a view to facilitating the review of general issues of compliance by the Committee as requested under paragraph 3 of decision BS-III/15. The statistical summary of the information provided in the first national reports will also be presented in an information document UNEP/CBD/BS/COP-MOP/4/INF/11. The full text of each report is available through the web site of the Secretariat at: <http://www.cbd.int/biosafety/parties/national-reports.shtml>.

6. The low level of submission of national reports is itself a general issue of compliance. The percentage of Parties whose first national reports were submitted and have been analyzed (35 percent) is the same as the percentage of Parties whose interim national reports were submitted and analyzed for the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (also 35 percent). As previously outlined during the second meeting of the Compliance Committee, reporting by each Party is essential not merely because it is required under Article 33 but also because it is a critical input for the effective implementation of other provisions of the Protocol such as the evaluation of the effectiveness of the Protocol every five years in accordance with Article 35. This general issue of compliance was addressed by the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol in decision BS-III/14, in particular in paragraphs 2 and 4 of that decision.

7. From the analysis of the 50 national reports received from Parties by 16 October 2007, some additional major issues of a general nature affecting several Parties with respect to their compliance to the Protocol may be identified and reviewed by the Compliance Committee. ^{2/} These include issues already identified in the context of the interim national reports addressed by the Committee at its second meeting and subsequently by the Conference of the Parties serving as the meeting of the Parties to the Protocol at its third meeting.

(a) Introducing legal, administrative and other measures necessary for the implementation of the Protocol

8. A number of reports indicate that there are significant gaps regarding the introduction of the necessary legal, administrative and other measures required to implement the Protocol. The percentage of

^{1/} This is the number of reports received by the date mentioned and included in the analysis. Otherwise, the number of reports received since has increased and at the time of finalizing this document the total number of reports received is 61 from Parties to the Protocol, and three from non-Parties.

^{2/} The Secretariat would like to point out that the general issues of compliance identified herein on the basis of the analysis of the first national reports are simply generalizations that should be understood within the limitations of the analysis itself as pointed out in the advanced draft document UNEP/CBD/BS/COP-MOP/4/13.

respondents indicating that they have a full domestic regulatory framework in place has remained more or less steady from the interim national reports (60 percent) to the first national reports (57 percent).

9. This general issue of compliance was discussed by the Compliance Committee during its second meeting and addressed by the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol in decision BS-III/1 in particular at paragraph 3 of that decision.

(b) *The obligation to promote public awareness and participation*

10. As illustrated by the reports, there has been a limited amount of work by respondents to consult, in accordance with their respective laws and regulations, the public in the decision-making process regarding living modified organisms and to make the results of such decisions available to the public. There has also been limited implementation of the obligation in Article 23.3 for each Party to endeavour to inform its public about the means of public access to the Biosafety Clearing-House.

11. This general issue of compliance was discussed by the Compliance Committee during its second meeting and addressed by the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol in decision BS-III/5 in particular at paragraph 6 of that decision. This paragraph was, in turn, incorporated into the Conference of the Parties' decision VIII/18 on 'Guidance to the financial mechanism' at paragraph 12 (b).

(c) *Illegal transboundary movements (Article 25)*

12. The Biosafety Protocol requires each Party to adopt appropriate domestic measures aimed at preventing and, if appropriate, penalizing transboundary movements of living modified organisms carried out in contravention of the Party's domestic measures to implement the Protocol. A number of respondents (25 percent, all from developing countries) reported not having adopted such measures.

13. More than a quarter of respondents (representing 13 of the 48 respondents who answered the question) reported the occurrence of illegal transboundary movements of living modified organisms into their country. Eleven of these responses were from developed countries or countries with economies in transition while two were from developing countries. Furthermore, of the 13 countries, two responded that they have made information concerning cases of illegal transboundary movements available to the Biosafety Clearing-House in accordance with the obligation in Article 25.3; seven responded that the information exists but has not yet been provided to the Biosafety Clearing-House while the remaining four stated that the information does not exist or is not applicable. This suggests that there is a gap between knowledge and awareness of illegal transboundary movements and the provision of information on such to the Biosafety Clearing-House as well, potentially, as a lack of information on specific illegal transboundary movements.

14. More work may, therefore, be required to fully implement the requirement to adopt national measures with a view to controlling contraventions of domestic biosafety rules on the one hand, and the duty to inform, in a timely manner, other Parties, through the BCH, about incidents of illegal transboundary movements of living modified organisms, on the other.

II. ELECTION OF NEW MEMBERS OF THE COMMITTEE (*Item 6*)

15. As reported at the last meeting of the Committee, Mr. Jose Alvaro Rodriguez, ex-member from the Latin America and Caribbean region had announced, through the Secretariat, his resignation from the Committee. The resignation was notified and a replacement was sought from the Bureau of the Conference of the Parties serving as the meeting of the Parties to the Protocol through a letter dated 15 August 2006. However, the new appointment has not yet been effected. At the same time, the term of nine members of the Committee comes to an end by the end of 2008 in accordance with paragraph 1 of

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rule 10 the rules of procedure of the Committee. If Mr. Rodriguez had not resigned, his term would have also come to an end by the end of 2008.

16. The fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol is, therefore, expected to elect ten new members of the Committee to replace those whose term comes to an end by 31 December 2008.

17. Members of the Committee whose term ends by the end of 2008 are: Mrs. Mary Fosi Mbantekhu and Dr. Tewolde Birhan Gebre Egziabher, from Africa; Mr. Gurdial Singh Nijar and Dr. Nematollah Khansari, from Asia & Pacific; Messrs. Lionel Michael and Jose Alvaro Rodriguez, from Group of Latin America and the Caribbean; Mr. Gábor Nechay and Ms. Liina Eek, from Central and Eastern Europe; and Messrs. Jürg Bally and Veit Koester, from Western Europe and others Group.

III. STRUCTURE OF THE REPORT OF THE COMMITTEE, INCLUDING ITS RECOMMENDATIONS (*Item 7*)

18. The Compliance Committee is having two meetings in the same year for the first time since it has begun its functions. It is also going to report, for the first time, to the Conference of the Parties serving as the meeting of the Parties to the Protocol on the works of its two meetings held inter-sessionally. As a result, reporting structure becomes an important item and part of the agenda of the Committee at the present meeting. The Secretariat is of the view that a consolidated report of the Committee's two inter-sessional meetings should be prepared and forwarded to the Conference of the Parties serving as the meeting of the Parties as document UNEP/CBD/BS/COP-MOP/4/2.

19. The Conference of the Parties serving as the meeting of the Parties to the Protocol had requested, at its third meeting, the Committee "to prepare a report on general issues of compliance by Parties with their obligations under the Protocol, in accordance with paragraph 1 (d) of section III of the Compliance Procedures and Mechanisms contained in the annex to decision BS-I/7, and make this report available six months prior to the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol." (Paragraph 3, decision BS-III/15). Accordingly, the Committee's report is expected to include a section or an annex addressing general issues of compliance. Based on the issues suggested for consideration by the Committee in section I of this document, the Secretariat is of the view that this item could be covered in the consolidated report under a separate section.

20. The Committee had also been requested by the third meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol "to compile further information on experience of other multilateral environmental agreements regarding repeated cases of non-compliance" (paragraph 2, decision BS-III/1). In order to assist the Committee in fulfilling this request, the Secretariat has submitted to the present meeting of the Committee an updated document on further information and experiences from other multilateral environmental agreements regarding repeated cases of non-compliance under their compliance mechanisms (UNEP/CBD/BS/CC/4/2). Once this document is reviewed and endorsed by the Committee it is expected to be forwarded to the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol as the Committee's document. Because the document is extensive, the Secretariat suggests submitting it as an addendum to the consolidated report, i.e. as document UNEP/CBD/BS/COP-MOP/4/2/Add.1.

21. Finally, the consolidated report and its addendum may be prepared and finalized by the Secretariat, following the fourth meeting of the Committee, under the guidance of the Chairman of the Committee and be made available, without any delay, on the website of the Convention on Biological Diversity.