



Convention on Biological Diversity

Distr.
GENERAL

UNEP/CBD/BS/CC/5/3
24 September 2008

ORIGINAL: ENGLISH

COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY

Fifth meeting

Kuala Lumpur, 19-21 November 2008

Item 4 of the provisional agenda*

REVIEW OF GENERAL ISSUES OF COMPLIANCE BASED ON THE REVISED ANALYSIS OF INFORMATION CONTAINED IN THE FIRST NATIONAL REPORTS

Note by the Executive Secretary

INTRODUCTION

1. The fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, in its decision BS-IV/14 on monitoring and reporting, reminded each Party of its obligation to submit national reports in accordance with Article 33 of the Protocol, requested Parties that had not yet done so to submit, without further delay, their first regular national reports to the Executive Secretary, and requested the Executive Secretary to repeat the analysis of the first national reports submitted after the deadline within three months after the meeting of the Parties and make the analysis available through the Biosafety Clearing-House.

2. In accordance with this decision, the Secretariat has received a number of additional first national reports and has revised the analysis of the information contained in the first national reports that it prepared for the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. The revised analysis can be found in document UNEP/CBD/BS/CC/5/2.

* UNEP/CBD/BS/CC/5/1.

3. The Secretariat has prepared the current document in order to facilitate the Committee's review of general issues of compliance based on the revised analysis of the first national reports. The document updates and expands upon a similar review of general issues of compliance that the Secretariat prepared for the fourth meeting of the Committee (UNEP/CBD/BS/CC/4/2/Add.1). ^{1/} The discussion below addresses the reporting rate, the introduction of legal, administrative and other measures necessary for the implementation of the Protocol, risk assessments under the advance informed agreement procedure, illegal transboundary movements of living modified organisms, and the obligation to promote public awareness and participation. The final section offers some concluding remarks.

I. REPORTING RATE

5. 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. At that date, there were 141 Parties to the Protocol with an obligation to submit first national reports. The initial analysis of the first national reports was based upon reports from 50 Parties to the Protocol and two non-Parties received by the Secretariat by 16 October 2007. The reports received from 50 Parties represented a reporting rate of 35 per cent of the Parties with an obligation to submit a first national report.

6. Between 17 October 2007 and 18 August 2008, one of the non-Parties that had submitted a report ratified the Protocol. Furthermore, another non-Party submitted a report and subsequently ratified the Protocol as well. While these countries are now Parties, they had no obligation to submit a first national report. During this same period, the Secretariat also received 26 reports from Parties and one from a non-Party bringing the total number of reports received to 80. Therefore, by 18 August 2008, the Secretariat had received reports from 76 of the 141 Parties with an obligation to report, representing a reporting rate of 54 per cent. It might also be noted that the Secretariat has since received three more first national reports from Parties after the revised analysis was completed, raising the reporting rate to 56 per cent.

7. The revised analysis of the first national reports (UNEP/CBD/BS/CC/5/2) calculates the reporting rate for each region based on the overall number of members in the group. When the reporting rate is instead calculated on the basis of the number of Parties in each group at the time the first national reports were due, the results are as follows: reports were received from 51 per cent of the Parties in the African region, 49 per cent of the Parties in the Asia-Pacific region, 35 per cent of the Parties in the Group of Latin American and Caribbean countries, 70 per cent of the Parties in the Central and Eastern European region, and 76 per cent of the Parties in the Western Europe and Others Group.

8. At its fourth meeting, the Committee noted the low number of first national reports received by the reporting deadline as well as the low number of national reports received and included in the initial analysis. The reporting rate has now risen by 20 per cent, which is a significant improvement over both the reporting rate from the initial analysis as well as the reporting rate of 46 per cent for the interim national reports. It is still, however, much lower than the reporting rate under the Convention, which, for the third national reports, stands at 75 per cent.

9. 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 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. At its fourth meeting, the Committee expressed the view that the low reporting rate for the first national reports at that time

^{1/} The general issues of compliance identified herein on the basis of the revised 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 revised analysis of the first national reports (UNEP/CBD/BS/CC/5/2).

constituted a serious issue of non-compliance. The issue was addressed again by the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol in decision BS-IV/14, particularly in paragraphs 1, 2 and 3 of that decision.

10. At its fourth meeting, the Committee requested the Secretariat to compile experience on reporting rates under other multilateral environmental agreements and to make that information available. The work plan proposed by the Chair foresees that this information will be considered by the Committee at its sixth meeting.

II. INTRODUCING LEGAL, ADMINISTRATIVE AND OTHER MEASURES NECESSARY FOR THE IMPLEMENTATION OF THE PROTOCOL

11. The review of general issues of compliance prepared for the fourth meeting of the Committee noted that 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 Committee considered this to be a serious issue of non-compliance and recalled the recommendations that it made on this issue in the context of the interim national reports.

12. The revised analysis of the first national reports does not improve the picture. With the increased number of national reports that have now been analysed, the percentage of respondents indicating that they have a full domestic regulatory framework in place (question 3) has dropped from 57 per cent in the initial analysis to 51 per cent in the revised analysis (compared to 60 per cent from the analysis of the interim national reports.)

13. 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 in paragraph 3 of that decision. The Compliance Committee did not make a specific recommendation on this issue to the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

14. Responses to a number of other questions also indicate gaps in the introduction of measures required to implement the Protocol. Question 7 of the reporting format asks whether there is a legal requirement for the accuracy of information provided by exporters under the jurisdiction of the respondent in conformity with Article 8(2) of the Protocol. Just over 50 per cent of respondents answered that they do have such a requirement, while 30 per cent responded that they do not yet have such a requirement but that it is under development. This would appear to be linked to gaps in the introduction of legal, administrative and other measures. A further 15 per cent of respondents indicated that the question is not applicable as they are not a Party of export, while only two respondents (equal to 2 per cent) responded that they do not have a legal requirement for the accuracy of information provided by exporters under their jurisdiction.

15. Question 24 asks whether the respondent's country has established and maintained appropriate mechanisms, measures and strategies to regulate, manage and control risks identified in the risk assessment provisions of the Protocol in accordance with Article 16(1) of the Protocol. Less than half the respondents (49 per cent) answered that their countries have fully established and maintained such mechanisms, measures and strategies. A further 39 per cent of respondents indicated that such mechanisms, measures and strategies are under development or are partially established, while 11 per cent stated that their countries had not established and maintained appropriate mechanisms, measures and strategies. With approximately half the respondents not having fully established and maintained appropriate mechanisms, measures and strategies, this would also appear to be linked to the gap in the introduction of measures necessary for the implementation of the Protocol.

16. Under question 25, less than half the respondents (48 per cent) stated that their country had fully adopted appropriate measures to prevent unintentional transboundary movements of living modified organisms, as required under Article 16(3). There were large fluctuations by region with a greater proportion of respondents from CEE and WEOG reporting that they had fully established such measures (71 and 94 per cent of respondents, respectively) compared to respondents from the African region (23 per cent), Asia-Pacific (29 per cent) and GRULAC (20 per cent). In these latter three regions, 50 per cent or more of the respondents indicated that such measures are under development or partially established (55 per cent of respondents from the African region, 53 per cent from Asia-Pacific and 50 per cent from GRULAC). Overall, 15 per cent of respondents answered that their country had not adopted such measures with 23 per cent of respondents from the African region and 30 per cent of respondents from GRULAC providing this answer. This would also appear to be linked to the gap in the introduction of measures necessary for the implementation of the Protocol.

III. RISK ASSESSMENTS UNDER THE ADVANCE INFORMED AGREEMENT PROCEDURE

17. Question 21 asked whether, if the respondent's country was a Party of import during the reporting period, it carried out risk assessments for all decisions under Article 10 (as required by Article 15(2)). While 14 per cent of respondents indicated that as a Party of import, risk assessments were carried out for all decisions taken under Article 10, 12 per cent of respondents indicated that as a Party of import, risk assessments were *not* carried out for all decisions taken under Article 10. This 12 per cent of respondents represents nine countries – four from Africa, three from Asia-Pacific and two from GRULAC. The majority of respondents (74 per cent) indicated that they were not a Party of import or did not take any decisions under Article 10.

18. Respondents that answered 'no' to question 21 were asked to clarify their answer in the space provided under question 28. Of the nine countries that answered 'no', five indicated in their clarification that the lack of risk assessments is linked to gaps in the adoption of the necessary measures for implementing the Protocol.

IV. ILLEGAL TRANSBOUNDARY MOVEMENTS (ARTICLE 25)

19. In the review of general issues of compliance prepared for the fourth meeting of the Committee, it was noted that a quarter of respondents reported that their country has not adopted 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 (question 57). The Committee made a recommendation to the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol on this issue which was taken up in paragraph 1 of decision BS-IV/1. With the revised analysis of the first national reports, the proportion of respondents stating that they have not adopted such measures has risen to 32 per cent. This may be linked to the gap in the introduction of measures necessary for the implementation of the Protocol.

20. The review of general issues of compliance prepared for the fourth meeting of the Committee also found that more than 25 per cent of respondents reported the occurrence of illegal transboundary movements of living modified organisms (question 58) and over half of these stated that information about the illegal transboundary movements exists but has not yet been provided to the Biosafety Clearing-House (question 2(h)). The Committee made a recommendation on this point to the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol which was similarly taken up in paragraph 1 of decision BS-IV/1. With the revised analysis of the first national reports, only one additional country reported the occurrence of an illegal transboundary movement of living modified organisms resulting in an overall drop in the percentage of respondents reporting the occurrence of illegal transboundary movements to 19 per cent. Similarly, the number of respondents

indicating that information about the illegal transboundary movements exists but has not yet been provided to the Biosafety Clearing-House only increased by one although it was not the same additional Party that reported the occurrence of illegal transboundary movements that also indicated that information about the movements exists but has not yet been provided to the Biosafety Clearing-House.

V. THE OBLIGATION TO PROMOTE PUBLIC AWARENESS AND PARTICIPATION

21. In the review of general issues of compliance that was prepared for the fourth meeting of the Committee (as contained in document UNEP/CBD/BS/CC/4/2/Add.1), it was noted that there has been a limited amount of work by respondents to implement Article 23(2) of the Protocol which required Parties 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. With the revised analysis of the first national reports, the percentage of respondents indicating that they fully consult the public in the decision-making regarding living modified organisms and make the results of such decisions available to the public remained approximately the same, decreasing slightly from 56 per cent to 52 per cent. In the revised analysis, 27 per cent of respondents reported having implemented Article 23(2) to a limited extent compared to 28 per cent of respondents who provided this answer in the initial analysis. Eight respondents (16 per cent, the same percentage as in the initial analysis) reported that no consultations with the public took place.

22. There has also been limited implementation of the obligation provided in Article 23(3) for each Party to endeavour to inform its public about the means of public access to the Biosafety Clearing-House. In the initial analysis of the first national reports, only 33 per cent of respondents reported having fully informed the public about the means of public access to the Biosafety Clearing-House while approximately 61 per cent of respondents reported having done so to a limited extent. In the revised analysis, the percentage of respondents reporting that they have fully informed the public dropped to 26 per cent, while the percentage indicating that they have informed the public to a limited extent stayed the same.

23. 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 in paragraph 6 of that decision. This paragraph was, in turn, incorporated into in paragraph 12 (b) of decision VIII/18 of the Conference of the Parties to the Convention on Biological Diversity, regarding guidance to the financial mechanism. The Committee considered the issue again at its fourth meeting and felt that compliance with the obligation to promote public awareness and participation was not at a satisfactory level.

VI. CONCLUSION

24. The information received through the additional reports has not dramatically changed the revised analysis. The reporting rate has improved, the percentage of respondents indicating the occurrence of illegal transboundary movements has dropped as has the percentage of respondents reporting that information on illegal transboundary movements exists but has not been provided to the Biosafety Clearing-House. The main addition has been to note that the percentage of respondents indicating that risk assessments were carried out for all decisions under Article 10 is nearly the same as the percentage of respondents indicating that risk assessments were not carried out for all such decisions. Otherwise, the general issues of compliance as derived from the information provided in the first national reports have remained largely the same from the initial analysis of the reports to the revised analysis.
