



## Convention on Biological Diversity

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### COMPLIANCE COMMITTEE UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY

Seventeenth meeting

Online, 15-17 April 2020

Item 6 of the provisional agenda

### REVIEW OF INDIVIDUAL CASES OF NON-COMPLIANCE

*Note by the Executive Secretary*

#### I. INTRODUCTION

1. At its fourteenth meeting, the Compliance Committee decided to include a standing item on the agenda of its future meetings to facilitate consideration of ongoing individual cases of non-compliance.<sup>1</sup>
2. At its sixteenth meeting, the Committee reviewed the non-compliance by Montenegro with its reporting obligation under Article 33 of the Protocol and decided on follow-up steps in this regard.<sup>2</sup>
3. Also at its sixteenth meeting, the Committee reviewed non-compliance by a number of Parties with their obligation under Article 2, paragraph 1, of the Protocol to take the necessary and appropriate legal, administrative and other measures to implement their obligations under the Protocol,<sup>3</sup> and agreed to some follow-up actions.<sup>4</sup>
4. The present document provides an overview of developments and actions taken since the Committee's sixteenth meeting regarding individual cases of non-compliance concerning, in section II, the obligation to submit national reports in accordance with Article 33 of the Protocol and, in section III, the obligation to take the necessary measures to implement the obligations under the Protocol, in accordance with Article 2, paragraph 1, of the Protocol. Each section also provides suggestions for possible follow-up by the Committee.

#### II. INDIVIDUAL CASES OF NON-COMPLIANCE CONCERNING THE OBLIGATION TO REPORT (ARTICLE 33)

##### A. Developments and actions taken

5. In its report to the Conference of the Parties serving as the meeting of the Parties to the Protocol at its ninth meeting, the Committee recommended that the Conference of the Parties serving as the meeting of the Parties to the Protocol caution Greece, Marshall Islands, Montenegro and Turkmenistan for not having submitted multiple national reports.<sup>5</sup> Three of these Parties – Greece, the Marshall Islands and Turkmenistan –submitted their third national report prior to the consideration of the item at the ninth meeting of the Parties. In decision

<sup>1</sup> See [CBD/CP/CC/14/5](#), para. 25.

<sup>2</sup> See [CBD/CP/CC/16/7](#), paras. 36-37.

<sup>3</sup> The Committee had identified these Parties in accordance with the information reported in third national reports regarding whether they had full measures in place for implementation of the Cartagena Protocol on Biosafety. See the report of the fifteenth meeting of the Compliance Committee ([CBD/CP/CC/15/5](#)).

<sup>4</sup> See [CBD/CP/CC/16/7](#), paras. 40-47.

<sup>5</sup> See [CBD/CP/MOP/9/2](#).

[CP-9/1](#), the Conference of the Parties serving as the meeting of the Parties to the Protocol did not caution or name Montenegro but instead requested “one Party” to submit, as a matter of urgency, its third national report.

6. This information was considered by the Committee at its sixteenth meeting as part of its review of relevant outcomes from the ninth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol and led to further discussions by the Committee on the pending individual case of non-compliance by Montenegro with its obligation to submit national reports in accordance with Article 33 of the Protocol.

7. The Committee decided that its Chair would send a follow-up letter to the national focal point of Montenegro, with a copy to the national focal point for the Convention on Biological Diversity, informing them of the outcome of the ninth meeting of the Parties in relation to the decision to request Montenegro to submit its third national report as a matter of urgency. The Committee decided that the letter should also provide information on the availability of and access to funding from the Global Environment Facility (GEF) for the completion of the fourth national report.

8. Accordingly, a letter dated 21 October 2019 was sent to the focal point concerned, with a copy to the respective national focal point for the Convention, inviting Montenegro to submit its national report.

9. The Committee also decided that its members from the Central and Eastern European region would follow up closely with Montenegro to endeavour to facilitate the timely submission of its fourth national report.<sup>6</sup> Committee members from the Central and Eastern European region will be invited to provide the Committee with an update on any progress in this regard.

10. In December 2019, the Secretariat received an email from the newly designated national focal point of Montenegro for the Cartagena Protocol informing the Secretariat of its intention to submit its fourth national report shortly and enquiring about the submission deadline. The Secretariat responded to this communication, thanking Montenegro and informing Montenegro of the importance of receiving the national report by the end of December 2019, as other processes depended on the timely submission of national reports. The Secretariat also informed Montenegro that the Compliance Committee would be considering compliance by Parties with their obligation to submit a national report at its seventeenth meeting, in April 2020. In further exchanges with the national focal point, the Secretariat also provided some guidance and contact information for presenting the required letter of commitment to the United Nations Environment Programme (UNEP) as a prerequisite for accessing GEF funding for the preparation of its national report.

11. In January 2020, the Secretariat followed up with Montenegro on the preparation of its fourth national report, including regarding any progress with UNEP on accessing GEF funding. Considering that fourth national report of Montenegro had not yet been received, the Secretariat also shared the letter which the Chair of the Compliance Committee had sent to the previous national focal point of Montenegro in October 2019 relating to the non-compliance by Montenegro with its reporting obligation.

12. No further communication has been received from Montenegro, and a fourth national report had not been submitted by the date of preparation of the present note.

### **B. Possible follow-up by the Committee**

13. In considering possible follow-up on the individual case of non-compliance by Montenegro with its reporting obligation under Article 33 of the Protocol, the Committee may wish to recall that, at its sixteenth meeting, it agreed to prioritize the review of compliance by Montenegro with its reporting obligation at the current meeting and to accelerate follow-up as necessary.<sup>7</sup> Against this background, the Committee may wish to consider follow-up actions to support Montenegro in complying with its reporting obligation, including in relation to its fourth national report. The Committee may wish to bear in mind that its recommendation to the

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<sup>6</sup> See [CBD/CP/CC/16/7](#), para. 37.

<sup>7</sup> See also [CBD/CP/CC/17/2](#).

Conference of the Parties serving as the meeting of the Parties, at its ninth meeting, to caution Montenegro for not having complied with its reporting obligation over multiple reporting cycles was not taken up.<sup>8</sup>

14. The Committee may also wish to consider any next steps in the light of information from its members from the Central and Eastern European region on any informal consultations they may have held with Montenegro and in the light of the status of the project to support the preparation of fourth national reports, including whether Montenegro has submitted its letter of commitment for the project.

### **III. INDIVIDUAL CASES OF NON-COMPLIANCE CONCERNING THE OBLIGATION TO TAKE MEASURES TO IMPLEMENT THE PROTOCOL (ARTICLE 2(1))**

#### **A. Developments and actions taken**

15. The Committee at its fifteenth meeting reviewed compliance by Parties with their obligation under Article 2, paragraph 1, of the Protocol to take the necessary and appropriate legal, administrative and other measures for the implementation of their obligations under the Protocol. The Committee decided that its Chair would contact those Parties that had reported, in their third national report, not having taken any measures or only having taken draft or temporary measures for the implementation of the Protocol, and request those Parties to develop a compliance action plan setting out a timeline and the actions required to achieve compliance with their obligations.<sup>9</sup> On the basis of information provided in their third national report, 25 Parties were identified and requested, by a letter from the Chair of the Committee, to develop a compliance action plan.

16. At its sixteenth meeting, the Committee considered this matter again and reviewed the responses received.

17. The Committee welcomed the response provided by Eritrea informing the Committee of its recent adoption of the necessary measures to implement the Protocol.

18. The Committee decided that its Chair would send a letter to Eritrea, thanking it for having provided the information on the adoption of the necessary measures to implement the Protocol and reminding it that the information should be included in their fourth national report and that their measures should be published in the BCH.

19. Accordingly, a letter was sent to the national focal point of Eritrea on 21 October 2019. By the date of preparation of the present note, Eritrea had not submitted a fourth national report. Furthermore, Eritrea had not published the necessary measures on the BCH. The only related record entitled “Proclamation No. 179/2017 - the Eritrean Environmental Protection, Management and Rehabilitation framework”, explains that the measure is an umbrella law for all environmental issues, including biosafety and provides a link to a 2017 press release from the Eritrean Ministry of Information. It does not provide a copy of the actual document or any further information.

20. The Committee at its sixteenth meeting also welcomed the submission of compliance action plans by Barbados, Kyrgyzstan, Niger and Oman, which had been shared with the members of the Committee ahead of the meeting through the online collaborative portal of the Compliance Committee. The Committee recognized that the submission of a compliance action plan in itself represented an important commitment to addressing non-compliance.

21. The Committee decided that its Chair would send letters to the four Parties that had submitted a compliance action plan, to thank them for their submission and inform them that the Secretariat would follow up on the progress of the activities according to the timelines indicated in the respective compliance action plans. Accordingly, the letters were sent to the national focal points in October 2019.

22. Niger informed the Secretariat that a specific law regarding biotechnological risks had been adopted and had entered into force on 30 October 2019. The text of law N°2019-48 entitled “Fixing the Fundamental

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<sup>8</sup> See [CBD/CP/CC/16/2](#), para. 18.

<sup>9</sup> See section VI, paragraph 1(c), of the procedures and mechanisms on compliance, as contained in the annex to decision BS-I/7.

Principles of Biotechnological Risks in Niger” was duly submitted to the BCH.<sup>10</sup> Niger also submitted its fourth national report and reported that “national measures are fully in place”.

23. As requested by the Committee, the Secretariat followed up with Parties concerned enquiring about progress of the activities outlined in their respective compliance action plan. In this regard, the Secretariat sent an email message to the national focal points of Barbados, Kyrgyzstan and Oman on 6 December 2019, requesting these Parties to provide an update on any progress made with regard to the specific actions and timelines indicated in their respective compliance action plans, particularly with reference to the activities to be carried out by the end of 2019 or early 2020. No responses had been received by the date of preparation of the present note.

24. Also at its sixteenth meeting, the Committee expressed concern that 20 of the initial 25 Parties which had been requested to prepare a compliance action plan, had neither submitted a compliance action plan, nor informed the Committee of their having taken the measures to implement the Protocol. The Committee decided that its Chair would send follow-up letters to these 20 Parties<sup>11</sup> urging them to submit a compliance action plan as soon as possible or inform the Committee of any developments with regard to taking the necessary measures to implement the Protocol. Those letters would remind the Parties concerned that the national process for the preparation of the fourth national report might inform the development of their compliance action plan.

25. Accordingly, follow-up letters from the Chair of the Committee were sent to the 20 Parties concerned in the first week of November 2019, requesting them to prepare a compliance action plan setting out the timeline and actions required to make progress in taking the necessary and appropriate measures to implement the Protocol. The letter contained a template for the compliance action plan. By the date of preparation of the present note, two Parties had provided a substantive response, as set out below, while a further three Parties<sup>12</sup> only acknowledged receipt of the letter. A total of 15 Parties did not reply.

26. Morocco submitted a compliance action plan on 31 December 2019 in French, also providing a courtesy translation in English. The plan was shared with the members of the Committee through the online collaborative portal prior to the present meeting. In its fourth national report, Morocco indicated that only temporary measures had been introduced and that it had revised its national biodiversity strategy and action plan in 2015 to include biosafety concerns.

27. Mauritania replied on 11 November 2019, indicating that some progress had been made towards national implementation of the Protocol, including the preparation of a draft law on biosafety which was awaiting revision in order to be adopted by the Government and the development of a manual and guide on decision-making procedures regarding living modified organisms. The national focal point indicated that the documents would be published on the BCH. By the date of preparation of the present note, these records had not been uploaded and a fourth national report had not yet been submitted by Mauritania.

#### **B. Possible follow-up by the Committee**

28. Different follow-up actions may be considered depending on the progress made by the Party concerned, including any relevant information provided in the fourth national reports. More information for the different categories of cases is provided in the sub-sections below.

##### *1. For those Parties that responded that they now have the necessary measures in place*

29. The Committee may wish to decide that its Chair send a letter to Niger, congratulating it on the adoption of its biosafety legislation and publication of the information in the BCH resulting in the successful achievement of its compliance action plan.

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<sup>10</sup> Available as BCH record 115282 at: <https://bch.cbd.int/database/record.shtml?documentid=115282>

<sup>11</sup> Bahamas, Botswana, Burundi, Dominica, Fiji, Gambia, Grenada, Guinea, Guyana, Mauritania, Morocco, Palau, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Suriname, Trinidad and Tobago, Tunisia, United Arab Emirates and Yemen.

<sup>12</sup> Fiji, Grenada and Tunisia.

30. The Committee may also wish to request the Secretariat to continue following up with Eritrea to urge it to submit the relevant measures on the BCH and provide any technical assistance, as necessary. Follow-up should also urge Eritrea to submit its fourth national report without further delay and include any relevant information on the adoption of national measures for implementation of the Protocol.

31. The Committee may also wish to decide that its Chair should send a letter to Mauritania, thanking it for having provided information on the expected adoption of measures to implement the Protocol, urging Mauritania to publish the relevant measures on the BCH and to submit a fourth national report reflecting this information as soon as possible. The Committee may also wish to consider whether further clarification is required and whether Mauritania would still be required to develop a compliance action plan.

## *2. For those Parties that did not submit a compliance action plan*

32. The Committee may wish to request that the Secretariat continue to follow-up with those Parties that have not yet submitted a compliance action plan and that have not provided information showing that the necessary measures to implement their obligations under the Protocol have been adopted,<sup>13</sup> urging them to do so as soon as possible.

33. Follow-up should take into account any information that these Parties have provided or may still provide in their fourth national reports and the BCH, as appropriate. By the date of preparation of the present note, fourth national reports had only been submitted by 6<sup>14</sup> out of the 20 Parties that were contacted following the sixteenth meeting of the Committee and requested to provide a compliance action plan or further information on appropriate measures to implement the Protocol. In their fourth national reports, none of these six Parties reported having full measures in place to implement the Protocol, but Grenada and the United Arab Emirates reported now having “partial” measures in place.

34. The Committee may wish to reconsider follow-up action with these Parties, as a matter of priority, at its next meeting in the light of the information provided in their fourth national report or any responses received.

## *3. For those Parties that submitted a compliance action plan*

35. The Committee may wish to consider the information provided in the compliance action plans of the four Parties<sup>15</sup> concerned in order to determine what relevant specific follow-up may be necessary. Accordingly, the Committee may wish to request that the Secretariat follow up with the national focal point of Morocco and continue to follow up with the national focal points of Barbados, Kyrgyzstan and Oman to monitor any progress made, considering also information provided by the Parties concerned in their fourth national report, and to provide the Compliance Committee at its eighteenth meeting with an update on this matter. The majority of the actions set out in the four compliance action plans are scheduled to be undertaken in 2020 and 2021.

36. Considering the efforts made by these four Parties to develop a compliance action plan, and taking into consideration that lack of financial resources for the implementation of the Protocol is an ongoing challenge for many Parties, the Committee may also wish to reiterate its recommendation to the Conference of the Parties serving as the meeting of the Parties to the Protocol to urge Parties and invite other Governments to provide voluntary funds in support of these Parties, as well as any additional Parties that develop and implement compliance action plans at the request of the Committee.

37. In order to provide a further incentive for Parties to develop and implement compliance action plans, thereby accelerating the adoption of measures, the Committee may also wish, once again, to recommend that the Conference of the Parties, in adopting its guidance to the financial mechanism with respect to support for the implementation of the Cartagena Protocol, invite the Global Environment Facility to make funding available to support Parties in implementing compliance action plans regarding the achievement of compliance with the

<sup>13</sup> Bahamas, Botswana, Burundi, Dominica, Fiji, Gambia, Grenada, Guinea, Guyana, Palau, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Suriname, Trinidad and Tobago, Tunisia, United Arab Emirates and Yemen.

<sup>14</sup> Botswana, Burundi, Grenada, Morocco, Suriname and United Arab Emirates.

<sup>15</sup> Barbados, Kyrgyzstan, Morocco and Oman.

Protocol. These recommendations have generally been adopted by the Conference of the Parties serving as the meeting of the Parties to the Protocol and the Conference of the Parties and have been transmitted as recommendations to GEF.

38. The Committee may also wish to consider what opportunities may arise for implementing the Protocol through the post-2020 global biodiversity framework and the post-2020 implementation plan and the capacity-building action plan for the Cartagena Protocol which are expected to be adopted at the next meetings of the Conference of the Parties to the Convention on Biological Diversity and the Conference of the Parties serving as the meeting of the Parties to the Protocol, respectively.

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