



# CONVENTION ON BIOLOGICAL DIVERSITY

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## CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY SERVING AS THE MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY

Third meeting

Curitiba, Brazil, 13-17 March 2006

Item 4 of the provisional agenda\*

### COMPLIANCE (ARTICLE 34)

#### *Measures in cases of repeated non-compliance*

*Note by the Executive Secretary*

#### I. INTRODUCTION

1. In accordance with Article 34 of the Biosafety Protocol, the Conference of the Parties serving as the meeting of the Parties to the Protocol adopted, at its first meeting, procedures and mechanisms on compliance as contained in the annex to decision BS-I/7.
2. Section VI of the procedures and mechanisms on compliance provide for measures to promote compliance and address cases of non-compliance. The Conference of the Parties serving as the meeting of the Parties to the Protocol identified and adopted various measures that the Compliance Committee, which was established by the same decision, may take with a view to promoting compliance and in response to cases of non-compliance. In taking such measures the Committee is required to take into account the capacity of the Party concerned and such other factors as the cause, type, degree and frequency of non-compliance (section VI, paragraph 1).
3. The Conference of the Parties serving as the meeting of the Parties to the Protocol may also decide, upon the recommendation of the Compliance Committee, on one or more of the measures specified in paragraph 2 of section VI, taking into account, once again, the capacity of the Party concerned to comply, and such factors as the cause, type, degree and frequency of non-compliance. In relation to frequency of non-compliance, paragraph 2 (d) of section VI of the procedures and mechanisms on compliance stipulates that in cases of repeated non-compliance, measures could be taken as may be decided by the Conference of the Parties serving as the meeting of the Parties to the Protocol at its third meeting, and thereafter within the review process in accordance with Article 35 of the Protocol.

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4. The present note is, therefore, intended to serve as a reminder to the Conference of the Parties serving as the meeting of the Parties to the Protocol of the commitment it took at its first meeting to consider and take a decision, at its third meeting on possible measures that may be taken against repeated cases of non-compliance. Section II of the note reviews the experience of other multilateral environmental agreements in defining measures that may be taken in cases of non-compliance. In section III elements of a possible draft decision are suggested.

## **II. EXPERIENCES FROM OTHER MULTILATERAL ENVIRONMENTAL AGREEMENTS REGARDING MEASURES THAT MAY BE TAKEN IN CASES OF NON-COMPLIANCE**

### **A. *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)***

5. The CITES non-compliance regime is largely based on provisions of the Convention dealing with reporting requirements and international measures as specified in articles VIII, XII and XIII, as well as various resolutions and decisions adopted by the Conference of the Parties over the years. At the sixth meeting of the Conference of the Parties a Standing Committee was established for the first time and reconstituted at the ninth meeting of the Conference of the Parties. The Committee was intended to oversee the work of the Convention during the inter-sessional period and to provide general policy and operational direction to the secretariat concerning the implementation of the Convention, to review non-compliance by Parties with CITES provisions, take appropriate decisions relating thereto and to recommend to the Conference of the Parties action that may be necessary to ensure compliance.

6. In cases of persistent non-compliance or failure to comply with the decisions of the Conference of the Parties regarding remedial measures, the Standing Committee can, in accordance with decision Conf. 10.18, advise Parties to impose bans on trade in CITES specimens on the offending Party. Such trade sanctions have been imposed on a number of Parties as a measure of last resort.

### **B. *Montreal Protocol on Substances that Deplete the Ozone Layer to the Vienna Convention on the Protection of the Ozone Layer (Montreal Protocol)***

7. The non-compliance procedures for the Montreal Protocol was adopted at the Fourth meeting of the Parties to the Protocol and amended at the tenth meeting. The Implementation Committee plays an important role in implementing the procedure. Each meeting of the Parties to the Protocol reviews the compliance of all Parties with the obligations under the Protocol on the basis of information reported by each Party.

8. The Meetings of the Parties take decisions on possible measures in response to specific cases of non-compliance with the aim to restoring compliance. Such possible measures include issuance of cautions of further measures in case the Party does not restore compliance. The indicative list of measures that might be taken in respect of non-compliance also includes suspension of specific rights and privileges under the Protocol.

### **C. *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention)***

9. According to the terms of reference of the Mechanism for Promoting Implementation and Compliance under the Basel Convention adopted by the Conference of the Parties at its sixth meeting, a Party that concludes that it is or will be unable to fully implement or comply with its obligations, despite its best efforts, can make a submission to the Committee established for administering the mechanism.

The Committee may provide the Party with difficulties in compliance, with advice, non-binding recommendations and information. This process is known as facilitation procedure. If, after undertaking such facilitation procedure and taking into account the cause, type, degree and frequency of compliance difficulties, as well as the capacity of the Party whose compliance is in question, the Committee considers it necessary to pursue further measures, it may recommend to the Conference of the Parties to consider further support or issuing a cautionary statement and providing advice regarding future compliance in order to help that Party to implement the provisions of the Basel Convention and to promote cooperation among all Parties.

***D. Procedures and mechanisms relating to compliance under the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto Protocol)***

10. According to Article 18 of the Kyoto Protocol, the Conference of the Parties to the Convention serving as the meeting of the Parties to the Protocol is required to approve, at its first session, appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of the Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree, and frequency of non-compliance. There has been a preparatory work in the past few years to fulfil this requirement and to establish a compliance committee which functions through a plenary, a bureau and two branches, namely facilitative branch and enforcement branch.

11. The procedures and mechanisms relating to compliance under the Kyoto Protocol have been adopted at the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol held in Montreal from 28 November to 9 December 2005. The procedures and mechanisms include sections on consequences applied by the Facilitative Branch (XIV), on the one hand, and consequences applied by the Enforcement Branch (XV), on the other.

12. The consequences that the Enforcement Branch is required to apply range from declaration of non-compliance to suspension of the eligibility to make transfers of emissions (article 17) until the Party is reinstated in accordance with the relevant sections and paragraphs of the procedures and mechanisms relating to compliance. In cases of non-compliance that may lead to consequences of declaration of non-compliance and development of a plan, the Enforcement Branch is required to take into account the cause, type, degree and frequency of the non-compliance of that Party (paragraph 1, section XV).

***E. Convention on Access to Information, Public Participation in decision-making and Access to Justice in environmental Matters (Aarhus Convention)***

13. The Parties to the Aarhus Convention adopted, at their first meeting, in October 2002, a decision on review of compliance (decision I/7), established a Compliance Committee and elected its members. The meeting of the Parties may decide upon appropriate measures to bring about full compliance with the Convention. In so doing, the Meeting of the Parties may consider any recommendations of the Committee, take into account the particular question before it, the cause, degree and frequency of the non-compliance. The measures that the Meeting of the Parties could decide upon include, issuing declarations of non-compliance; issuing cautions; suspending, in accordance with the applicable rules of international law concerning suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention; and take such other non-confrontational, non-judicial and consultative measures as may be appropriate.

***F. Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention)***

14. At its second meeting, held in Rome from 27 to 30 September 2005, the Conference of the Parties to the Rotterdam Convention adopted decision RC-2/3 on non-compliance. It decided to consider further the procedures and institutional mechanisms on non-compliance required under article 17 of the Convention for adoption at its third meeting. The draft text as contained in the annex to the decision provides for, among other things, a section on possible measures to address compliance issues. Such measures are intended to be considered by the Compliance Committee after the undertaking of the facilitation procedure set out in a preceding section of the draft.

15. The Committee would be required to take into account the cause, type, degree and frequency of compliance difficulties, including financial and technical capacities in proposing recommendations to the Conference of the Parties of the possible measures that could further be taken to address a Party's compliance problems. The possible measures identified in the draft and which, for the most part, are still under square brackets include: issuing a caution; suspending rights and privileges under the Convention; and recommending a non-compliant Party to take steps to remedy the non-compliant situation, such as re-import/re-export of the chemical or safe disposal at the expense of the non-compliant Party.

**III. ELEMENTS OF A DRAFT DECISION**

16. The Conference of the Parties serving as the meeting of the Parties to the Protocol may wish to consider the following elements in developing and adopting a decision under this item:

(a) Recall paragraph 2 (d), section VI of the procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety as annexed to decision BS-I/7;

(b) Consider the experience of other multilateral environmental agreements, as presented in section II of this document, in addressing cases of repeated non-compliance within their respective compliance procedures and mechanisms;

(c) Consider and adopt, as appropriate, measures that may be taken in cases of repeated non-compliance in the context of the Biosafety Protocol.

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