



United Nations  
Environment Programme

Food and Agriculture Organization  
of the United Nations

Distr.  
GENERAL

UNEP/FAO/PIC/INC.10/20  
21 August 2003

ORIGINAL: ENGLISH

INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR AN  
INTERNATIONAL LEGALLY BINDING INSTRUMENT FOR  
THE APPLICATION OF THE PRIOR INFORMED CONSENT  
PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND  
PESTICIDES IN INTERNATIONAL TRADE

Tenth session

Geneva, 17-21 November 2003

Item 5 (d) of the provisional agenda\*

**Preparations for the Conference of the Parties:  
Non-compliance**

**DRAFT OF PROCEDURES AND INSTITUTIONAL MECHANISMS FOR HANDLING CASES OF  
NON-COMPLIANCE, BY THE CHAIR OF THE WORKING GROUP ON COMPLIANCE**

**Note by the secretariat**

1. The open-ended working group on compliance established by the Intergovernmental Negotiating Committee at its ninth session considered compliance issues under article 17 of the Convention and, using the draft prepared by the Secretariat and reproduced in annex to document UNEP/FAO/PIC/INC.9/16, produced a working draft of procedures and institutional mechanisms for handling cases of non-compliance, as set forth in annex VII to the report of the Committee on the work of its ninth session (UNEP/FAO/PIC/INC.9/21). The working group expressed the wish to continue its consideration of the draft at the Committee's tenth session.
2. The Committee agreed to reconvene the working group on compliance at its tenth session, at an early stage in its proceedings. It was agreed that the Chair of the working group on compliance would prepare a Chair's draft, taking fully into account latest developments concerning the procedures and institutional mechanisms for handling cases of non-compliance, in order to facilitate discussions (*ibid.*, para. 121).
3. The Chair's draft of procedures and institutional mechanisms for handling cases of non-compliance is reproduced in annex to the present note.

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\* UNEP/FAO/PIC/INC.10/1.

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Annex

PROCEDURES AND INSTITUTIONAL MECHANISMS FOR  
HANDLING CASES OF NON-COMPLIANCE

Draft by the Chair of the working group on compliance

The following text is recommended to the Conference of the Parties for its consideration.

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Draft decision 1/..      Approval of procedures and institutional mechanisms for determining non-compliance with the provisions of the Convention and for treatment of Parties found to be in non-compliance

The Conference of the Parties,

Bearing in mind the provisions of Article 17 of the Convention,

Decides to approve the procedures and institutional mechanisms for determining non-compliance with the provisions of the Convention and for treatment of Parties found to be in non-compliance set for in the appendix to the present decision.

## Appendix

### Establishment of a Compliance Committee

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

### Members

2. The Committee shall consist of [XX] members. Members shall be nominated by Parties and elected by the Conference of the Parties. In electing members, due consideration shall be given to the principle of equitable geographical representation of [the regional groups of the United Nations] [the [interim] PIC regions].
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 present decision is adopted, the Conference of the Parties shall elect half the members for one term and half the 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 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.

### Officers

5. The Committee shall elect its own Chair. [Three] Vice-Chairs and a Rapporteur shall be elected by the Committee in accordance with rule 30 of the rules of procedure of the Conference of the Parties.

### Meetings

6. The Committee shall hold meetings as necessary [, normally twice a year,] and wherever possible in conjunction with meetings of the Conference of the Parties or other Convention bodies.
7. Subject to paragraph 8 below, the meetings of the Committee shall be [open][closed] to other Parties or the public unless the Committee and the Party whose compliance is in question agree otherwise.
8. Where [a Party is identified in a submission or itself makes a submission] [a submission is made with respect to the possible non-compliance of a Party], 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 decision of the Committee.

### Quorum

9. [Two-thirds of the] [X] members of the Committee shall constitute a quorum.

### Rules of procedure

10. Except where otherwise provided in this mechanism, the rules of procedure for meetings of the Conference of the Parties shall apply, mutatis mutandis, to the decision-making and proceedings of the meetings of the Committee.

Submissions to the Committee

11. Submissions may be made to the Committee by:

(a) A Party which believes that, despite its best endeavours, it may be unable to comply with certain obligations under the Convention. That Party may make a written submission to the secretariat seeking advice from the Committee. The 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 has concerns or is affected by a failure to comply with the Convention's obligations by another Party with which it is directly involved under 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;

(c) The secretariat, if, while acting pursuant to its functions under the Convention, it becomes aware of possible difficulties for any Party in complying with its obligations under the Convention [or when it receives submissions from individuals or organizations having reservations about a Party's compliance with its obligations under the Convention].

12. 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.

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

14. The secretariat shall, within two weeks of its receiving any submission made under subparagraphs 11 (b) or (c) 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. Without prejudice to paragraph 13 above, additional information provided in response by a Party whose compliance is in question should be forwarded to the secretariat within three months of the date of receipt of the submission by the 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.

16. The Committee may decide not to proceed with submissions which it considers to be:

(a) De minimis;

(b) Manifestly ill-founded.

Facilitation

17. The Committee shall consider any submission made to it in accordance with paragraph 11 above with a view to establishing the facts, including the facts of whether non-compliance exists or will be in existence, to determining the root causes of the matter of concern, and to assisting in its resolution. Towards 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 programme to attain compliance as soon as possible.

Additional measures

18. If, after undertaking the facilitation procedure set forth in paragraph 17 above and taking into account the cause, type, degree and frequency of compliance difficulties, 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 that it consider [appropriate measures, to be taken in accordance with international law, to attain compliance, including]:

- [(a) Further support under the Convention for the Party concerned, including prioritization of technical assistance and capacity-building and access to financial resources;]
- [(b) Issuing a cautionary statement and providing advice regarding future compliance in order to help Parties to implement the provisions of the Rotterdam Convention and to promote cooperation between all Parties;]
- [(c) Formulation of a compliance plan, including timelines and targets;]
- [(d) A formal statement of concern regarding possible future non-compliance;]
- [(e) A formal statement on the determination of non-compliance;]
- [(f) Issuing a caution;]
- [(g) Taking other measures to bring a Party back into compliance, including certain forms of sanctions, from the indicative list of such measures to be established by the Conference of the Parties;]
- [(h) Issuing a formal statement of concern regarding possible future non-compliance;]
- [(i) Issuing a determination of non-compliance;]
- [(j) Suspending rights and privileges under the Convention.]

Handling of information

19. The Committee may receive relevant information, through the secretariat, from the Parties and from all other sources.

20. 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

21. The Compliance Committee may monitor the consequences of action taken in pursuance of paragraphs 17 or 18 above.

General compliance issues

22. 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 submitted to it 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 of meetings of the Committee

23. The reports of the meetings of the Committee shall be made available to the public.

Reports to the Conference of the Parties

24. 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

25. Where the activities of the Committee with respect to particular issues overlap with the responsibilities of another Convention body, the Conference of the Parties may direct the Committee to work in conjunction with that body.

Other multilateral environmental agreements

26. [Where there is an overlap with obligations and responsibilities under other multilateral environmental agreements, the Conference of the Parties may request the Committee to communicate with [relevant][similar types of] bodies of those agreements with a view to pursuing possibilities for synergies and linkages, including through organizational and practical cooperation, and to report to the Conference of the Parties.]

Review of the compliance mechanism

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

Relationship with settlement of disputes

28. These procedures and mechanism shall be effected without prejudice to Article 20 of the Convention.

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