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**Food and Agriculture Organization  
of the United Nations**

**Rotterdam Convention on the Prior  
Informed Consent Procedure for Certain  
Hazardous Chemicals and Pesticides in  
International Trade**  
**Open-ended Ad Hoc Working Group on Non-compliance**  
Rome, 26–27 September 2005  
Item 3 of the provisional agenda \*

**Consideration of procedures and institutional mechanisms for determining  
non-compliance with the provisions of the Convention and for the treatment  
of Parties found to be in non-compliance**

## **Non-compliance: Procedures and institutional mechanisms for determining non-compliance with the provisions of the Convention and for the treatment of Parties found to be in non-compliance**

### **Note by the secretariat**

1. At its first meeting, the Conference of the Parties:
  - (a) Noted with appreciation the preparatory work already undertaken by the Intergovernmental Negotiating Committee on the elaboration of the procedures and mechanisms called for by article 17, and especially that reflected in the note by the secretariat on procedures and institutional mechanisms for determining non compliance with the provisions of the Convention and for the treatment of Parties found to be in non-compliance, prepared for the first meeting of the Conference (UNEP/FAO/RC/COP.1/20); and
  - (b) Decided to convene an open-ended ad hoc working group on article 17 immediately prior to its second meeting, with a view to preparing for and carrying forward deliberations on the issue.
2. The secretariat has the honour to present to the Working Group, in the annex to the present note, document UNEP/FAO/RC/COP.1/20.

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\* UNEP/FAO/RC/OEWG.1/1.

## Annex

UNITED  
NATIONS

RC

UNEP/FAO/RC/COP.1/20



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**Food and Agriculture Organization  
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**Rotterdam Convention on the Prior  
Informed Consent Procedure for Certain  
Hazardous Chemicals and Pesticides in  
International Trade  
Conference of the Parties**

First meeting

Geneva, 20–24 September 2004

Item 7 (c) of the provisional agenda \*

**Matters stipulated by the Convention for action  
by the Conference of the Parties: non-compliance**

## **Non-compliance: Procedures and institutional mechanisms for determining non-compliance with the provisions of the Convention and for the treatment of Parties found to be in non-compliance**

### **Note by the secretariat**

#### **Introduction**

1. In its article 17, the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention) states:

“The Conference of the Parties shall, as soon as practicable, develop and approve procedures and institutional mechanisms for determining non-compliance with the provisions of this Convention and for treatment of Parties found to be in non-compliance.”

2. At its sixth session, the Intergovernmental Negotiating Committee considered this matter and requested the secretariat to prepare documentation, for submission at its seventh session, on procedures and institutional mechanisms for determining non-compliance. At its seventh session, the Committee considered this subject on that basis, and requested the secretariat to develop a model for a procedure to handle cases of non-compliance and to submit the model for consideration at its eighth session.

3. At its eighth session, the Intergovernmental Negotiating Committee, assisted by the work of an open-ended legal working group, examined the model and undertook initial debate, following which it

\* UNEP/FAO/RC/COP.1/1.

decided to discuss the matter further and to reconvene the working group as a compliance working group at its ninth session. At its ninth session, the Committee, established the open-ended working group on compliance, which considered the subject and produced a working draft of procedures and institutional mechanisms for handling cases of non-compliance. 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.

4. At its tenth session, the Intergovernmental Negotiating Committee reconvened the open-ended working group on compliance, and requested that it review the draft prepared by its chair, as well as the draft decision and questionnaire presented in the secretariat's note. The working group carefully examined the chair's draft and proposed a revised text of the draft compliance mechanisms and procedures, which the chair of the group presented to the Committee. The Committee decided to forward the draft as set out in the annex to the draft decision contained in the present note to the Conference of the Parties for consideration at its first meeting.

### **Suggested action by the Conference of the Parties**

5. The Conference of the Parties may wish to consider the draft decision and its annex presented below for possible adoption at its first meeting.

#### **Non-compliance: approval of procedures and institutional mechanisms for determining non-compliance with the provisions of the Convention and for the treatment of Parties found to be in non-compliance**

*The Conference of the Parties,*

*Bearing in mind* the provisions of articles 17 and 18, paragraph 5 (a), of the Convention,

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

## Annex

### 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 of 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.

5. If a member of the Committee resigns or is otherwise unable to complete his or her term of office or to perform his or her functions, the Party who nominated that member shall nominate an alternate to serve for the remainder of the term.

#### *Officers*

6. 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*

7. The Committee shall hold meetings as necessary and wherever possible in conjunction with meetings of the Conference of the Parties or other Convention bodies.

8. Subject to paragraph 9 below, the meetings of the Committee shall be [open [to other Parties]] [closed [to the public] [to other Parties or the public] unless the Committee and the Party whose compliance is in question agree otherwise.

[The Parties to whom the meeting is open shall not have a right to participate in the meeting unless the Committee and the Party whose compliance is in question agree otherwise.]

9. Where 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 conclusion of the Committee.

**Alternative 1:***[Quorum*

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

*Rules of procedure*

11. 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.]

**Alternative 2 (combined paras. 10 and 11):**

[The Committee shall make every effort to reach agreement on all matters of substance by consensus. [Where this is not possible the report and recommendations shall reflect the views of all the Committee members.] If all efforts to reach consensus have been exhausted and no agreement has been reached, any decision shall, as a last resort be taken by a two-thirds majority of the members present and voting or by [six] [eight] members, whichever is greater.]

[Ten] [Eight] members of the Committee shall constitute a quorum.]

12. Submissions may be made in writing, through the secretariat where subparagraph[s] (a) [and (b)] appl[y][ies], by:
- (a) A Party which believes that, despite its best endeavours, it is, or will be, unable to comply with certain obligations under the Convention. Such a 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 [articles [4, 5, 10 [and][.] 11[and 12]] of] the Convention, it becomes aware of possible difficulties for any Party in complying with its obligations under [articles [4, 5, 10 [and][.] 11 [and 12]] of] the Convention [or when it receives submissions from individuals or organizations having reservations about a Party's compliance with its obligations under the Convention]].
13. The secretariat shall forward submissions made under subparagraph 12 (a) above, within two weeks of receiving such submissions, to the members of the Committee for consideration at the Committee's next meeting.
14. The secretariat shall, within two weeks of its receiving any submission made under subparagraph 12 (b) or making a submission under subparagraph 12 (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. Parties whose compliance is in question may present responses or comments at every step of the proceedings described in the present decision.
16. Without prejudice to paragraph 15 above, additional information, provided by a Party whose compliance is in question in response to a submission, should be forwarded to the secretariat within three months of the date of receipt of the submission by that 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 12 (b) above, the information shall be forwarded by the secretariat also to the Party that made the submission.]
17. The Committee may decide not to proceed with submissions which it considers to be:
- (a) De minimis;

- (b) Manifestly ill-founded.

*Facilitation*

18. The Committee shall consider any submission made to it in accordance with paragraph 12 above with a view to establishing the facts and the root causes of the matter of concern, and to assisting in its resolution. To 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 compliance plan, including timelines and targets.

*Additional measures*

19. If, after undertaking the facilitation procedure set forth in paragraph 18 above and taking into account the cause, type, degree and frequency of compliance difficulties, [as well as the capacities of the Parties whose compliance is in question] 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 facilitation, as appropriate, of access to financial resources for technical assistance and capacity-building;
- (b) Providing advice regarding future compliance in order to help Parties to implement the provisions of the Convention and to promote cooperation between all Parties;
- (c) Statement of concern regarding possible future non-compliance;
- [(d) Statement on the determination of non-compliance;]
- [(e) Issuing a caution;]
- [(f) Suspending rights and privileges under the Convention;]
- [(g) Arranging for the re-export of chemicals imported in violation of the Convention.]

[20. It is understood that, as far as developing countries and countries with economies in transition are concerned, additional measures referred to in paragraph 19 should not be undertaken towards these countries, if the reasons for non-compliance are lack of technical assistance or inadequate capacity to fulfil their obligations.]

*Handling of information*

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

[21 alt: As regards paragraph 12 submissions, the Committee may only receive information:

- (a) Submitted by the secretariat from Parties pursuant to paragraphs 12 and 16;
- (b) Obtained by the secretariat from Parties while acting pursuant to its functions under the Convention; and
- (c) With the consent of the Party concerned, as requested by the Committee from any source.]

[22 bis: For the purposes of examining systemic issues of general compliance under paragraph 25, the Committee may:

- (a) Request information from all Parties;
- (b) Request relevant information from any reliable sources and outside experts; and
- (c) Consult with the secretariat and draw upon its experience and knowledge base.]

23. 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*

24. The Compliance Committee should monitor the consequences of action taken in pursuance of paragraphs 18 or 19 above.

*General compliance issues*

25. 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 obtained by the secretariat, while acting pursuant to its functions under the convention, from Parties and submitted to the Committee 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 to the Conference of the Parties*

26. The Committee shall submit a report [to each ordinary meeting of][, as appropriate, to] 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*

27. Where the activities of the Committee with respect to particular issues overlap with the responsibilities of another Rotterdam Convention body, the Conference of the Parties may direct the Committee to consult with that body.

*Other multilateral environmental agreements*

[28. 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 and exchange experience with similar types of committees of those other agreements and to report to the Conference of the Parties.]

*Review of the compliance mechanism*

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

*Relationship with settlement of disputes*

30. These procedures and mechanisms shall be without prejudice to article 20 of the Convention.

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