

PROCEDURES AND MECHANISMS ON IMPLEMENTATION AND COMPLIANCE WITH THE BASEL AND ROTTERDAM CONVENTIONS



BASEL CONVENTION



ROTTERDAM CONVENTION



Food and Agriculture
Organization of the
United Nations



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FOREWORD

This publication is intended to promote understanding of the procedures and mechanisms for promoting implementation and compliance with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal ("Basel Convention") and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ("Rotterdam Convention"). It presents a snapshot of the terms of reference of both mechanisms, as well as information on the achievements over the years of the Basel Convention compliance mechanism. The terms of reference of both mechanisms are set out in the annexes to this publication.

I. THE MECHANISM FOR PROMOTING IMPLEMENTATION AND COMPLIANCE WITH THE BASEL CONVENTION

1. INTRODUCTION

- The terms of reference of the Mechanism for Promoting Implementation and Compliance with the Basel Convention were adopted by the sixth meeting of the Conference of the Parties in **2002** (Decision VI/12). Paragraph 9(c) of the terms of reference, which defines the conditions under which the Secretariat may make a submission to the Committee, was subsequently amended by the fourteenth meeting of the Conference of the Parties (Decision BC-14/15). For ease of reference, the consolidated amended terms of reference are set out in Annex II of this leaflet.
 - The **objective** of the mechanism is to assist Parties to comply with their obligations under the Convention and to facilitate, promote, monitor and aim to secure implementation of and compliance with the obligations under the Basel Convention (Paragraph 1).
 - The mechanism is non-confrontational, transparent, cost-effective and preventive in nature, simple, flexible, non-binding and **oriented in the direction of helping Parties implement the Convention**. The mechanism is to pay particular attention to the special needs of developing countries and countries with economies in transition, and is intended to promote cooperation between all Parties (Paragraph 2).
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2. WHO ADMINISTERS THE COMPLIANCE MECHANISM?

- The Compliance Committee is the body entrusted with the administration of the mechanism. It consists of **15 members**, nominated by the Parties to the Convention based on equitable geographical representation of the five regional groups of the United Nations (Africa States, Asia and Pacific States, Central and Eastern Europe States, Latin America and Caribbean States, and Western Europe and Others group). Committee members are elected by the Conference of the Parties which is the governing body of the Convention (Paragraph 3).
- Committee members have expertise in areas including scientific, technical, socio-economic and/or legal fields. **They serve objectively and in the best interest of the Convention.** The officers – a Chair, three Vice-chairs and a Rapporteur – are elected by the Committee (Paragraphs 5 and 7)
- The Committee is to meet at least once between the meetings of the Conference of the Parties. It works on the basis of **consensus** for all matters of substance. In case agreement cannot be reached by consensus, the report of a meeting and the recommendations of the Committee reflect the views of all Committee members. The Committee can also, as a last resort, adopt a decision by a two-thirds majority of the members present and voting or by eight members, whichever is greater (Paragraphs 8 and 25).

3. WHAT DOES THE COMMITTEE DO?

- The Committee has a dual mandate to:
 - a) Deal with specific submissions relating to the compliance of an **individual** Party (Paragraph 9);
 - b) Review **general** issues of implementation and compliance (Paragraph 21).
- Depending on whether the Committee acts based on its specific submissions or general review mandate determines how it initiates its work, the procedures it follows and the possible outcomes of its work. See section 4 below for information on the former, and section 5 for information on the latter.

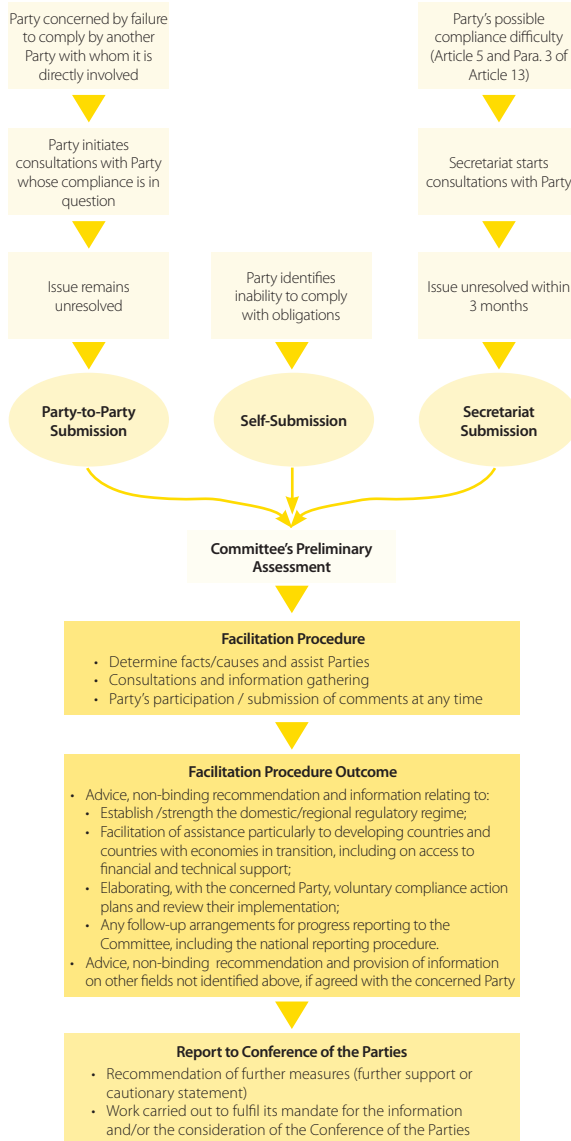
4. SPECIFIC SUBMISSIONS: HOW CAN THE COMMITTEE ASSIST INDIVIDUAL PARTIES?

- The Committee may assist individual Parties in resolving implementation or compliance difficulties upon receipt of a valid submission (Paragraph 9).

A. Who can make a submission to the Committee?

- Specific submissions can be made to the Committee by:
 - a) A Party in connection with its own implementation and compliance difficulties – known as a **Party self-submission** (Paragraph 9(a));
 - b) A Party in connection with the implementation and compliance by another Party with whom it is directly involved under the Convention - known as a **Party-to-Party submission**; Before making its submission, the Party must inform the other Party of its intention and both Parties should try to resolve the matter through consultations (Paragraph 9(b));
 - c) The Secretariat of the Basel Convention, in connection with possible difficulties by a Party with specific obligations under the Convention to transmit information to the Secretariat (information on designated country contacts pursuant to Article 5 and national reports pursuant to Paragraph 3 of Article 13), provided that the matter has not been resolved within three months by consultation by the Secretariat with the Party concerned – known as a **Secretariat submission** (Paragraph 9(c)).

- The flowchart below provides an overview on the specific submissions procedures:



B. Content and form of the submission

- Any submission, except a Secretariat submission, shall be **addressed to the Secretariat** for onward transmission to the Committee (Paragraph 10).
- Any submission **must set out**:
 - a) The matter of concern, and (Paragraph 10 (a))
 - b) The relevant provisions under the Basel Convention (Paragraph 10 (b)).
- In case of a Party-to-Party submission, the submission must also set out information substantiating the submission (Paragraph 10 (c)).
- It is important to bear in mind that submissions need to be made to the Committee enough in advance of a meeting to allow time for sufficient time for processing of the related documents, this could be about six weeks prior to the opening of the meeting for a self-submission.
- In case of a Party-to-Party submission or a Secretariat submission, the Secretariat is to send a copy of the submission to the Party whose compliance is in question within two weeks of its reception. The Party whose compliance is in question may present responses and/or comments at every step of the proceedings. It is recommended that any Party-to-Party submission or Secretariat submission be made at least four months prior to the meeting of the Committee so as to enable the Party concerned by the submission to consider and prepare a response and/or comments in advance of the meeting. (Paragraphs 12 and 13).

C. Does the Committee proceed with all submissions received?

- No, the Committee may decide not to proceed with a submission which it considers is:
 - a) *De minimis* (Paragraph 18(a)); or,
 - b) Manifestly ill-founded (Paragraph 18(b)).
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D. Can Parties participate in the proceedings?

- Where a Party is identified in a submission or itself makes a submission, it shall be invited to participate in the consideration of the submission by the Committee (Paragraph 15).
- Such a Party however shall not take part in the elaboration and adoption of the conclusions or recommendations of the Committee. The conclusions and recommendations shall be shared with the Party concerned for consideration and an opportunity to comment (Paragraph 15).
- Other than that, the general rule is that sessions of the meeting dealing with specific submissions are **not open** to other Parties or to the public unless the Committee and the Party whose compliance is in question agree otherwise (Paragraph 16).

E. How does the Committee proceed with submissions?

- The Committee (Paragraph 19):
 - a) Considers a submission with a view to **determining the facts and root causes of the matter of concern**, and
 - b) Assists **in its resolution**.
 - In carrying out its functions, the Committee has the following **information** available to it:
 - a) The submission;
 - b) Any additional information by the Party having made the submission or by the Secretariat if it is the one that made the submission;
 - c) Information (responses and/or comments) submitted by the Party whose compliance is in question.
 - As mentioned above, a Party identified in a submission or that itself made a submission shall be invited to participate in the consideration of the submission by the Committee (Paragraph 15).
 - In carrying out its functions, the Committee may also inter alia (Paragraph 22):
 - a) Request further information from all Parties, through the Secretariat, on general issues of compliance and implementation under its consideration;
 - b) Consult with other bodies of the Convention;
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- c) Request further information from any sources and draw upon outside expertise, as it considers necessary and appropriate, either with the consent of the Party concerned or as directed by the Conference of the Parties;
 - d) Undertake, with the agreement of a Party(-ies), information gathering in its or their territory for the purpose of fulfilling the functions of the Committee;
 - e) Consult with the Secretariat and draw upon its experience and knowledge base compiled under article 16 of the Convention and request through the Secretariat information, where appropriate in the form of a report, on matters under the Committee's consideration; and
 - f) Review the national reports of Parties provided under article 13 of the Convention.
 - Assistance in the resolution of the matter of concern is first undertaken by the Committee pursuant to a **facilitation procedure**. Under that procedure, the Committee may provide a Party, after proper consultations, with (Paragraph 19):
 - a) Advice, non-binding recommendations and information relating to, among other things:
 - Establishment/strengthening of domestic/regional regulatory regime;
 - Facilitation of assistance of financial and technical nature, including technology transfer and capacity-building, in particular for developing countries and countries with economies in transition;
 - Elaboration and implementation review, in cooperation with the concerned Parties, of voluntary compliance action plans with benchmarks, objectives, indicators and implementation timeline;
 - Any follow-up arrangements for progress reporting to the Committee, including through the national reporting procedure under Basel Convention's Article 13.
 - b) Other forms of advice, non-binding recommendations and information not listed above, as long as they are provided in agreement with the Party concerned.
 - At its ninth meeting, the Conference of the Parties decided to enlarge the scope of the Basel Convention Voluntary Trust Fund to establish an **implementation fund** to assist any Party that is a developing country or country with an economy in transition and is the subject of a submission (Decision BC-IX/2). Through successive decisions, the Conference of the Parties has clarified that the resources are intended to fund activities listed in the compliance action
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plans presented by Parties in relation to specific submissions and approved by the Committee; and that access to the resources must be based on a recommendation by the Committee to the Executive Secretary of the Basel Convention.

- If, after undertaking the 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 consider it necessary to pursue **further measures** to address a Party's compliance difficulties, it may recommend to the Conference of the Parties that it consider, within its mandate:
 - a) Further support under the Basel Convention for the concerned Party, including prioritization of technical assistance, capacity-building and access to financial resources (Paragraph 20 (a)); or,
 - b) Issuing a cautionary statement and providing advice regarding future compliance in order to help Parties to implement the provisions of the Basel Convention and to promote cooperation between all Parties (Paragraph 20 (b)).

F. Where can I find information on the activities of the Committee under its specific submissions mandate?

As at 15 August 2019, the Committee has assisted 13 Parties to resolve their implementation and compliance difficulties, while 19 submissions are still under consideration. Information on the work of the Committee under its specific submissions mandate can be found on the website of the Basel Convention at:

<http://www.basel.int/Implementation/LegalMatters/Compliance/SpecificSubmissionsActivities/Currentsubmissions/tabid/2310/Default.aspx>.

5. HOW DOES THE COMMITTEE REVIEW GENERAL ISSUES OF IMPLEMENTATION AND COMPLIANCE?

A. How is the work of the Committee initiated?

The Conference of the Parties decides which general issues of compliance and implementation the Committee is to review (Paragraph 21).

B. What kind of issues does the Committee review?

The terms of reference provide that general issues of implementation and compliance may relate, among others, to (Paragraph 21):

- a) Ensuring the environmentally sound management and disposal of hazardous and other wastes;
 - b) Training customs and other personnel;
 - c) Accessing technical and financial support, in particular for developing countries, including technology transfer and capacity-building;
 - d) Establishing and developing means of detecting and eradicating illegal traffic, including investigating, sampling and testing;
 - e) Monitoring, assessing and facilitating reporting obligations under Article 13 of the Basel Convention; and
 - f) The implementation of, and compliance with, specified obligations under the Convention.
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C. How does the Committee proceed with the review of general issues of implementation and compliance?

- The Committee proceeds with the review of general issues of implementation and compliance on the basis of the mandate given by the Conference of the Parties (Paragraph 21). Over the years, the practice has been developed whereby the Committee proposes a draft programme of work to the Conference of the Parties for its consideration and possible adoption. Once adopted, the Committee will, subject to the availability of resources, undertake the activities entrusted to it.
- The flowchart below provides an overview of the procedures pertaining to the review of general issues of implementation and compliance.



- In carrying out its functions, the Committee may inter alia (Paragraph 22):
 - a) Request further information from all Parties, through the Secretariat, on general issues of compliance and implementation under its consideration;
 - b) Consult with other bodies of the Convention;
 - c) Request further information from any sources and draw upon outside expertise, as it considers necessary and appropriate, either with the consent of the Party concerned or as directed by the Conference of the Parties;
 - d) Undertake, with the agreement of a Party(ies), information gathering in its or their territory for the purpose of fulfilling the functions of the Committee;
 - e) Consult with the Secretariat and draw upon its experience and knowledge base compiled under article 16 of the Convention and request through the Secretariat information, where appropriate in the form of a report, on matters under the Committee's consideration; and
 - f) Review the national reports of Parties provided under article 13 of the Convention.

- Sessions dealing with the review of general issues of implementation and compliance are open to the Parties and the public, unless otherwise decided by the Committee.

D. Where can I find information on the activities of the Committee under its general review mandate?

- Over the years, the Committee has reviewed implementation and compliance difficulties with Parties' obligations to:
 - a)** Designate a focal point as well as one or more competent authorities (Article 5);
 - b)** Transmit annual national reports (Paragraph 3 of Article 13);
 - c)** Develop adequate legislation implementing the Basel Convention (Paragraph 4 of Article 4 and Paragraph 5 of Article 9);
 - d)** Prevent and combat illegal traffic (Article 9);
 - e)** Control transboundary movements of hazardous wastes and other wastes (Article 6).
 - The activities undertaken include:
 - a)** Reviewing Parties' difficulties in meeting specific obligations;
 - b)** Identifying how to address these difficulties;
 - c)** Reviewing current guidance documents or developing new guidance documents; and
 - d)** Making recommendations to the COP on other steps that could be taken to improve the implementation and compliance with the Convention.
 - Guidance documents developed by the Committee and adopted by the Conference of the Parties include:
 - a)** Guide for the development of national legal frameworks to implement the Basel Convention (2019);
 - b)** Benchmark report aimed at facilitating reporting under Paragraph 3 of Article 13 of the Basel Convention – examples reflecting Parties' good practices (2019);
 - c)** Revised guidance on improving national reporting (2019);
 - d)** Guidance on the implementation of the Basel Convention provisions dealing with illegal traffic (Paragraphs 2, 3 and 4 of Article 9) (2017);
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- e) Methodological Guide for the development of inventories of hazardous wastes and other wastes under the Basel Convention (2015);
- f) Guide to the Control System (2015);
- g) Guide for the Implementation of the Basel Convention (2015).
- The work programmes of the Committee adopted by the Conference of the Parties over the years as well as information on past activities of the Committee aimed at reviewing general issues of implementation and compliance can be found on the website of the Convention at:

<http://www.basel.int/Implementation/LegalMatters/Compliance/WorkProgramme/20202021/tabid/8023/Default.aspx>

6. WHO DOES THE COMMITTEE REPORT TO?

- The Committee reports to each ordinary meeting of the Conference of the Parties on the work it has carried out to fulfil its functions relating to specific submissions for the information and/or the consideration of the Conference of the Parties.
 - The Committee also reports to each ordinary meeting of the Conference of the Parties on any conclusions and/or recommendations it has developed and on its suggestions for any future work that may be required on general issues of compliance and implementation.
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II. PROCEDURES AND MECHANISMS ON COMPLIANCE WITH THE ROTTERDAM CONVENTION

1. INTRODUCTION

- The Procedures and Mechanisms on Compliance with the Rotterdam Convention were adopted by the ninth meeting of the Conference of the Parties in **2019** (Decision RC 9/7), as a new Annex VII to the Rotterdam Convention. For ease of reference, the text of that Annex is set out in Annex III of the present leaflet.
- Article 17 of the Rotterdam Convention provides the legal basis for the development and adoption of procedures and institutional mechanism for assessment of non-compliance with the provisions of the Rotterdam Convention and for treatment of Parties with compliance difficulties.

2. WHO ADMINISTERS THE COMPLIANCE MECHANISM?

- The Compliance Committee is the body entrusted with the administration of the mechanism. It consists of **15 members**, nominated by the Parties to the Convention based on equitable geographical representation of the five regional groups of the United Nations (Africa States, Asia and Pacific States, Central and Eastern Europe States, Latin America and Caribbean States and Western Europe and Others group). The Committee members are elected by the Conference of the Parties (Paragraph 2).
 - The Committee members have expertise and specific qualifications in the subject matter of the Rotterdam Convention. They serve objectively and in the best interest of the Convention. All the members shall avoid direct or indirect conflict of interests - whenever such situations occur, the member shall bring the issue to the Committee and not participate in the elaboration and adoption of a recommendation of the Committee. The Committee's officers – a Chair, a Vice-Chair and a Rapporteur – are elected by its members (Paragraphs 3, 6 and 11)
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- As a general rule, Committee's meetings are open to Parties and the public, unless decided otherwise by the Committee (Paragraph 8).
- The Committee meets as necessary and wherever possible in conjunction with meetings of the Conference of the Parties or other Convention bodies. It works on the basis of consensus for all matters of substance. If it cannot reach an agreement by consensus, the Committee can also, as a last resort, adopt a decision by a four-fifths majority of the members present and voting or by eight members, whichever is greater. In this case, the meeting report reflects the views of all members (Paragraphs 7 and 10).

3. WHAT DOES THE COMMITTEE DO?

- Like the Basel Convention Implementation and Compliance Committee, the Rotterdam Compliance Committee has a dual mandate to:
 - a) Deal with specific submissions relating to the compliance of an **individual** Party;
 - b) Review **systemic issues of general compliance**.
 - Depending on whether the Committee acts based on its specific submissions or general review mandate determines how it initiates its work, the procedures it follows and the possible outcomes of its work. See section 4 below for information on the former, and section 5 for information on the latter.
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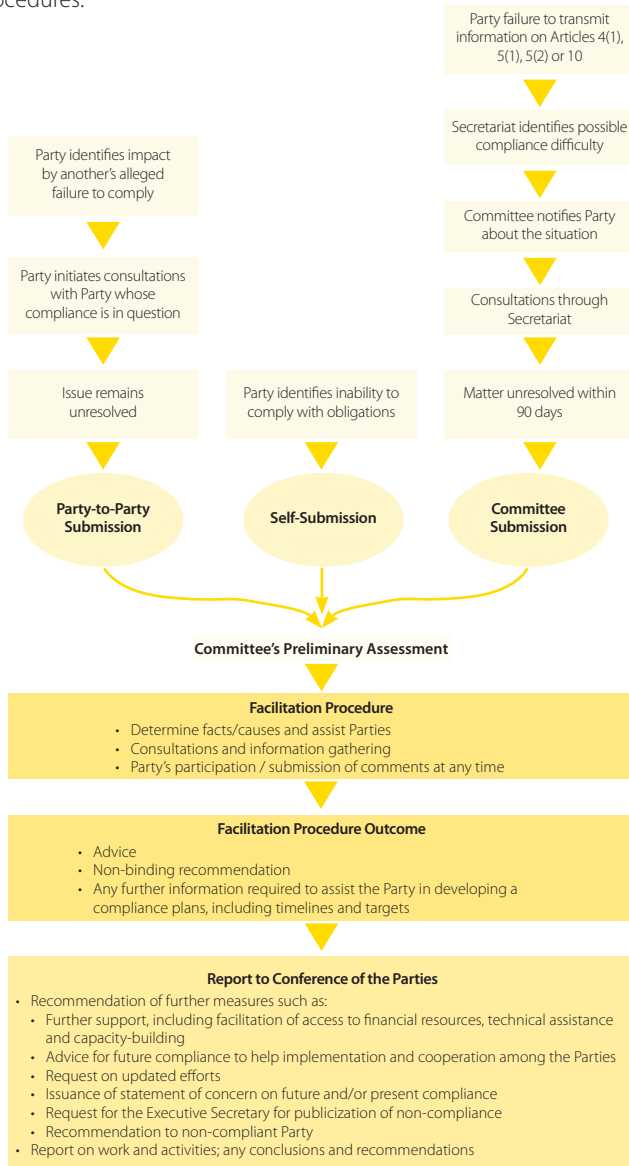
4. HOW MAY THE COMMITTEE ASSIST INDIVIDUAL PARTIES?

The Committee may assist individual Parties in resolving compliance difficulties upon receipt of a valid submission (Paragraphs 12 and 13).

A. Who can make a submission to the Committee?

- Specific submissions can be initiated by:
 - a) A Party that believes it is or will be unable to fully implement or comply with certain obligations under the Rotterdam Convention – known as a **Party self-submission** (Paragraph 12(a));
 - b) A Party that is directly affected or likely to be directly affected by another Party's alleged failure to comply with its obligations under the Rotterdam Convention – known as a **Party-to-Party submission**. Before making its submission, the Party must undertake consultations with the other Party (Paragraph 12(b)).
- The Committee may also assess possible difficulties by a Party with specific obligations to transmit certain information to the Secretariat (information on designated national authorities pursuant Article 4(1), final regulatory action notifications pursuant Articles 5 (1) and (2), and import responses pursuant Article 10), provided that the matter has not been resolved within 90 days by consultation through the Secretariat with the Party concerned – known as **Committee submission** (Paragraph 13).

- The flowchart below provides an overview on the specific submissions procedures:



B. Content and form of the submission

- Any submission, except a Committee submission under Paragraph 13, is **addressed to the Secretariat** for onward transmission to the Committee (Paragraphs 12, 14 and 15).
 - Both the Party self-submission and the Party-to-Party Submission must be **made in writing and set out** (Paragraph 12):
 - a) The details as to which specific obligations are concerned; and
 - b) Information substantiating the submission.
 - In case of a Party self-submission, the submission:
 - a) Must also include an **assessment of the reason** why it is unable to meet its obligations;
 - b) May include **suggestions for solutions** which the Party considers may be most appropriate to its particular needs (Paragraph 12).
 - In case of a Party-to-Party submission, the submission must also **set out how the Party is affected or likely to be affected** (Paragraph 12).
 - It is important to bear in mind that submissions need to be made to the Committee enough in advance of a meeting to allow sufficient time for processing of the related documents, this could be about six weeks prior to the opening of the meeting for a self-submission and four months for a Party-to-Party submission or Committee submission.
 - **Within two weeks** of receiving a submission, the Secretariat forwards:
 - a) A self-submission: to the members of the Committee for consideration at the Committee's next meeting;
 - b) A Party-to-Party submission or Committee submission: to the Party whose compliance is in question.
 - The Party whose compliance is in question may present responses and/or comments at every step of the proceedings.
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C. Does the Committee proceed with all submissions received?

No, the Committee may decide not to proceed with a submission which it considers to be:

- a) *De minimis* (Paragraph 18(a)); or,
- b) Manifestly ill-founded (Paragraph 18(b)).

D. Can Parties participate in the proceedings?

- The Party whose compliance is in question will be invited to participate in the consideration of the submission by the Committee. However, it cannot take part in the elaboration and adoption of the Committee's conclusions or recommendations (Paragraph 9).
- Parties and/or any person involved in the deliberations of the Committee shall protect the confidentiality of information received in confidence (Paragraph 23).
- Other than that, whenever dealing with individual submissions, the Committee's meetings shall be **open to Parties** and **closed to public**, unless otherwise agreed by the Party whose compliance is in question (Paragraph 8).
- Although the meeting is open, Parties and observers do not have a right to **participate** in the meeting unless the Committee and the Party whose compliance is in question agree otherwise (Paragraph 8).

E. How does the Committee proceed with specific submissions?

- The Committee:
 - a) Receives and considers a submission with a view to establishing the **facts and root causes** of the matter of concern; and,
 - b) **Assists Parties** in its resolution, taking into account technical assistance available under the Convention (Paragraph 19).
-

- In carrying out its functions, the Committee will have available to it:
 - a) The submission;
 - b) Any additional information provided during the preliminary assessment phase;
 - c) Responses and/or comments submitted by the Party whose compliance is in question.
 - The Committee may receive relevant information, through the Secretariat, from:
 - a) Parties;
 - b) Relevant sources, as it considers necessary and appropriate, with the prior consent of the Party concerned or as directed by the Conference of the Parties;
 - c) The Convention clearing-house mechanism and relevant intergovernmental organizations, including any comments from the Party concerned which needs to be provided with such information. (Paragraph 21 (1) and (2))
 - In addition, where relevant, the Committee may solicit specific information, upon request by the Conference of the Parties or at its own initiative, from compliance committees dealing with hazardous substances and wastes under the auspices of relevant multilateral environmental agreements and report on these activities to the Conference of the Parties (Paragraph 28).
 - Assistance in the resolution of the matter of concern is first undertaken by the Committee pursuant to a **facilitation procedure**. Under that procedure, the Committee may provide a Party, after proper consultations, with (Paragraph 19):
 - a) Advice;
 - b) Non-Binding Recommendations;
 - c) Any further information required to assist the Party in developing a compliance plan, including timelines and targets.
 - If, after undertaking the facilitation procedure, and taking into account the cause, type, degree and frequency of compliance difficulties, including financial and technical capacities of the Parties whose compliance is in question the Committee considers it necessary to pursue further measures to address a Party's compliance difficulties, it may recommend to the Conference of the Parties that it consider, within its mandate and in accordance with international law to achieve compliance (Paragraph 20):
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- a) Further support under the Rotterdam Convention for the concerned Party, including facilitation, as appropriate, of access to financial resources, 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 among all Parties;
 - c) Requesting the Party concerned to provide an update on its efforts;
 - d) Issuing a statement of concern regarding possible future non-compliance;
 - e) Issuing a statement of concern regarding current non-compliance;
 - f) Requesting the Executive Secretary to make public cases of non-compliance;
 - g) Recommending that a non-compliance situation be addressed by the non-compliant Party with the aim of resolving the situation.
- The Committee also **monitors the consequences of action** taken under its specific submissions mandate (Paragraph 24).

5. HOW DOES THE COMMITTEE REVIEW GENERAL COMPLIANCE ISSUES?

A. How is the work of the Committee initiated?

The Committee's work under its general review mandate can be initiated in two ways (Paragraph 25):

- a) On **request from the Conference of the Parties**; or
- b) The **Committee decides**, based on information from Parties obtained by the Secretariat while carrying out its functions and submitted to the Committee, **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.

B What kind of issues does the Committee review?

The Committee may examine **systemic issues of general compliance of interest to all Parties**. (Paragraph 25).

C How does the Committee proceed with the review of general compliance issues?

- As a general rule, Committee's meetings to review general compliance issues shall be open to Parties and the public, unless decided otherwise by the Committee (Paragraph 8).
- The flowchart below provides an overview of how the Committee proceeds with the review of general compliance issues under the Rotterdam Convention:



- The Committee may receive relevant information, through the Secretariat, from:
 - a) Parties;
 - b) Relevant sources, as it considers necessary and appropriate, with the prior consent of the Party concerned or as directed by the Conference of the Parties;
 - c) The Convention clearing-house mechanism and relevant intergovernmental organizations, including any comments from the Party concerned which also needs to be provided with such information. (Paragraph 21 (1) and (2))
- In examining systemic issues of general compliance, the Committee may, amongst other things (Paragraph 22):
 - a) Request information from all Parties;

- b)** In accordance with relevant guidance by the Conference of the Parties, request relevant information from any reliable sources and outside experts;
 - c)** Consult with the Secretariat and draw upon its experience and knowledge.
- Here too, where relevant, the Committee might also solicit specific information, upon request by the Conference of the Parties or directly, from compliance committees dealing with hazardous substances and wastes under other relevant multilateral environmental agreements and report these activities to the Conference of the Parties (Paragraph 28).

6. WHO DOES THE COMMITTEE REPORT TO?

The Committee shall submit a **report to each ordinary meeting of the Conference of the Parties** reflecting:

- a)** The work undertaken by the Committee;
 - b)** The conclusions or recommendations of the Committee;
 - c)** The future programme of work of the Committee for consideration and approval of the Conference of the Parties (Paragraph 26).
-

ANNEX I: CORRELATION TABLE OF THE MECHANISMS' PROVISIONS

Reference	Basel Mechanism	Rotterdam Mechanism
Mechanism Objectives	Paragraph 1	Article 17 of the Rotterdam Convention
Nature of Mechanism	Paragraph 2	-
Committee Members – Elections	Paragraphs 3, 4 and 6	Paragraphs 1, 2, 4 and 5
Committee Members – Officers	Paragraph 7	Paragraph 6
Committee Members – Expertise	Paragraph 5	Paragraph 3
Committee Members – Conflict of Interest	Paragraph 5	Paragraph 11
Committee Members – Term of office	Paragraph 6	Paragraph 4
Meetings – Frequency	Paragraph 8	Paragraph 7
Meetings – Access	Paragraph 16	Paragraph 8
Meetings – Decision-making	Paragraph 25	Paragraph 10
Specific Submissions – Self-submission	Paragraph 9(a)	Paragraph 12(a)
Specific Submissions – Party-to-Party submission	Paragraph 9(b)	Paragraph 12(b)
Specific Submissions – Secretariat / Committee submission	Paragraph 9(c)	Paragraph 13
Specific Submissions – Timeframes	Paragraphs 9(c), 11, 13 and 14	Paragraph 13, 14, 15 and 17

Reference	Basel Mechanism	Rotterdam Mechanism
Specific Submissions – Formal requirements / procedural aspects	Paragraphs 10, 12 and 15	Paragraphs 9, 12(a), 12(b) and 16
Specific Submissions – Information	Paragraph 22	Paragraphs 21 and 28
Specific Submissions – Preliminary Assessment	Paragraph 18	Paragraph 18
Specific Submissions - Facilitation	Paragraph 19	Paragraph 19
Specific Submissions - Recommendation of further measures to the Conference of the Parties	Paragraph 20	Paragraph 20
Review of General Compliance Issues - Mandate	Paragraph 21	Paragraph 25
Review of General Compliance Issues - Information	Paragraph 22	Paragraphs 21, 22 and 28
Reports to the Conference of the Parties	Paragraphs 23 and 24	Paragraph 26
Monitoring	-	Paragraph 24
Confidentiality	Paragraph 26	Paragraph 23
Other Subsidiary Bodies	Paragraph 2 <i>in fine</i>	Paragraph 27
Review of the Mechanism	-	Paragraph 29
Relationship with Dispute Settlement	Paragraph 27	Paragraph 30

ANNEX II: TERMS OF REFERENCE OF THE MECHANISM FOR PROMOTING IMPLEMENTATION AND COMPLIANCE WITH THE BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

OBJECTIVES

1. The objective of the mechanism is to assist Parties to comply with their obligations under the Convention and to facilitate, promote, monitor and aim to secure the implementation of and compliance with the obligations under the Convention.

NATURE OF THE MECHANISM

2. The mechanism shall be non-confrontational, transparent, cost-effective and preventive in nature, simple, flexible, non-binding and oriented in the direction of helping parties to implement the provisions of the Basel Convention. It will pay particular attention to the special needs of developing countries and countries with economies in transition, and is intended to promote cooperation between all Parties. The mechanism should complement work performed by other Convention bodies and by the Basel Convention Regional Centres.

COMPOSITION AND TENURE

3. A Committee for administrating this mechanism ("the Committee") is hereby established. It shall consist of 15 Members nominated by the Parties, serving in accordance with paragraph 5, and based on equitable geographical representation of the five regional groups of the United Nations, elected by the Conference of the Parties.

4. 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 mandate.

5. Members of the Committee will serve objectively and in the best interest of the Convention. They shall have expertise relating to the subject matter of the Convention in areas including scientific, technical, socio-economic and/or legal fields.
6. At the meeting at which the decision establishing the mechanism is adopted, the Conference of the Parties shall elect five members, one from each region, for one term, and ten members, two from each region, 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 purposes of the present terms of reference “term” means 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 Parties.
7. The Committee shall elect its officers – a Chair, three Vice-chairs and a Rapporteur – based on equitable geographical representation of the five regional groups of the United Nations.
8. The Committee shall meet at least once between each regular meeting of the Conference of the Parties, and in conjunction with meetings of other Convention bodies. The secretariat shall arrange for and service the meetings of the Committee.

PROCEDURES FOR SPECIFIC SUBMISSIONS

9. Submissions may be made to the Committee by:
 - a) A Party that concludes that, despite its best efforts, it is or will be unable to fully implement or comply with its obligations under the Convention;
 - b) A Party that has concerns or is affected by a failure to comply with and/or implement the Convention's obligations by another Party with whom it is directly involved under the Convention. A Party intending to make a submission under this subparagraph shall inform the Party whose compliance is in question, and both Parties should then try to resolve the matter through consultations;
 - c) The Secretariat, if, while acting pursuant to its functions under articles 13 and 16, it becomes aware of possible difficulties of any Party in complying with its obligations under Article 5 and Paragraph 3 of Article 13 of the Convention, provided that the matter has not been resolved within three months by consultation with the Party concerned.

10. Any submission, except one made under Paragraph 9 (c), shall be addressed in writing to the secretariat, and shall set out:

- a)** The matter of concern;
- b)** The relevant provisions of the Convention; and
- c)** Where Paragraph 9(b) applies, information substantiating the submission.

11. Where a submission is made under Paragraph 9 (a), the secretariat shall forward the submission, within two weeks of its receiving the submission, to the Committee for consideration at its next meeting.

12. The Party whose compliance is in question may present responses and/or comments at every step of the proceedings described in this decision.

13. In cases of a submission other than by a Party with respect to its own compliance, the secretariat shall send, within two weeks of its receiving the submission, a copy to the Party whose compliance with the Convention is in question and to the Committee for consideration at its next meeting.

14. Without prejudice to Paragraph 12, additional information provided in response by the Party whose compliance is in question should be forwarded to the secretariat within three months of the date of the receipt of the submission by the Party in question, unless the circumstances of a particular case require an extended period of time. Such information will be immediately transmitted to the members of the Committee for consideration at its next meeting. Where a submission has been made pursuant to Paragraph 9 (b), the information shall also be forwarded by the secretariat to the Party that made the submission.

15. Where a Party is identified in a submission or itself makes a submission, it shall be invited to participate in the consideration of the submission by the Committee. Such a Party, however, shall not take part in the elaboration and adoption of the conclusions or recommendations by the Committee. Conclusions and recommendations shall be shared with the Party concerned for consideration and an opportunity to comment. Any such comments shall be forwarded with the report of the Committee to the Conference of the Parties.

16. Meetings dealing with specific submissions relating to the compliance of an individual Party shall not be open to other Parties or the public, unless the Committee and the Party whose compliance is in question agree otherwise.

17. Under the compliance mechanism, a Party may also consider and use relevant and appropriate information provided by civil society on compliance difficulties.

18. The Committee may decide not to proceed with a submission which it considers is:

- a) *De minimis*; or
- b) Manifestly ill-founded.

FACILITATION PROCEDURE

19. The Committee shall consider any submission made to it in accordance with paragraph 9 with a view to determining the facts and root causes of the matter of concern and, assist in its resolution. As part of this process, the Committee may provide a Party, after coordination with that Party, with advice, non-binding recommendations and information relating to, inter alia;

- a) Establishing and/or strengthening its domestic/regional regulatory regimes;
- b) Facilitation of assistance in particular to developing countries and countries with economies in transition, including on how to access financial and technical support, including technology transfer and capacity-building;
- c) Elaborating, as appropriate and with the cooperation of the Party or Parties faced with the compliance problems, voluntary compliance action plans, and review their implementation. A voluntary compliance action plan may include benchmarks, objectives and indicators of the plan, as well as an indicative timeline for its implementation;
- d) Any follow-up arrangements for progress reporting to the Committee, including through the national reporting procedure under article 13.

Advice, non-binding recommendations and information other than those listed in subparagraphs (a) to (d) above should be provided in agreement with that Party.

RECOMMENDATION TO THE CONFERENCE OF THE PARTIES ON ADDITIONAL MEASURES

20. If, after undertaking the facilitation procedure in Paragraph 19 above 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 in the light of paragraphs 1 and 2 to pursue further measures to address a Party's compliance difficulties, it may recommend to the Conference of the Parties that it consider:

- a) Further support under the Convention for the Party concerned, including prioritization of technical assistance and capacity-building and access to financial resources; or
- b) Issuing a cautionary statement and providing advice regarding future compliance in order to help Parties to implement the provisions of the Basel Convention and to promote cooperation between all Parties.

Any such action shall be consistent with article 15 of the Convention.

GENERAL REVIEW

21. The Committee shall, as directed by the Conference of Parties, review general issues of compliance and implementation under the Convention relating to, inter alia:

- a) Ensuring the environmentally sound management and disposal of hazardous and other wastes;
- b) Training customs and other personnel;
- c) Accessing technical and financial support, particularly for developing countries, including technology transfer and capacity-building;
- d) Establishing and developing means of detecting and eradicating illegal traffic, including investigating, sampling and testing;
- e) Monitoring, assessing and facilitating reporting under article 13 of the Convention; and
- f) The implementation of, and compliance with, specified obligations under the Convention.

CONSULTATION AND INFORMATION

22. In carrying out its functions, the Committee may, inter alia:

- a) Request further information from all Parties, through the secretariat, on general issues of compliance and implementation under its consideration;
- b) Consult with other bodies of the Convention;
- c) Request further information from any sources and draw upon outside expertise, as it considers necessary and appropriate, either with the consent of the Party concerned or as directed by the Conference of the Parties;

- d) Undertake, with the agreement of a Party(ies), information gathering in its or their territory for the purpose of fulfilling the functions of the Committee;
- e) Consult with the secretariat and draw upon its experience and knowledge base compiled under article 16 of the Convention and request through the secretariat information, where appropriate in the form of a report, on matters under the Committee's consideration; and
- f) Review the national reports of Parties provided under article 13 of the Convention.

REPORTING

23. The Committee shall report to each ordinary meeting of the Conference of the Parties on the work it has carried out to fulfil its functions under paragraphs 19 and 20 for the information and/or the consideration of the Conference of the Parties.

24. The Committee shall also report to each ordinary meeting of the Conference of the Parties on any conclusions and/or recommendations it has developed under Paragraph 21 and on its suggestions for any future work that may be required on general issues of compliance and implementation, for the consideration and approval of the Conference of the Parties.

DECISION-MAKING

25. 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-third majority of the members present and voting or by eight members, whichever is the greater. Ten members of the Committee shall constitute a quorum.

CONFIDENTIALITY

26. The Committee, any Party or others involved in its deliberations shall protect the confidentiality of information received in confidence.

RELATIONSHIP WITH PROVISIONS OF THE CONVENTION

27. The present mechanism shall be without prejudice to the provisions of article 20 on settlement of disputes.

28. In performing its functions under paragraphs 19, 20 and 21, the Committee shall take into account any specific procedures provided for under the Convention concerning failures to meet Convention obligations.

ANNEX III: ANNEX VII TO THE ROTTERDAM CONVENTION ON THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE

PROCEDURES AND MECHANISMS ON COMPLIANCE WITH THE ROTTERDAM CONVENTION

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

MEMBERS

2. The Committee shall consist of 15 members. Members shall be nominated by Parties and elected by the Conference of the Parties on the basis of equitable geographical representation of the five regional groups of the United Nations.
3. Members shall have expertise and specific qualifications in the subject matter covered by the Convention. They shall serve objectively and in the best interest of the Convention.

ELECTION OF MEMBERS

4. At its first meeting after the entry into force of the present annex, the Conference of the Parties shall elect eight members of the Committee for one term and seven 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 annex, “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 that nominated that member shall nominate an alternate to serve for the remainder of the term.
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OFFICERS

6. The Committee shall elect its own chair. A vice-chair and a rapporteur shall be elected, on a rotating basis, 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 Parties and the public unless the Committee decides otherwise. When the Committee is dealing with submissions pursuant to Paragraph 12 or 13 below, the meetings of the Committee shall be open to Parties and closed to the public unless the Party whose compliance is in question agrees otherwise. The Parties or observers 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 regard 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 in relation to the matter.

10. The Committee shall make every effort to reach agreement on all matters of substance by consensus. Where this is not possible, the report shall reflect the views of all 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 four-fifths majority of the members present and voting or by eight members, whichever is greater. Ten members of the Committee shall constitute a quorum.

11. Each member of the Committee shall, in respect of any matter that is under consideration by the Committee, avoid direct or indirect conflicts of interest. When a member finds himself or herself faced with a direct or indirect conflict of interest, or is a citizen of a Party whose compliance is in question, that member shall bring the issue to the attention of the Committee before consideration of the matter. The concerned member shall not participate in the elaboration and adoption of a recommendation of the Committee in relation to that matter.

12. Submissions may be made in writing, through the Secretariat, by:

- a)** A Party that 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 is directly affected or likely to be directly affected by another Party's alleged failure to comply with the obligations of the Convention. A Party intending to make a submission under the present 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, including how the Party is affected or likely to be affected.

13. The Committee, in order to assess possible difficulties faced by Parties in fulfilling their obligations under Articles 4 (1), 5 (1), 5 (2) and 10 of the Convention, upon receipt of information from the Secretariat provided by such Parties pursuant to those provisions, shall notify the Party in writing regarding the matter of concern. If the matter has not been resolved within 90 days by consultation through the Secretariat with the Party concerned and the Committee considers the matter further, it shall do so in accordance with paragraphs 16 to 24 below.

14. 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.

15. The Secretariat shall, within two weeks of its receiving any submission made under subparagraph 12 (b) or in furtherance to Paragraph 13 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.

16. A Party whose compliance is in question may present responses or comments at every step of the proceedings described in the present annex.

17. Without prejudice to Paragraph 16 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.

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

- a) *De minimis*;
- b) Manifestly ill-founded.

FACILITATION

19. The Committee shall consider any submission made to it in accordance with Paragraph 12 or in furtherance of Paragraph 13 above, with a view to establishing the facts and the root causes of the matter of concern and to assisting in its resolution, taking into account Article 16 of the Convention. 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.

POSSIBLE MEASURES TO ADDRESS COMPLIANCE ISSUES

20. If, after undertaking the facilitation procedure set forth in Paragraph 19 above and taking into account the cause, type, degree and frequency of compliance difficulties, including financial and technical 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, the Committee may recommend to the Conference of the Parties, bearing in mind its ability under Article 18 (5) (c) of the Convention, that it consider the following measures, to be taken in accordance with international law, to attain compliance:

- a) Further support under the Convention for the Party concerned, including facilitation, as appropriate, of access to financial resources, 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 among all Parties;
- c)** Requesting the Party concerned to provide an update on its efforts;
- d)** Issuing a statement of concern regarding possible future non-compliance;
- e)** Issuing a statement of concern regarding current non-compliance;
- f)** Requesting the Executive Secretary to make public cases of non-compliance;
- g)** Recommending that a non-compliance situation be addressed by the non-compliant Party with the aim of resolving the situation.

HANDLING OF INFORMATION

- 21.** (1) The Committee may receive relevant information, through the Secretariat, from:
- a)** The Parties;
 - b)** Relevant sources, as it considers necessary and appropriate, with the prior consent of the Party concerned or as directed by the Conference of the Parties;
 - c)** The Convention clearing-house mechanism and relevant intergovernmental organizations. The Committee shall provide the Party concerned with such information and invite it to present comments thereon.
- (2) The Committee may also request information from the Secretariat, where appropriate, in the form of a report, on matters under the Committee's consideration.
- 22.** For the purpose of examining systemic issues of general compliance under paragraph 25 below, the Committee may:
- a)** Request information from all Parties;
 - b)** In accordance with relevant guidance by the Conference of the Parties, request relevant information from any reliable sources and outside experts;
 - 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 or any person involved in the deliberations of the Committee shall protect the confidentiality of information received in confidence.
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MONITORING

24. The Compliance Committee should monitor the consequences of action taken in pursuance of paragraph 19 or 20 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 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 in respect of 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.

INFORMATION-SHARING WITH COMPLIANCE COMMITTEES UNDER RELEVANT MULTILATERAL ENVIRONMENTAL AGREEMENTS

28. Where relevant, the Committee may solicit specific information, upon request by the Conference of the Parties or at its own initiative, from compliance committees dealing with hazardous substances and wastes under the auspices of relevant multilateral environmental agreements and report on these activities 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 annex.

RELATIONSHIP WITH SETTLEMENT OF DISPUTES

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

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