

BC-10/11: Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention

The Conference of the Parties,

Noting with appreciation the report of the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention on its work and the recommendations made therein,¹

Welcoming the work undertaken by the Committee since the ninth meeting of the Conference of the Parties and the completion of its 2007–2008 and 2009–2011 work programmes,

Welcoming also the submissions by Oman and the Secretariat under paragraphs 9 (a) and 9 (c) respectively of the terms of reference of the Mechanism for Promoting Implementation and Compliance of the Basel Convention,

Welcoming further the Committee's consideration of those specific submissions with a view to determining the facts and root causes of the matters of concern and the Committee's assistance in resolving them,

Taking note of the decisions adopted by the Committee in relation to the specific submissions,

Recognizing the need to provide the Committee with sufficient funding to enable it to function effectively and to carry out its work programme,

I

Implementation of the work programme for the biennium 2007–2008: review of general issues of compliance and implementation

1. *Takes note* of the guidance document on improving national reporting by parties² and of the national reporting training package CD-ROM available in the six official languages of the United Nations and encourages parties to use them;

2. *Also takes note* of the directory of institutions offering activities aimed at improving the capacity to detect, prevent and prosecute cases of illegal traffic³ and encourages parties and relevant entities to provide updated information on its content;

3. *Requests* the Committee to prepare a first draft of terms of reference for cooperative arrangements on preventing and combating illegal traffic to bring together and improve cooperation and coordination between relevant entities with a specific mandate to deliver capacity-building activities on preventing and combating illegal traffic, such as the World Customs Organization, the International Criminal Police Organization, the United Nations Environment Programme, individual parties, the Basel Convention regional and coordinating centres, networks and the Secretariat, with a focus on the development of tools and training materials, the hosting of workshops and information exchange;

1 UNEP/CHW.10/9/Rev.1.

2 UNEP/CHW.10/INF/11.

3 www.basel.int/legalmatters/illegtraff/directory2009-07-13.doc.

4. *Invites* parties and others to submit comments on the draft terms of reference by 30 April 2012;

5. *Requests* the Committee, in the context of its 2012–2013 programme of work, to prepare, in cooperation with relevant entities and for the consideration of the Conference of the Parties at its eleventh meeting, a draft decision including detailed draft terms of reference for the cooperative arrangements, taking into account the comments received;

II

Implementation of the work programme for the triennium 2009–2011: specific submissions regarding party implementation and compliance

A. Implementation fund

6. *Invites* all parties and others in a position to do so to make financial contributions to the implementation fund established by decision IX/2;

7. *Takes note* of the discussions on the consultative process on financing options for chemicals and wastes;

8. *Adopts* directions, as set out in paragraph 9 of the present decision, on how the implementation fund may be used in the intersessional period between the tenth and eleventh meetings of the Conference of the Parties to assist parties in the context of the facilitation procedure set out in paragraphs 19 and 20 of the terms of reference of the Mechanism for Promoting Implementation and Compliance and in line with decision IX/2;

9. *Decides* that the resources in the implementation fund may be used to fund activities listed in the compliance action plans approved by the Committee, such as the elaboration of national inventories;

10. *Recognizes* that such directions are without prejudice to future directions that the Conference of the Parties may adopt in subsequent meetings and, as appropriate, the result of discussions in relevant processes;

11. *Authorizes* the Committee to direct the use of the implementation fund in the intersessional period between the tenth and eleventh meetings of the Conference of the Parties in the context of the facilitation procedure as set out in paragraphs 19 and 20 of the terms of reference of the Mechanism for Promoting Implementation and Compliance and in accordance with the directions given by the Conference of the Parties;

12. *Requests* the Committee to review the directions set out in paragraph 9 of the present decision and to make recommendations for revised directions, as appropriate, for consideration by the Conference of the Parties at its eleventh meeting;

B. Submissions and engagement

13. *Decides* to amend, on a provisional basis for the period between the tenth and eleventh meetings of the Conference of the Parties, the terms of reference of the mechanism for promoting implementation and compliance by replacing the current paragraph 9 (c) with “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 paragraph 1 of Article 3, paragraph 1 (a) of Article 4, Article 5 and paragraphs 2 and 3 of Article 13 of the Convention, provided that the matter has not been resolved within three months by consultation with the Party concerned.”;

14. *Requests* the Committee to provide to the Conference of the Parties at its eleventh meeting a report on its evaluation of the effectiveness of the amendment referred to in the preceding paragraph, including recommendations;

15. *Requests* the Secretariat to reflect the above changes in the terms of reference of the mechanism for promoting implementation and compliance;

16. *Requests* the Committee to invite parties to engage with the Committee in relation to implementation and compliance difficulties;

III

Implementation of the work programme for the triennium 2009–2011: review of general issues of compliance and implementation

A. Monitoring, assessing and facilitating reporting under Article 13 of the Convention

17. *Takes note* of the benchmark report developed by the Committee⁴ and encourages parties to use it;

18. *Endorses* the criteria and categories identified by the Committee for classifying and publishing parties' compliance performance with regard to their annual reporting obligations;⁵

19. *Takes note* of the classification developed by the Committee, including the assumptions upon which the classification was based;⁶

20. *Expresses its appreciation* to parties that have submitted complete reports on time and urges other parties to improve the timeliness and completeness of their national reports;

21. *Acknowledges* that many parties do not fully comply with their national reporting obligations, stemming from a lack of capacity and a lack of capacity-building activities provided to developing countries and countries with economies in transition, a lack of understanding of the usefulness of the information reported and a lack of consequences in case of the non-submission of national reports;

22. *Also acknowledges* that parties lack guidance as to what is expected of them and that benchmark national reports could assist in resolving that situation;

23. *Decides* that the classification of parties' compliance performance with regard to their annual reporting obligations should be a regular activity of the Committee and, as such, included in its work programme and undertaken on an annual basis, with individual parties named in the Committee's report;

24. *Takes note* of the report on the status of reporting, identifying the difficulties faced by parties in fulfilling their national reporting obligations for 2006 and 2007 and their needs for assistance with regard to reporting and of the conclusions made therein;⁷

25. *Notes with concern* that the level of reporting appears to be declining;

4 UNEP/CHW.10/INF/11.

5 UNEP/CHW.10/9/Rev.1, para. 26

6 Id. paras. 25, 26 and 27, and annex I.

7 UNEP/CHW.10/INF/11.

26. *Notes* that, in general, the above-mentioned report on the status of reporting shows that parties provide fairly comprehensive responses in relation to part I of the revised questionnaire, with lower levels of reporting occurring in relation to part II, notably concerning data on the generation of hazardous and other wastes;

27. *Affirms* that the problem of non-reporting, incomplete reporting or late reporting is all the more serious because of the close link between the core obligations of the Convention and the obligation to submit national reports in accordance with paragraph 3 of Article 13 of the Convention;

28. *Considers* that workshops on national reporting have the potential to contribute to improving parties' implementation of and compliance with paragraph 3 of Article 13 of the Convention and that the Committee should continue guiding and reviewing the Secretariat's training activities on improving national reporting, their potential impact on the improvement of national reporting by parties, and lessons learned from training activities for the updating of existing or the development of new tools;

29. *Adopts* the following national reporting targets as a way of measuring progress in the overall implementation of and compliance with paragraph 3 of Article 13 of the Convention: 30 per cent of reports due for 2010 are submitted in time (baseline: 13.3 per cent for the reports due for 2006); and 20 per cent of reports due for 2010 are submitted complete (baseline: 9 per cent for the reports due for 2006);

30. *Acknowledges* the value for the Committee of establishing a dialogue with other treaty bodies dealing with similar national reporting issues;

B. Implementation of, and compliance with, specified obligations under the Convention

1. National definitions

31. *Adopts* the revised standardized reporting format for transmitting information under Article 3 of the Convention and question 2 (c) of the revised questionnaire;⁸

32. *Decides* that, while parties have a primary obligation to notify other parties of national definitions of hazardous wastes pursuant to Article 3 and paragraph 2 (b) of Article 13 of the Convention, information on national definitions reported to the Secretariat pursuant to question 2 (c) of the revised questionnaire on transmission of information through designated focal points will also be considered to be notified pursuant to Article 3 and paragraph 2 (b) of Article 13 of the Convention;

33. *Requests* the Secretariat to reflect in the revised questionnaire on transmission of information the changes brought about by the adoption of the revised standardized reporting format for transmitting information under Article 3 of the Convention and question 2 (c) of the revised questionnaire;

34. *Also requests* the Secretariat, subject to the availability of funding, to reflect those changes in its national reporting database, in the online national reporting database available on the Convention website and in all relevant documents;

35. *Requests* parties that have not yet provided the Secretariat with any of the information required under Article 3 of the Convention to do so as soon as possible and to report any subsequent significant change in that information using the revised standardized reporting format for reporting under Article 3 of the Convention;

36. *Requests* the Secretariat to assist parties in ensuring that the information so notified is up to date, accurate and complete to facilitate parties' understanding of other parties' national definitions of hazardous wastes;

37. *Also requests* the Secretariat to make available on its website the information received from parties pursuant to Article 3 of the Convention and, within available resources, to make such information available in the six official languages of the United Nations;

2. Import and export prohibitions

38. *Adopts* the standardized reporting format for transmitting information under paragraphs 1 (a) and (b) of Article 4 and paragraphs 2 (c) and (d) of Article 13 of the Convention;⁹

39. *Decides* that, while parties have a primary obligation to notify other parties of information on import and export prohibitions and restrictions pursuant to paragraphs 1 (a) and (b) of Article 4 and paragraphs 2 (c) and (d) of Article 13 of the Convention, information on import and export prohibitions and restrictions reported to the Secretariat pursuant to questions 3 (a)–(f) of the revised questionnaire on transmission of information through the designated focal point will also be considered to be notified pursuant to paragraphs 1 (a) and (b) of Article 4 and paragraphs 2 (c) and (d) of Article 13 of the Convention;

40. *Requests* parties that have not yet provided the Secretariat with any of the information required under paragraphs 1 (a) and (b) of Article 4 and paragraphs 2 (c) and (d) of Article 13 of the Convention to do so as soon as possible and to report any subsequent significant change in that information using the above-mentioned standardized reporting format;

41. *Requests* the Secretariat to assist parties in ensuring that the information so notified is up to date, accurate and complete to facilitate parties' understanding of other parties' import and export prohibitions;

42. *Also requests* the Secretariat to make available on its website the information received from parties pursuant to paragraphs 1 (a) and (b) of Article 4 and paragraphs 2 (c) and (d) of Article 13 of the Convention and, within available resources, to make such information available in the six official languages of the United Nations;

3. Competent authorities and focal points

43. *Reminds* parties of the importance of designating competent authorities and focal points and of providing updated contact information for these entities in accordance with Article 5 of the Convention;

44. *Invites* each of Cape Verde, Comoros, Eritrea, Guinea, Guinea-Bissau, Kazakhstan, Liberia, Libya, Malawi, Nauru, Saint Kitts and Nevis, Somalia, Swaziland, Tonga and Turkmenistan to comply with Article 5 of the Convention by designating a focal point and one or more competent authorities;

45. *Invites* parties, in particular those mentioned above, to communicate to the Secretariat any challenges that they face in designating competent authorities and focal points and their needs for assistance in doing so;

9 Ibid., annex III.

46. *Encourages* those same parties to inform the Committee under paragraph 9 (a) of the terms of reference should they conclude that, their best efforts notwithstanding, they are or will be unable fully to implement or comply with their obligations under Article 5 of the Convention;

4. Control system for the transboundary movement of hazardous wastes

47. *Takes note* of the review of the control system for the transboundary movement of wastes (notification document and movement document) and the difficulties that parties face in implementing the system¹⁰ and of the imbalance in the geographical distribution of the responses received from parties, in particular from Africa and from Asia and the Pacific;

48. *Requests* the Committee to update the guide to the control system approved in 1998,¹¹ taking into account the current difficulties faced by parties in implementing the said control system;

49. *Also requests* the Committee to develop an interactive tool on the Convention website to make available to all parties the necessary information needed to complete the forms for the notification and movement documents and other relevant associated information;

50. *Appeals* to parties and members of the World Customs Organization Harmonized System Committee to finalize by 2014 the outstanding work on the identification of wastes subject to the Convention in the World Customs Organization Harmonized Commodity Description and Coding System;

5. Legislation

51. *Takes note* of the report on the status of legislation and other legal or administrative measures and needs for assistance;¹²

52. *Decides* to establish, in the Committee's work programme, a legal framework programme for the review and assessment, upon request, of national legislation to implement the provisions of the Convention and to assist parties, upon request, in the preparation of new legislation or the amendment of existing legislation;

53. *Decides* that participation in the programme should be based on a submission under paragraph 9 (a) of the terms of reference and that, for each participating party, the programme should be based on the proposed phases outlined in the report mentioned in paragraph 51 of the present decision;

54. *Invites* parties to cooperate with the Committee in the implementation of the phases of the programme;

55. *Invites* the conferences of the parties to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants to take note of this programme and to consider the opportunities for cooperation;

56. *Requests* the Secretariat to continue providing technical assistance to parties upon request for the development of national legislation and other measures (for example, through training sessions and workshops and legal advice);

10 UNEP/CHW.10/INF/11.

11 UNEP/CHW.4/5.

12 UNEP/CHW.10/INF/11.

IV
Financial matters

57. *Expresses its appreciation* to the Governments of Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland for providing support for the Committee's work during the triennium 2009–2011;

58. *Calls upon* parties and others in a position to do so to make financial or in kind contributions to enable the Committee to discharge its mandate;

V
Work programme for the biennium 2012–2013

59. *Approves* the work programme of the Committee for 2012–2013 set out in the annex to the present decision;

60. *Requests* the Committee to establish priorities, work methods and schedules with regard to the issues identified in the work programme and to coordinate with the Open-ended Working Group, the Secretariat and the Basel Convention regional and coordinating centres to avoid duplication of activities;

61. *Also requests* the Committee to report to the Conference of the Parties at its eleventh meeting on the work that it has carried out to fulfil its functions in accordance with paragraphs 23 and 24 of the terms of reference;

62. *Calls upon* parties to make use of the mechanism for promoting implementation and compliance.

Annex to decision BC-10/11

Work programme for 2012–2013 of the Committee for Administering the Mechanism for Promoting Implementation and Compliance

I. Review of general issues of compliance and implementation under the Convention

Objective	Activity
<p>1. National reporting</p> <p>Improve timely and complete national reporting under paragraph 3 of Article 13 of the Convention</p>	<p>(a) Classify and publish parties' individual compliance performance with regard to the annual national reporting obligations for 2009-2011, based on the criteria, categories and targets approved by the Conference of the Parties at its tenth meeting;</p> <p>(b) Update the DVD entitled "Training tool for improving national reporting by parties to the Basel Convention" by adding the benchmark report, in the six official languages of the United Nations, and produce additional copies of the tool;</p> <p>(c) Develop guidance on the development of inventories;</p> <p>(d) Develop further electronic tools to improve national reporting, such as web-based seminars and online training courses;</p> <p>(e) Guide and review the Secretariat's training activities on improving national reporting, their potential impact on the improvement in national reporting by parties, and lessons learned from training activities for the updating of existing or the development of new tools;</p> <p>(f) Establish a dialogue with other multilateral environmental agreement compliance bodies dealing with national reporting issues.</p>
<p>2. National legislation</p> <p>Improve implementation of and compliance with paragraph 4 of Article 4 and paragraph 5 of Article 9 of the Convention</p>	<p>Identify parties' needs for assistance, assess the adequacy of existing tools and training activities to meet those needs and develop a legal capacity-building strategy under the Convention to improve the implementation of and compliance with paragraph 4 of Article 4 and paragraph 5 of Article 9 of the Convention.</p>
<p>3. Illegal traffic</p> <p>Prevent and combat illegal traffic</p>	<p>(a) Undertake the activities mentioned in paragraphs 3 and 5 of the present decision pertaining to the development of draft terms of reference for the cooperative arrangements on preventing and combating illegal traffic;</p> <p>(b) Review parties' implementation of and compliance with the take-back provision set forth in paragraph 2 of Article 9 of the Convention, including the difficulties faced by parties, and develop a guidance document based on best practices and suggesting a harmonized approach to the implementation of this provision;</p> <p>(c) Guide and review the Secretariat's development of tools and training activities for Customs and other enforcement officials.</p>

Objective	Activity
<p>4. Insurance, bond, guarantee</p> <p>Improve the implementation of and compliance with paragraph 11 of Article 6 of the Convention</p>	<p>Develop guidance on how to implement paragraph 11 of Article 6 of the Convention.</p>
<p>5. Control system</p> <p>Improve the implementation of and compliance with Article 6 of the Convention</p>	<p>(a) Update the guide to the control system adopted in 1998, taking into account the current difficulties faced by countries in implementing the control system;</p> <p>(b) Develop an interactive tool on the Convention website to make available to all parties the information needed to complete the forms for the notification and movement documents and other relevant associated information.</p>

II. Specific submissions regarding party implementation and compliance

1. The Committee shall accord priority to dealing with specific submissions regarding party implementation and compliance received or initiated in accordance with paragraph 9 of the terms of reference.

2. In line with the authorization from the Conference of the Parties, the Committee may recommend use of the implementation fund, subject to the availability of resources, to assist parties in the context of the facilitation procedure established under paragraph 20 of the Committee's terms of reference.

3. In relation to the implementation fund, the Committee shall allocate the available resources from the implementation fund in the period between the tenth and eleventh meetings of the Conference of the Parties to assist parties in the context of the facilitation procedure set out in paragraphs 19 and 20 of the terms of reference of the Mechanism for Promoting Implementation and Compliance of the Basel Convention to fund activities listed in the compliance action plans approved by the Committee. In addition, the Committee shall review the directions set out in paragraph 9 of the present decision and make recommendations for revised directions, as appropriate, for consideration by the Conference of the Parties at its eleventh meeting.

4. In relation to the amendment of paragraph 9 (c) of the terms of reference, the Committee shall provide to the Conference of the Parties at its eleventh meeting a report on its evaluation of the effectiveness of the amendment mentioned in paragraph 13 of the present decision, including recommendations.