



UNITED  
NATIONS

EP

UNEP(DEPI)/MED CC.9/6



UNITED NATIONS  
ENVIRONMENT PROGRAMME  
MEDITERRANEAN ACTION PLAN

17 October 2014  
English  
Original: French

9<sup>th</sup> Meeting of the Compliance Committee of Barcelona Convention  
and its Protocols

Split, Croatia, 27-28 November 2014

**Agenda Item 8: Draft revised reporting format of the Barcelona Convention and its Protocols**

**Explanatory note on the draft revised reporting format related to the application of the Barcelona Convention and its Protocols**

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## **Explanatory note on the draft revised reporting format related to the application of the Barcelona Convention and its Protocols**

The fifteenth meeting of the Contracting Parties to the Barcelona Convention and its Protocols (Almeria, 2008) has adopted, in its decision IG. 17/3, a new reporting format (UNEP(DEPI)/MED IG.17/10 Annex V) which was used in 2006-2007, 2008-2009 and 2010-2011. It should also be used for the biennium 2012-2013, the last report to be tackled by the Coordination Unit before October 2014.

The Compliance Committee of Barcelona Convention and its Protocols, which has undertaken the evaluation of reports for biennia 2008-2009 and 2010-2011 during the 6<sup>th</sup> and 7<sup>th</sup> meeting in 2013, has withdrawn some conclusions formulated in paragraphs 24 and 25 of its activity report submitted at the 18<sup>th</sup> meeting of the Contracting Parties in Istanbul, in December 2013 (UNEP (DEPI)/MED IG 21/8), according to which:

- The given information is too partial,
- Responses are too general,
- The format is too complex and repetitive,
- There is a lack of accuracy in technical data.

Consequently, the Compliance Committee proposed a review of the format by proposing to:

- Simplify it,
- Obtain necessary explanations when the given response is negative,
- Define a more adapted content for the section “allocation of resources,
- Reinforce and explain the section “effectiveness”.

The Eighteenth Meeting of the Contracting Parties (Istanbul, 2013) has then adopted Decision IG. 21/2 related to the reporting format (UNEP (DEPI)/MED IG. 21/9 Annex II). Taking note of the proposition of the Compliance Committee to proceed with a simplification of the reporting format in order to make it more accessible and operational for Contracting Parties, it has been decided to:

“Ask the secretariat to prepare, in close cooperation with the Compliance Committee, a simplified and practical draft of the reporting model of the Barcelona Convention and its Protocols, which also includes information of the concrete implementation measures taken to reach an effective reduction of pollution and the preservation of biodiversity and submit for examination and adoption at the nineteenth meeting of the Contracting Parties”.

The present document aims at proposing a new reporting model.

### **I. Preliminary observations**

#### **1) Legal basis of reports**

It is noteworthy that periodical reports should be addressed by the Contracting Parties to the Organization by virtue of Articles 26 and 27 of Barcelona Convention about the protection of the coastal and marine environment, as modified in Barcelona in 1995. This general obligation imposes itself whether for the implementation of the Convention itself or of its Protocols. It has been particularly reiterated by some Protocols which defined the particular contents of relevant reports. It is the case the art.13 of the LBS Protocol, art. 23 of the SPA Protocol. For this reason, the present draft format is explicitly referring to the requirements of these two articles which were partially omitted in the previous format.

Reports are an obligation. Only their form and their frequency may be the object of adaptations decided at the discretion of Contracting Parties.

2) Periodicity of reports

The frequency of reports presentation was every two years (Decision IG.17/3). Decision IG 20/3 of the 17<sup>th</sup> meeting of the Parties in Paris in 2012 called for a realistic and applicable proposition concerning the frequency of reports. Taking into consideration the opinion of the Compliance Committee during the 6<sup>th</sup> meeting (point 6 of conclusions, annex III), the Contracting Parties decided, in Istanbul, in 2013, to maintain the two-year frequency, at least for 2012-2013. We cannot exclude, in the future, the modification of this frequency.

In fact, the two-year frequency is not imposed by the Convention which leaves to the meeting of the Contracting Parties to set the frequency of reports, without having to amend the Convention (art. 26-2 of the Convention). The future format herewith proposed, which will not be in application but after its adoption at the 19<sup>th</sup> Conference of the Parties in 2015 for the biennium 2014-2015 and afterwards, may, in the future, be only applied every four years alternately with the particular format (see below) related to the Protocol on the Integrated Management of Coastal Zones (ICZM). The past difficulties encountered for the drafting and the timely sending of reports show that the States have some difficulty to respect this deadline, not only because of the complexity of the report, but because of a great number of concerned agreements (8 overall with the Convention) whereas, on the other hand, Parties should also report regarding several other regional and universal international conventions.

3) Implementation field of reports

Decision IG.21/2 of Istanbul decided to separate the reporting format related to the Protocol about the Integrated Management of Coastal Zones (ICZM) from the one related to the Convention and other Protocols. This difference of treatment is attributed to the recent date of entry into force of ICZM Protocol, on March 24, 2011, and because this Protocol has a transversal content touching upon a large variety of different sectors. For this reason, this decision adopts the legal and institutional aspect of the reporting format related to ICZM Protocol (annex II) and asks the secretariat to draft an operational aspect of the ICZM report for the next meeting of the Parties. In this way, the RAC/MAP is in charge of this elaboration which is underway.

For this reason, the present reporting format is not concerned by the implementation of the Convention and 6 of its Protocols out of 7.

It is appropriate to evaluate, in the future, if this separation is justified or if it might be more appropriate and practical to have two different formats, one about the Convention and 3 Protocols, and the other one about 4 other Protocols and submit it alternately to a four-year periodicity. Therefore, at every meeting of the Contracting Parties, it is possible to focus, every two years, on half of the concerned agreements.

4) Usefulness of the explanatory note on the way how to draft a national report

The Compliance Committee drafted, at its 7<sup>th</sup> session in 2013, this explanatory note to take into consideration the shortcomings noted at the examination of reports for the biennium 2010-2011. This note is in annex II of the activity report of the Compliance Committee for the biennium 2012-2013 approved by the 18<sup>th</sup> meeting of the Contracting Parties (UNEP(DEPI)/MED IG.21/8). The relevant recommendations will be applied to 2012-2013 and 2014-2015 reports. Subject to some changes in the formulation, the note will also apply during the drafting of the reports of 2015-2016 and afterwards, according to the new format to be approved during the 19<sup>th</sup> meeting of the Parties. It may be useful, after the examination of the new format by the Compliance Committee, that the latter proceeds, if necessary, to an adaptation of this explanatory note to the text of the new format.

## II. Objectives sought by the new reporting format

The new reporting format should respond, at the same time, to the purposes as expressed in the Convention, to the legal and practical functions of the reports and to the critics as resulting from the opinion of the Compliance Committee and from Decision IG.21/2 of Parties.

### Responding to the purposes of the report

It is worthy to note the purposes of the report as resulting from art. 26 of the Convention. Reports should report:

- a) In general, about the application, at the same time, of the Convention, Protocols, as well as recommendations adopted by Parties, even such recommendations do not have the same legal functions as the previous ones.
- b) Measures taken by Parties to this end, these measures being legal, administrative and others. "Others" means also technical, educational and communication measures. However, a priority should be given to "legal" measures or to their absence, because only such measures legally allow the respect of imposed obligations.
- c) The effectiveness of taken measures: Parties are hereby invited to undertake an assessment which is not limited to the simple objective description, but implies a subjective appreciation. For this reason, it is convenient to use indicators measuring the achieved progress. But the scientific measure of effectiveness cannot be satisfied or limited to brief answers in a questionnaire. It is necessary to admit that, with the lack of adapted scientific tools which are common to State Parties, the report will not be able to respond, in a satisfying way, to the question of effectiveness. The meeting of Parties should include, into the working program, research on instruments to measure effectiveness, integrating, at the same time, scientific, economic, social and legal indicators.
- d) Problems encountered during the implementation of the Convention, Protocols and recommendations: This data is, a priori, easier to deal with compared to the previous one. However, the person in charge of answering the questionnaire should be accurately informed at the central administration and at the competent local services in order to collect all observations, translating the exact content of encountered problems. These encountered problems will be, at the same time, of a legal, administrative, financial, social, scientific, technical, cultural and practical nature. The answers given in this context are very useful for the Secretariat and for the Compliance Committee, in order to better appreciate, concretely, the real conditions of implementation and the causes of non-implementation.

### 1) Responding to the legal and practical functions of the report

The report fulfills, *de jure* and *de facto*, various functions. It is not a simple formal instrument of control of compliance with the Convention. It is a constitutive element of a chain of bodies and decisions which contribute to the good functioning of the Convention and its Protocols.

We repeat, at this stage, the enumeration proposed in the explanatory note about the way how to draft national reports set up by the Compliance Committee during its 8<sup>th</sup> meeting and approved by the 18<sup>th</sup> meeting of Parties (annex II of the activity report of the Compliance Committee for the biennium 2012-2013, UNEP (DEPI)/MED IG.21/8).

1. Allowing the meeting of Contracting Parties to "examine" reports (art.18-2-ii of the Convention and be hence informed of the activities taken by the Parties),
2. Allowing the meeting of Contracting Parties "to assess the compliance" of commitments (art. 27 of the Convention),
3. Allowing the meeting of Contracting Parties to formulate recommendations (art. 27 of the Convention),
4. Assessing the compliance of national legal, administrative and other measures with the Convention and its Protocols,
5. Measuring the effectiveness of taken measures and encountered problems,
6. Allowing the Compliance Committee to fulfill the mandate it was entrusted with "to facilitate and promote the compliance of obligations" (1.objectives, decisions, IG 17/2),
7. Allowing the Secretariat to communicate the reports to Parties (art. 17 (ii)),
8. Allowing the Secretariat to report to the Contracting Parties regarding the execution of the Convention (art.17 (VI)),
9. Improving the follow-up of progress in the implementation of the Convention on the national and regional levels,
10. Regularly providing updated information,
11. Allowing the Secretariat to make a credible synthesis while having all pertinent information,
12. Facilitating hence the assessment of the status of the Mediterranean Sea (art. 18-2-i of the Convention),
13. Facilitating the implementation of the Mediterranean Action Plan (art. 4-2 of the Convention),
14. Sharing among contracting parties and with MAP partners information in reports and the best environmental practices (art. 4-4-b of the Convention).

## 2) Responding to critics expressed regarding reports

The Compliance Committee and the meeting of the Parties formulated several critics regarding the existent format. It is necessary to thoroughly evaluate the feasibility of responses to give to these critics.

These critics are, at the same time, about raised questions and about generally given answers. We definitely cannot put ourselves in the shoes of those who respond. But the formulation of questions may guide responses, more particularly.

It is asked to:

- Simplify the questions because they are too complex, sometimes repetitive.
- Ask for more accurate and more technical responses ; to explain the reason behind the "no" responses
- Explain the issue of "effectiveness".

We will note a serious difficulty resulting from these critics, which are often contradictory. It is being said, at the same time, to consequently reduce their volume. On the other hand, it is necessary to ask for more accurate responses by burdening the exercise with technical information and additional explanations. It is hence essential to seek a balance between these contradictory requirements.

### III. Structure of the new reporting format

#### A. Form questions

##### 1. *Number of pages*

It is important to recall that the questionnaire does not only concern one convention, but 7 different conventions, even if they are from the same family.

The current format of 2008 amounts to 99 pages distributed as follows : Convention (13 pages) ; Dumping protocol (9 pages) ; Prevention and Emergency protocol (16 pages) ; LBS and Activities protocol (13 pages) ; SPA and Biodiversity protocol (23 pages) ; Offshore protocol (10 pages) ; Hazardous waste protocol (15 pages).

The exploitation of questionnaires to respond to the sought objectives detailed in II requires sufficient information. Otherwise, the exercise is useless. For this reason, it is erroneous to seek, at all costs, to reduce the number of pages, with the risk of not having sufficient information anymore. We thus propose a reasonable compromise by reducing the questionnaire to 64 pages (i.e. a significant decrease by 35 pages), thus allowing to have an average of 9 pages for each of the 7 concerned legal instruments. In reality, the objective should be to reduce the number of pages of the questionnaire, leaving to all Parties a greater flexibility in the dimension of responses: fewer pages in the questionnaire, but more pages in the responses.

However, in order to avoid abuses, we can think of imposing a maximum number of pages for responses, as decided by the Secretariat of Aarhus Convention for the Protocol on Pollutant Release and Transfer Registers (PRTR), expecting a maximum of 13 000 words in its note addressed to the second session of the meeting of the Parties, from June 30 till July 4, 2014. This corresponds, overall, to 24 pages of response for a format including only 6. This seems too much and we can recommend, more modestly, to limit the responses to the 7 documents assessed at 100 pages for a 64-page format. This would allow respondents to fill 31 pages maximum out of responses by yes or no, i.e. only four pages on average for each instrument of the 7 legal instruments.

All in all, everything will depend of the formulation of yes/no questions or open questions. The experience taken from the responses to the questionnaire for the biennium 2010-2011 is that responses to open questions are most often not developed. It is evident that editors prefer yes/no answers which require less work, but are very difficult to exploit by assessors.

##### 2. *Division in several headings*

The current format divides the questionnaire related to each legal instrument, examined in several parties, eventually varying according to the examined protocol. In general, we find: the status of ratifications; legal and administrative measures; technical data; allocation of resources; effectiveness. We will see, while examining substantive issues, that these headlines may be improved.

##### 3. *Repetitions*

We concluded, in the current format, some repetitions, especially – in references to other international conventions (list of pages 13 to 18) and in references to various protocols (p. 9 to 12 and p. 13 to 18),

- p. 73 and 82 about contingency plans,
- p. 40 and 46 about art. 12,
- p. 40 and 45 about access to information,
- p. 40 and 44 about cross-border impact studies,
- p. 19 and 38 about “the polluter pays” and art.4 par.3 sub-par. b.

#### 4. *Duplication*

- While ICZM Protocol has a separate questionnaire, the current format, however, raises issues about coastal zones, for example, p. 40 or p. 42. It is thus appropriate to suppress everything that is related to coastal zones, including the party concerning the Convention itself.
- The 12th meeting of the Parties in Monaco in 2001 adopted an annotated format for presentation reports of proposed areas for inscription on SPAMIs list (UNEP DEC)/MED IG. 13/7). However, in the current format related to SPA and Biodiversity Protocol, p. 93 and 94 raise also questions about SPAMIs.

#### 5. *Errors in references to some articles*

We have identified some mistakes on the previous table, for example, in the Emergency Protocol in reference to Article 15 instead of 16 ; in the LBS protocol, in reference to Article 6-3 instead of 6-4.

### B. Substantive issues

#### 1. *Headings contents*

- “legal measures” is sometimes separated from “administrative measures”: it is appropriate to gather them since they concern neighboring instruments.
- “related technical data” is linked to “administrative measures”: it seems more appropriate to separate them when the technical data concern the technical and scientific content of administrative measures, the latter being apprehended under their formal aspect. It would have been more appropriate to provide additional technical data. This raises the problem of links with the various specialized centers and the link with specific requests for technical information already formulated by these centers and which should not be duplicated. Therefore, with technical data being directly submitted to MEDPOL, the questionnaire (p. 83) is duplicated, requiring data over monitoring programs of land-based pollution. This duplication raises an issue of principle, to know if it is essential to differentiate between the technical data at the heart of a special format for each center and a general format regarding legal and administrative data for the Secretariat. A synthesis will be necessary, in all cases.
- “allocation of resources”: this formulation which is too vague should be more accurate. It covers different issues according to the cases: institutions, programs, information to the public. It should also cover the issue of budgets and the number of agents.
- “Effectiveness”: this important heading is, in general, badly filled by respondents. It should be better oriented towards potential indicators measuring effectiveness in terms of statistics. But it should also allow comments on qualitative elements.

#### 2. *Contents of questions*

The current format is based on a pertinent method which aimed, in 2008, on the basis of reflexions of a working group which convened in 2006 and 2007, at drafting a new format. For the purpose of facilitating the work of respondents, it was then decided to privilege



yes/no binary questions to check, enriched with headings, such as: “under preparation, other, not applicable”. These responses were completed by a checkbox: “difficulties/challenges” with the mentions to check which are supposed to explain the answer: “policy framework, regulatory framework, financial resources, administrative management, technical capabilities, public participation” to which it was possible to freely add “remarks/comments”. It appeared, in practice, that respondents, most often, contended themselves with ticking the checkboxes without adding any references, remarks or comments. Moreover, there seems to have been a confusion between the requests related to “difficulties/challenges” and the final heading “effectiveness”.

For this reason, we propose an easier content of questions which gives the respondent the capacity to specify the content of his response, clearly separating the data and the appreciations regarding encountered problems or difficulties. However, accurate instructions should be given to this end, regarding the explanatory note about how to draft reports.

### *3. Usage of scientific or technical indicators*

There was hope that, during the 14<sup>th</sup> meeting of the contracting Parties in Portoroz, the format becomes founded on indicators. Decision IG 17/3 approving the format makes reference to this requirement. However, MEDPOL and several activity centers drafted or are drafting indicators which are specific to protocols, the implementation of which they follow. Some of these indicators were approved by the meeting of the Parties, such as those related to the environmental objectives taken in application of Art. 18-2-VII of the Convention and included in Decision IG 20/4 of the 17<sup>th</sup> meeting in Paris regarding the ecosystem approach of MAP. Other indicators, regarding pollutions, were drafted for each of these 6 protocols which were in place in 2008. These indicators are at the heart of a review and a follow-up by the group, known as the “network compliance and enforcement of regulation” for the control of land-based pollution, for example in 2011 (UNEP(DEPI)ME, WG 367/1).

These indicators which are very useful to assess MAP effectiveness directly contribute to the requirements of Art. 26-1-b of the Convention. They hence perfectly find their place in the reports. However, it seems that there are some redundancies since the particular follow-up by protocol or by a group of protocols leads to procedures of parallel assessments. Therefore, it may be appropriate to prevent the duplication of the report with these assessments and avoid having Parties incited twice to provide the same indicators. Moreover, these scientific indicators should be completed by legal indicators.

### *4. Importance of comments*

Whether the question is open or closed, it seems necessary to incite respondents to always add comments (within the limit of pages set in advance) in order to better appreciate the practical reality of application modalities of the Convention and the Protocols.

### *5. Structure of the format*

The format structure should be simple and homogenous at the same time and respond to the specificities of each Protocol.

We will regroup, at the beginning, the information about the authors of the report. Most often, there will be several authors according to each protocol.

Each protocol will be at the heart of a specific structure while attempting however, such as in the previous format, to maintain the titles of identical or neighboring headings.

#### **IV. Comments related to the new content of format**

We have strived to give the respondent a freedom of response that is greater than in the previous format where systematic tables used to constrain respondents to an identical and repetitive system which is not always well-adapted.

1. The status and the dates of ratifications of the Convention and the Protocols were suppressed because this is already known information held by the depository and the Secretariat.
2. The ratification of regional and international legal instruments (ex. part III, Table III p. 13 of the old format) covering 5 pages and a half was suppressed. It is, in part, in duplication with Barcelona acts, the inventory not being really exhaustive and this information not directly concerning the application of the Convention and the Protocols. Moreover, it is possible, if needed, to claim to separate this type of information that is henceforth available of each website of the concerned conventions. However, we have maintained Table II – bilateral, regional and/or sub-regional agreements, since they directly concern the Mediterranean Sea.
3. In general, we have suppressed the tables to check, with yes/no options (etc.), except for the requests of technical or operational information request and for technical action plans (species or waste).
4. In the questions about legal and administrative measures taken by the States, we have suppressed the tables to check which summarized, each time, the text of each targeted article. We support to simply give the number of the article in order not to overburden the text. Therefore, we have simplified the format which, in its previous version, repeated sometimes questions about the same article.
5. We may ask ourselves if it is appropriate or not to raise a separate question about the articles concerning information and participation. We have mentioned them one after the other in the general question about taken legal measures.
6. For each Protocol, in the “effectiveness” heading, we added “encountered difficulties” since this concerns the assessment of directly at the same time.
7. In the Emergency Protocol, we have maintained the tables on relevant conventions because of art. 3-1 a) of the Protocol, although the monitoring of the compliance with these conventions does not lie within the Barcelona System. We may then ask ourselves about the usefulness, at this stage, of maintaining the “difficulties/challenges” column?

#### **V. Final recommendations**

1. According to Art. 26-1-a) of the Convention, reports should also report about the application of “recommendations” adopted by Parties. The latter are too numerous and sometimes ignored, forgotten or not updated. It is therefore appropriate to proceed with a systemic compilation of all these recommendations in a dedicated site and a paper compendium in order to better take them into consideration in the questionnaire. This work cannot be undertaken for the drafting of the present work.
2. It is appropriate to call upon the Parties to provide, systematically, references to texts and documents, if any, by referring to a precise Internet site.
3. In order to obtain responses which are more exhaustive and better adapted to the needs, it is appropriate to organize a workshop that is especially dedicated to submit the format and help the Parties respond to them. This proposition was already formulated in the explanatory note of 2013 about the instructions of how to use the reporting format approved by the Parties during the 18<sup>th</sup> meeting of the Parties and claimed by the Compliance Committee during the 7<sup>th</sup> session in 2013.

4. Moreover, this note proposed the adoption, by the Parties, of a common strategy for the drafting of reports. This document should be able to be at the heart of a Decision of the 19<sup>th</sup> meeting of the Parties. At this occasion, we can propose, on a voluntary basis, a peer assessment of reports, which would complete that of the Compliance Committee.
5. It is also preferable that, in the future, as it has been claimed by the Compliance Committee during the 8<sup>th</sup> session in 2013, national reports should be put online for all Parties and for the Public, as soon as they are sent to the Secretariat. The publication of reports cannot but reinforce their interest and incite Parties to give them all the attention they deserve.
6. The explanatory note should be at the heart of an adaptation to the text of the new format.