

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



Fourteenth meeting of the Conference of the Parties
The Hague (Netherlands), 3-15 June 2007

Interpretation and implementation of the Convention

Compliance and enforcement issues

GUIDELINES FOR COMPLIANCE WITH THE CONVENTION

1. This document has been prepared by the Chairman of the Standing Committee Working Group on Compliance.
2. At its 12th meeting (Santiago, 2002), the Conference of the Parties instructed the Standing Committee to elaborate guidelines for compliance with the Convention. The Standing Committee established an open-ended Working Group on Compliance for this task at its 50th meeting (Geneva, March 2004). The Working Group has since met on the margin of the 13th meeting of the Conference of the Parties (Bangkok, 2004), and the 53rd (Geneva, June-July 2005) and 54th (Geneva, October 2006) meetings of the Standing Committee.
3. As the Working Group has been open-ended, attendance has varied, and it is fair to say that non-members of the Organisation for Economic Co-operation and Development (OECD) have been underrepresented compared to their number. Still, the Working Group's deliberations have revealed greatly differing positions, particularly on the coercive nature of compliance measures.
4. During SC54 the Working Group reached agreement, with the exception of nine instances of bracketed text, on draft Guidelines for Compliance with the Convention. The Standing Committee instructed the Working Group to continue its work by electronic means in order to reduce as far as possible the number of bracketed passages, before submission of the draft text at the present meeting. The Chairman consequently suggested compromise wording for the bracketed passages. These suggestions were accepted by some Working Group members, but they failed to receive unanimous acceptance and certain members clearly stated that they wished to postpone further discussion until the Working Group was able to meet again on the margin of CoP14.
5. The bracketed passages are marked on the draft text contained in the Annex and are followed by boxes which sum up the various positions of the Working Group members.
6. The Working Group agreed at an early stage of its work that the guidelines should reflect current compliance practice, as laid down in the Convention and relevant Resolutions and Decisions, and it so informed the Standing Committee. The guidelines should not formulate new rules. However, there were differing views in the Working Group as to whether the interpretation of existing rules may be regarded as formulating new rules, even when this interpretation is based on current practice. Some of the bracketed text reflects this perspective.

Recommendation

7. The Chairman of the Working Group proposes that the Group reconvene on the margin of CoP14 in order to finalize the guidelines for compliance with the Convention, on the basis of the draft text contained in the Annex.

COMMENTS FROM THE SECRETARIAT

- A. The Secretariat welcomes the progress that the Working Group has made in elaborating guidelines for compliance with the Convention and looks forward to their completion. The draft guidelines serve to 'codify' and integrate the currently fragmented compliance scheme and provide a balanced and flexible basis for applying it in a more consistent, proportionate and fair manner. This will afford the scheme increased certainty and credibility. The draft guidelines also make the compliance scheme more transparent and user-friendly, enabling it to better meet the needs and expectations of Parties and relevant Convention bodies. The guidelines should ultimately bring about improved compliance with CITES, thereby enhancing the Convention's overall effectiveness.
- B. When finalizing the guidelines, the Working Group should recommend any follow-up actions which might be needed to put them into effect.
- C. Costs associated with the Secretariat's support to the Standing Committee on compliance matters, including the possible development of a database for maintaining compliance-related information, are reflected in the costed programme of work.

DRAFT GUIDELINES FOR COMPLIANCE WITH THE CONVENTION
[Document SC54 Com. 4 with the addition of subsequent comments from the Working Group]

I Objective and scope

1. The objective of these guidelines is to [inform Parties and others of CITES procedures concerning promoting, facilitating and achieving]/[promote, facilitate and achieve] compliance with obligations under the Convention and, in particular, assisting Parties in meeting their obligations regarding such compliance.

The Chairman proposed deleting the text in the second pair of brackets, considering that it was rendered redundant by the last part of the sentence: "assisting Parties in meeting their obligations..."

This was acceptable to some WG members, whereas other members retained a strong preference for maintaining that text (and deleting the alternative): "We do believe that the purpose (...) is not merely to inform but, in addition, to promote and actually achieve compliance (...). The last part of the sentence focuses on facilitating and, perhaps, promoting compliance, but not on achieving [it]. Since the procedure provides for trade sanctions, we believe that this is an essential part of the objective."

Specifically, the guidelines describe [and clarify] existing procedures in order to facilitate consistent and effective handling of compliance matters relating to obligations under the Convention, taking into account relevant Resolutions and Decisions, in both specific and general compliance matters.

The Chairman's proposal was to delete "and clarify", since this might be understood as "interpret", which is controversial within the Working Group.

Some members accepted the deletion, whereas others wished to retain the wording, "as we believe that we are trying to develop a text which not only describes the current practice but smoothes out any inconsistency in order to provide a clear description of the relevant Resolutions and practice."

2. These guidelines address compliance matters relating to the obligations under the Convention, taking into account relevant Resolutions and Decisions. Particular attention should be paid to the following:
 - a) Designating Management Authority(ies) and Scientific Authority(ies) (Article IX);
 - b) Permitting trade in CITES-listed specimens only to the extent consistent with the procedures laid down in the Convention (Articles III, IV, V, VI, VII and XV);
 - c) Taking appropriate domestic measures to enforce the provisions of the Convention and prohibit trade in violation thereof (Article VIII, paragraph 1);
 - d) Maintaining records of trade and submitting periodic reports (Article VIII, paragraphs 7 and 8); and
 - e) Responding as soon as possible to communications of the Secretariat related to information that a species included in Appendix I or II is being adversely affected by trade in specimens of that species or that the provisions of the Convention are not being effectively implemented (Article XIII).
3. The procedures described in these guidelines are without prejudice to any rights and obligations and to any dispute settlement procedure under the Convention.

II General principles

1. A supportive and non-adversarial approach is taken towards compliance matters, with the aim of ensuring long-term compliance.
2. Compliance matters are handled as quickly as possible. Such matters are considered and ensuing compliance measures are applied in a fair, consistent and transparent manner.

3. Generally, findings, reports and communications in compliance matters are not treated confidentially.
However, communications between the Secretariat and individual Parties on specific compliance matters are generally confidential.
4. Decisions on whether to close or keep open debates in compliance matters[, including the reasoning,] are taken according to the Rules of Procedure of the body considering the matter.

The Chairman suggested deleting the bracketed text, since the reasoning behind a decision to close a debate or not will be made before an open session and thus be a matter of public record.

While some members accepted this, others wished to retain the notion of "reasoning" to clarify the existing procedures and ensure greater safeguards for the Parties.

If retained, it should at least be rephrased in a syntactically correct wording:

"Decisions on whether to close or keep open debates in compliance matters should be reasoned and taken according to the Rules...."

5. The Secretariat communicates compliance-related decisions to the relevant authorities.

III The various bodies and their compliance-related tasks

1. Compliance matters are handled by various CITES bodies. Some of their functions are listed below.
2. The Conference of the Parties:
 - a) provides general policy guidance on compliance issues;
 - b) directs and oversees the handling of compliance matters particularly through the identification of key obligations and procedures;
 - c) reviews as needed decisions of the Standing Committee related to specific compliance matters; and
 - d) may delegate certain authority to the Standing Committee or other bodies.

2^{bis} When the Conference of the Parties decides to carry out itself the tasks delegated to the Standing Committee, it follows the same procedures as those described below for the Standing Committee.

One member suggested deleting paragraph 2^{bis}.

The Chairman considers that deleting this article will not reduce the Conference's ability to seize itself of any matter it pleases. Retaining the article makes it clear which rules apply for the Conference's handling of compliance matters.

3. The Standing Committee, acting in accordance with instructions from and authority delegated by the Conference of the Parties, handles general and specific compliance matters, including:
 - a) monitoring and assessing overall compliance with obligations under the Convention;
 - b) advising and assisting Parties in complying with obligations under the Convention;
 - c) verifying information; and
 - d) taking compliance measures as described below.
4. The Animals and Plants Committees, acting in accordance with instructions from and authority delegated by the Conference of the Parties, advise and assist the Standing Committee and the Conference of the Parties with regard to compliance matters, *inter alia* by undertaking necessary reviews, consultations, assessments and reporting. These Committees are entrusted with specific tasks in the handling of matters related to the review of significant trade.

5. The Secretariat:

- a) assists and supports the Animals and Plants Committees, the Standing Committee and the Conference of the Parties in carrying out their functions concerning compliance matters as described in these guidelines and, where applicable, according to the procedures set out in relevant Resolutions and Decisions;
- b) receives, assesses and communicates to the Parties information on compliance matters;
- c) advises and assists Parties in complying with obligations under the Convention;
- d) makes recommendations for achieving compliance; and
- e) monitors the implementation of compliance-related decisions.

IV Handling of specific compliance matters

A. Identification of potential compliance matters

1. Annual and biennial reports, legislative texts as well as other special reports and responses to information requests, for example within the review of significant trade or the national legislation project, provide the primary, but not exclusive, means of monitoring compliance with obligations under the Convention.
2. The Secretariat provides a Party concerned with information it receives about that Party's compliance, and communicates with the Party regarding this matter.
3. In response, the Party informs the Secretariat as soon as possible of any relevant facts in so far as its laws permit and, where appropriate, proposes remedial action. Where the Party considers that an inquiry is desirable, such inquiry may be carried out by one or more persons expressly authorized by the Party.
4. Any Party concerned over matters related to trade in specimens of CITES-listed species by another Party may bring the matter up directly with that Party and/or call upon the Secretariat for assistance.
5. Parties themselves are encouraged to give the Secretariat early warning of any compliance matter, including the inability to provide information by a certain deadline, and indicate the reasons and any need for assistance.
6. Where compliance matters are identified, the Parties concerned are given every opportunity to correct them within reasonable time limits, if necessary with the assistance of the Secretariat.

B. Consideration of compliance matters

1. If the Party fails to take sufficient remedial action within a reasonable time limit, the compliance matter is brought to the attention of the Standing Committee by the Secretariat in direct contact with the Party concerned.

2. If a matter of compliance is brought to the attention of the Standing Committee by [other (directly affected) Parties]/[others in accordance with the Rules of Procedure], the Standing Committee:

The Chairman proposed deleting the first bracketed text while retaining the second, if his suggestion to delete paragraph c) below was accepted.

One WG member strongly opposed this and wished to retain "other directly affected Parties". It was concerned that the procedures set out above, under section IV A paragraphs 2-6 and section IV B might create new triggering mechanisms. It believed that the triggering power must be limited to those Parties which are directly affected by the non-compliance situation instead of allowing "any party including NGOs" to trigger such processes.

- a) refers the matter to the Secretariat for action according to the procedure in section IV, A, paragraphs 2-6 above; or
- b) rejects it under paragraph 5 below; [or
- c) follows the procedures as described below].

The Chairman had suggested deleting paragraph c) since, according to the Standing Committee Rules of Procedure (Rule 20), documents to be considered at a meeting shall normally be provided to the Secretariat (within a certain deadline). The normal way of bringing a matter to the attention of the Committee thus goes through the Secretariat. Compliance matters are too serious to be dealt with on the (oral) input of one Party. The proper way of dealing with the matter in such cases is to refer it to the Secretariat [paragraph a].

This suggestion was accepted by some members, but others disagreed: "We think that it is critical for the Standing Committee to be able to take the decisions it deems appropriate. It should not be limited to merely referring matters to the Secretariat. We do not believe that this reflects the mandate of the Standing Committee or current practice. Moreover, we think it is important to have a clear link with the procedures set out from paragraph 3 onwards in order to ensure clarity and coherence within the document."

3. When compliance matters are brought to the attention of the Standing Committee, it is generally done in writing and includes details as to which specific obligations are concerned and an assessment of the reasons why the Party concerned may be unable to meet those obligations.
4. When a compliance matter is brought to the attention of the Standing Committee, the Secretariat immediately informs the Party or Parties concerned.
5. The Standing Committee rejects compliance matters which it considers are trivial or ill-founded.

Where the Standing Committee has decided that the submission is not trivial or ill-founded, the Party concerned is given the opportunity to provide comments within a reasonable time limit.

6. The Standing Committee decides whether to gather or request further information on a compliance matter whenever such information may be found and whether to seek an invitation from the Party concerned to undertake the gathering and verification of information in the territory of that Party or wherever such information may be found.
7. The Party concerned has the right to participate in discussions with respect to its own compliance, in accordance with the Rules of Procedure of the relevant body.
8. If a Party cannot access the financial resources needed to participate in CITES meetings where its own compliance is being considered, it is able to request assistance from the Secretariat or the Standing Committee in identifying such resources.

C. Measures to achieve compliance

1. If a compliance matter has not been resolved, the Standing Committee decides to take one or more of the following measures:
 - a) provision of advice, information and appropriate facilitation of assistance and other capacity-building support to the Party concerned;
 - b) request of special reporting from the Party concerned;
 - c) issuance of a written caution, requesting a response and offering assistance;
 - d) recommendations of specific capacity-building actions to be undertaken by the Party concerned;
 - e) in-country assistance, technical assessment and verification mission, upon the invitation of the Party concerned;
 - f) public notification of compliance matters sent through the Secretariat to all Parties advising that compliance matters have been brought to the attention of a Party and that, up to that time, there has been no satisfactory response or action;
 - [^{f^{bis}}] issuance of declaration of non-compliance;] and /or

The Chairman had suggested paragraph f^{bis}) to be deleted as redundant, unless "declaration of non-compliance" is more than another way of describing the "public notification" in paragraph f) above. Again, some WG members agreed with this, whereas others found it "useful to include this measure to ensure that the Standing Committee has a wide range of options at its disposal to ensure that the Party concerned is brought back into compliance as quickly as possible. In addition, it is our understanding that this measure reflects current practice. This measure is certainly not covered by a public notification of compliance matters, because that merely signals that there is an issue and falls short of determining whether the line of compliance to non-compliance has been crossed."

- g) request of a compliance action plan to be submitted to the Standing Committee by the Party concerned identifying appropriate steps, a timetable for when those steps should be completed and means to assess satisfactory completion.
2. In certain cases, the Standing Committee decides to recommend the suspension of commercial or all trade in specimens of one or more CITES-listed species, consistent with ~~[Article XIII of]~~ the Convention. Such a recommendation may be made in cases where a Party's compliance matter is unresolved and persistent and the Party is showing no intention to achieve compliance or a State not a Party is not issuing the documentation referred to in Article X of the Convention. Such a recommendation is always specifically and explicitly based on the Convention and on any applicable Resolutions or Decisions by the Conference of the Parties¹.

No objections were received to deleting as redundant the bracketed words "Article XIII of".

On the other hand, in the footnote, one WG member suggested deleting the references to "Resolution Conf. 11.3 (Rev. 13) (Compliance and enforcement)" and "Resolution Conf. 11.1(Rev. CoP13) (Establishment of committees)", seeing that "trade suspension" is not specified in Resolution Conf. 11.3 (Rev. CoP13) or Resolution Conf. 11.1 (Rev. CoP13) as a measure to promote and achieve compliance. One other member of the WG expressed sympathy with this suggestion.

Other members, however, pointed out that this footnote reflects a finely balanced compromise concerning the mandate of the Standing Committee to take measures on the suspension of trade, that all the members of the WG stretched their instructions to the maximum to achieve this compromise, and that any alterations could unravel this delicate compromise.

¹ These currently include:

- Resolution Conf. 11.17 (Rev. CoP13) (National reports);
- Decision 13.82 (National laws for implementation of the Convention);
- Resolution Conf. 12.8 (Rev. CoP13) (Review of Significant trade in specimens of Appendix-II species);
- Convention Article XIII [and Resolution Conf. 11.3 (Rev. CoP13) (Compliance and enforcement)]; and
- [Resolution Conf 11.1(Rev. CoP13) (Establishment of committees)]

- [3. The list of measures above is not necessarily an exhaustive list of measures applied to date.] /
[The list of measures above is not necessarily exhaustive.]

The Chairman had suggested keeping the first bracketed text minus the two last words ("to date"). One member wished to retain the entire first bracket as being "in line with the descriptive nature of the Guidelines".

Other members, however, strongly preferred the second sentence, believing "that it's important for the Standing Committee to have a wide range of measures available to it so that it is able to tailor the response measure to the compliance issue in front of it. (...) We note that over time, the Standing Committee has developed new measures to deal with new and novel situations and has been able to respond effectively to those situations. To limit the range of measures could prevent the Standing Committee from providing the most appropriate response."

4. When the Standing Committee decides upon one or more of the measures mentioned above, it takes into account:
- a) the capacity of the Party concerned, especially developing countries and in particular the least developed and small island developing States and Parties with economies in transition;
 - b) such factors as the cause, type, degree and frequency of the compliance matters ~~and proportionality~~; and

The Chairman had suggested deleting "and proportionality" as redundant, "cause, type, degree and frequency" being the very factors that are taken into account when applying the principle of proportionality.

One Party, however, wished to retain the wording "in order to make it clear that the measures taken by the Standing Committee must be 'proportional' to the seriousness of the non-compliance situation."

- c) the possible impact on conservation and sustainable use with a view to avoiding negative results.

These considerations are clearly set out in the Standing Committee's recommendations.

D. Monitoring and implementation of measures to achieve compliance

1. The Standing Committee, with the assistance of the Secretariat, monitors the actions taken by the Party concerned to implement the measures taken. In this regard, the Standing Committee may, *inter alia*:
 - a) request the Party concerned to submit progress reports in accordance with a schedule; and
 - b) arrange, upon the invitation of the Party concerned, for an in-country technical assessment and for a verification mission.

In the light of progress, the Standing Committee decides whether to adjust the measures it has taken, or to take other measures.

2. Existing recommendations to suspend trade are generally reviewed at each Standing Committee meeting. They are also monitored intersessionally by the Secretariat. A recommendation to suspend trade is withdrawn as soon as the compliance matter has been resolved or sufficient progress has been made. The Secretariat notifies Parties of any such withdrawal as soon as possible.
3. The general guidelines in paragraphs D 1 and 2 above are in some cases supplemented by more precise provisions regarding specific categories of compliance matters, e.g. in the case of significant trade in specimens of Appendix-II species, and laid out in the Resolutions and Decisions related thereto.

V Reporting and reviews

Reporting

1. The Standing Committee reports to the Conference of the Parties on compliance matters. The Secretariat reports to the Standing Committee and the Conference of the Parties on compliance matters.
2. The Conference of the Parties may review this document periodically and revise it where appropriate.