

COUNCIL DECISION (EU) 2019/53**of 20 December 2018****on the position to be taken on behalf of the European Union at the Conference of the Parties to the Rotterdam Convention regarding compliance procedures**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 192(1) and 207(3), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade ('the Convention') was concluded on behalf of the Union by means of Council Decision 2006/730/EC ⁽¹⁾ and entered into force on 24 February 2004.
- (2) Pursuant to Article 22 of the Convention, the Conference of the Parties may adopt additional annexes to the Convention that relate to procedural, scientific, technical or administrative matters.
- (3) At the 9th ordinary meeting of the Conference of the Parties, which is to take place from 29 April to 10 May 2019, the Parties will consider the adoption of an additional procedural annex in order to introduce a non-compliance mechanism as required by Article 17 of the Convention.
- (4) It is appropriate to establish the position to be taken on the Union's behalf in the Conference of the Parties, as the additional procedural annex will be binding on the Union.
- (5) The Union reaffirms that it is crucial to promote and to commit globally towards a better implementation of multilateral environmental agreements and standards.
- (6) To the extent that the Convention falls both within the competence of the Union and the competence of the Member States, the Commission and the Member States should cooperate closely for the adoption of a compliance mechanism, aiming for unity in the international representation of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the upcoming Conference of the Parties to the Rotterdam Convention shall be to support the draft act on compliance attached to this Decision.

Minor changes to the draft act on compliance attached to this Decision may be agreed to, in the light of developments at the upcoming Conference of the Parties, by representatives of the Union, in consultation with Member States, during on-the-spot coordination meetings, without a further decision of the Council.

Article 2

This Decision shall enter into force on the date of its adoption.

⁽¹⁾ Council Decision 2006/730/EC of 25 September 2006 on the conclusion, on behalf of the European Community, of the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade (OJ L 299, 28.10.2006, p. 23).

Article 3

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 20 December 2018.

For the Council
The President
E. KÖSTINGER

ANNEX

Draft decision RC-9/[]: Procedures and mechanisms on compliance with the Rotterdam Convention**Submission by ...**

Decides to adopt Annex VII to the Convention, setting out procedures and mechanisms on compliance with the Rotterdam Convention, as contained in the annex to the present decision.

*Appendix***Annex VII: 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 interests of the Convention.

Election of members

- (4) At its first meeting after the entry into force of this 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 this 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 who nominated that member shall nominate an alternate to serve for the remainder of the term.

Officers

- (6) The Committee shall elect its own Chair. 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, 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.
- (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 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 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 where subparagraphs (a) and (b) apply, by:
- (a) A party which believes that, despite its best endeavours, it is, or will be, unable to comply with certain obligations under the Convention. Such a submission should include details as to which specific obligations are concerned and an assessment of the reason why the party may be unable to meet those obligations. Where possible, substantiating information, or advice as to where such substantiating information may be found, may be provided. The submission may include suggestions for solutions which the party considers may be most appropriate to its particular needs.
 - (b) A party that 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 this subparagraph should before so doing undertake consultations with the party whose compliance is in question. The submission should include details as to which specific obligations are concerned, and information substantiating the submission, 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 the Articles 4(1), 5 (1) and (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.
- (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, 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) Parties whose compliance is in question may present responses or comments at every step of the proceedings described in the present decision.
- (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, it may recommend to the Conference of the Parties, bearing in mind its ability under Article 18, paragraph 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 between all parties;
- (c) Requesting the Party concerned to 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-compliant 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 purposes of examining systemic issues of general compliance under paragraph 25, 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; and
 - (c) Consult with the Secretariat and draw upon its experience and knowledge base.
- (23) Subject to Article 14 of the Convention, the Committee, any party and any person involved in the deliberations of the Committee shall protect the confidentiality of information received in confidence.

Monitoring

- (24) The Compliance Committee should monitor the consequences of action taken in pursuance of paragraphs 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 other relevant multilateral environmental agreements

- (28) Where relevant, the Committee may solicit specific information, upon request by the Conference of the Parties, or directly, from compliance committees dealing with hazardous substances and wastes under the auspices of other 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 this annex.

Relationship with settlement of disputes

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