



## NOTIFICATION TO THE PARTIES

No. 2004/052

Geneva, 28 June 2004

CONCERNING:

### Guidelines on compliance with the Convention

1. At its 50th meeting (Geneva, March 2004), the Standing Committee considered revised draft *Guidelines on Compliance with the Convention* prepared on its instruction by the Secretariat. As it was unable to agree on a document at that meeting, the Committee established an open-ended, intersessional Working Group on Compliance and a process to create a document for consideration at its 53rd meeting.
2. The Standing Committee agreed that a working group established at its 50th meeting, comprising Australia, Ecuador, Germany, Malaysia, Norway, the United Republic of Tanzania and the United States of America, would be the nucleus of the Working Group on Compliance. Australia accepted to serve as its interim chairman.
3. Parties that are interested in participating in the Working Group on Compliance are invited to advise the Secretariat in writing by 15 July 2004. As the Working Group will conduct its work electronically, Parties should provide a contact email address.
4. Once it is established, the Working Group will decide upon a chairman. It will also determine how to proceed with its work and how to elicit input from intergovernmental and non-governmental organizations. The Secretariat will keep Parties informed about the progress of the Working Group by posting its products on the CITES website.
5. A copy of the revised draft *Guidelines on Compliance with the Convention* (contained in Annex 3 to document SC50 Doc. 27) is attached. The summary report for SC50, to be published in the course of June, contains a synopsis of the discussions held on this text and reflects that there was an apparent disagreement concerning what constitutes 'guidelines' that needed to be resolved.
6. As it is important to elicit input on the revised draft *Guidelines*, particularly their overall structure and content, Parties are encouraged to submit their comments on the attached text to the Secretariat, which will then share them with the Working Group.
7. Parties' attention is also drawn to the fact that Ireland, on behalf of the Member States of the European Community, has tabled document SC50 Doc. 27 for discussion at CoP13 (see the Annex to document CoP13 Doc. 25). Parties are reminded that document SC50 Doc. 27 was not agreed and is still under deliberation by the Standing Committee.

## Annex

Document SC50 Doc. 27 Annex 3Revised draft guidelines on compliance with the ConventionObjective

1. The objective of these guidelines is to assist the Standing Committee in:
  - a) reviewing Parties' overall compliance with the Convention;
  - b) promoting and facilitating Parties' compliance with the Convention with an emphasis on preventing non-compliance in the first instance;
  - c) ensuring the consistent and effective application of compliance-related procedures within the framework of the Convention's provisions and relevant Resolutions;
  - d) examining a Party's non-compliance with the Convention with an emphasis on identifying the cause(s) of non-compliance facilitating a Party's return to compliance within the shortest possible time-frame; and
  - e) identifying ways to improve the implementation, and thereby the effectiveness, of the Convention and making appropriate recommendations to the Conference of the Parties.

General principles

2. These guidelines have their basis in Decision 12.84 and should be applied in a manner consistent with the legally-binding text of the Convention, applicable rules and principles of international law, relevant Resolutions and Decisions of the Conference of the Parties, decisions and recommendations of CITES subsidiary bodies and historical practice.
3. In the event of any conflict between these guidelines and the Convention, the Convention prevails.
4. These guidelines are without prejudice to any dispute settlement procedure under the Convention.
5. A positive and supportive approach should be taken towards issues of non-compliance, with the aim of ensuring long-term compliance.
6. Non-compliance should be addressed in a consultative, transparent and pragmatic manner with procedural safeguards for affected Parties .
7. Discussions should not be confidential except for the following reasons:
  - a) to avoid threats to the safety of individuals;
  - b) to protect legitimate commercial secrecy; or

- c) to avoid the disclosure of information that could jeopardize the survival of populations of species included in the Appendices of the Convention.

The decision to keep discussions confidential is the responsibility of the Standing Committee or the Conference of the Parties.

- 8. The application of these guidelines in addressing instances of non-compliance must be consistent and fair. There should be equal treatment of Parties in similar situations and where applicable precedents are involved, but sufficient flexibility to address compliance matters on a case-by-case basis, taking into account factors such as national economic circumstances, social stability and existing constraints.
- 9. Where compliance measures are being developed, their possible conservation impact must be taken into account and all efforts taken to avoid developing and establishing measures that are likely to bring about negative conservation results, even if these would apply to limited number of Parties or species.

#### Authority of the Conference of the Parties

- 10. As the supreme policy-making body of the Convention, the Conference of the Parties should direct and oversee the handling of compliance matters particularly through the identification of key obligations and procedures. It should consider and decide upon recommendations made to it by the Standing Committee for improving compliance with the Convention. At the request of a Party, the Conference of the Parties should review specific issues of non-compliance and related decisions of the Standing Committee.

#### Role of the Standing Committee

- 11. The Standing Committee should examine general and specific compliance matters in accordance with instructions from and authority delegated by the Conference of the Parties. It should advise and assist Parties in complying with the Convention, verify information, make determinations regarding issues of non-compliance with the Convention, recommend measures to restore compliance and monitor and assess overall compliance.

#### Role of the Animals and Plants Committees

- 12. The Animals and Plants Committees should advise and assist the Standing Committee and the Conference of the Parties with regard to compliance matters by *inter alia* undertaking necessary reviews, consultations, assessments and reporting.

#### Role of the Secretariat

- 13. The Secretariat should assist and support the Standing Committee and the Conference of the Parties in carrying out their functions concerning compliance matters. It should receive, study, verify and communicate to the Parties information on compliance matters. It should advise and assist Parties in complying with the Convention, draw their attention to apparent issues of non-compliance, follow the instructions and comply with the deadlines given by the Standing Committee and the Conference of the Parties, and track the implementation of compliance-related decisions of the Standing Committee and the Conference of the Parties.

The Secretariat should report on a regular basis to the Standing Committee and the Conference of the Parties on its activities undertaken under these guidelines.

#### Obligations

14. The application of these guidelines relates, in particular, to compliance with the following Convention obligations:
- a) Designation of a Management Authority and a Scientific Authority (Article IX);
  - b) Ensuring that trade only takes place after the prior grant of certain permits or certificates or comparable documents issued by non-party States showing that, *inter alia*, specimens have been legally-acquired and their trade is not detrimental to the survival of the species (Articles III, IV, V, VI, VII and X);
  - c) Taking of appropriate measures to enforce the provisions of the Convention and prohibit trade in specimens in violation thereof (Article VIII, paragraph 1);
  - d) Maintenance of records of trade and preparation of periodic reports on implementation of the Convention (Article VIII, paragraphs 7 and 8); and
  - e) Responding 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).

#### General promotion and facilitation of compliance (and prevention of non-compliance)

15. The Secretariat should keep Parties informed as fully as possible, through confidential communications, where necessary, and otherwise through Notifications to the Parties and its reports, of areas of effective compliance with the Convention, the identification of compliance problems, the actions taken to solve those problems and the successful restoration of compliance.
16. The Secretariat should, by the most effective means, advise Parties at least 60 days in advance of deadlines applicable to reporting or other obligations under the Convention and offer relevant assistance.
17. Advice, assistance and other capacity-building activities provided by the Secretariat or other bodies should focus on enabling Parties to meet the compliance obligations listed above.
18. Annual and biennial reports, legislative texts as well as other special reports and responses to information requests (e.g. related to species management or enforcement issues) should provide the primary means by which compliance with the Convention is monitored.
19. Information and reports provided by Parties should be reviewed by the Secretariat and the results of these reviews should be provided to the Parties. The Secretariat may receive compliance-related information at any time and from any source.

20. The Secretariat should maintain open and regular communication with Parties concerning compliance matters.

Party-specific facilitation of compliance (and prevention of non-compliance)

21. The Secretariat should provide individual Parties that may not be in compliance with information it receives that indicates compliance problems and should use oral and written communications with these individual Parties to determine whether compliance problems exist.
22. Parties should provide to the Secretariat early warning of any compliance problems, including the inability to provide information by a certain deadline and, where appropriate, the reasons for these problems.
23. Where compliance problems are detected, the Secretariat or other appropriate body should provide advice or assistance to solve them.
24. A Party that has been identified by the Secretariat as having compliance problems should be given the opportunity to correct those problems. It may be asked by the Standing Committee to undertake additional reporting or targeted monitoring (e.g. submission of further information or provision of permit copies to the Secretariat for verification for a certain period of time) an investigation or other recommended policies or actions.
25. If a Party's compliance problem is not resolved in spite of any assistance provided and in spite of time allowed for correction, the Standing Committee should issue an informal warning to the affected Party stating that it is out of compliance, explaining the basis for that conclusion, and advising it that the non-compliance procedure may be initiated.

Identifying and addressing of non-compliance (and restoring compliance)

*Initiation of non-compliance procedure*

26. The non-compliance procedure may be initiated by the submission of issues of non-compliance to the Standing Committee or the Conference of the Parties by:
- a) A Party that concludes that despite its best endeavours it may be unable on its own to comply with certain obligations under the Convention;
  - b) One or more Parties that, in the course of their trade monitoring and enforcement, have concerns about another Party's compliance with its obligations under the Convention or have concerns about trade involving States not party to the Convention; or;
  - c) The Secretariat, on its own initiative or in response to information it has received from elsewhere;
- or it may be initiated directly by:
- d) The Conference of the Parties; or
  - e) The Standing Committee.

27. Non-compliance submissions should be in writing and should include details as to which specific obligations are concerned and an assessment of the reasons why the affected Party may be unable to meet those obligations. Corroborating information, or advice where such corroborating information may be found, should be provided. The non-compliance submission may include proposals for remedial action.
28. The Standing Committee or the Conference of the Parties shall reject non-compliance submissions which it considers are:
  - a) trivial; or
  - b) manifestly ill-founded.
29. Before making a non-compliance submission to the Standing Committee or the Conference of the Parties, the Secretariat should screen the underlying information to determine its reliability and relevance, compile corroborating information and consult with the affected Party.
30. The Standing Committee and the Conference of the Parties should ensure the expedited handling of a non-compliance submission.

*Information gathering and fact-finding*

31. The Standing Committee and the Conference of the Parties should consider non-compliance submissions, information and observations on non-compliance with a view to establishing relevant facts and securing an amicable solution of the matter.
32. A Party that is the subject of a non-compliance submission or that makes a non-compliance submission with respect to itself has the right to participate in the discussions of the Standing Committee or the Conference of the Parties with respect to that non-compliance submission and to be consulted formally on the non-compliance submission. Formal consultations should be followed, where appropriate, by information consultations. The affected Party may not take part in the preparation and adoption of any decisions, any measures or any recommendations of the Standing Committee or the Conference of the Parties. Where an affected Party cannot access the financial resources needed to participate in such discussions, it may request assistance from the Secretariat in identifying such resources.
33. Where necessary and provided funds are available the Standing Committee or Conference of the Parties should request, through the Secretariat, further information on a non-compliance submission and should undertake, through the Secretariat and upon the invitation of the Party concerned, the gathering and verification of information in the territory of that Party or wherever such information may be found.

*Determination of non-compliance and its cause*

34. The Standing Committee or the Conference of the Parties should determine whether or not a state of non-compliance exists. Where it has determined that such is the case, it should establish the facts and possible causes of the matter of concern and the requirements for its resolution.

35. The Standing Committee or the Conference of the Parties should also consider the nature, cause, degree and frequency of non-compliance and whether the affected Party has taken or planned any steps to restore compliance before making a determination that issues of non-compliance exist. Non-compliance with a single Convention obligation may be sufficient to result in a determination.

*Recommendation of measures to restore compliance*

36. The Standing Committee or the Conference of the Parties may , after consideration of the information available to it, decide upon one or more of the following sequential, graduated measures to address non-compliance issues that are determined to exist and bring about full compliance with the Convention:

- a) advice, information, appropriate assistance and other capacity-building support to the affected Party through the Secretariat or another body;
- b) direct contact with the affected Party by a representative of the Standing Committee with a view to helping it find a solution;
- c) special reporting by the affected Party and data verification by the Secretariat;
- d) issuance of a formal caution directly to an affected Party warning that it is in non-compliance, requesting a response or action and indicating that, if there is none, further measures might be taken;
- e) recommended specific actions to be undertaken by the affected Party;
- f) in-country technical assessment and verification mission, upon the invitation of the Party concerned, by the Secretariat or, depending on the assessment needs, by an independent review team;
- g) public notification of non-compliance sent through the Secretariat by the Standing Committee or the Conference of the Parties to all Parties advising that issues of non-compliance have been brought to the attention of a Party and that, up to that time, there has been no satisfactory response or action;
- h) agreement between the affected Party and the Secretariat on a compliance action plan with steps needed for a Party to comply, a timetable for when those steps should be completed and means to assess satisfactory completion. During this period, no additional measures would be applied provided that progress in returning to compliance continued to be made;

- i) recommended temporary suspension of commercial or all trade in specimens of one or more CITES-listed species, consistent with Article XIII of the Convention. A recommendation to suspend trade should be made in cases where a Party's non-compliance is persistent and where it is determined that such persistence is wilful or is the result of manifest negligence and is likely to be detrimental to the survival of one or more CITES-listed species. Such a determination should be made, for example, when a Party does not:

- i) follow recommendations;
- ii) take advantage of offers of assistance;
- iii) agree to a compliance action plan; or
- iv) comply with an agreed plan.

It should also be made where no domestic measures exist to enforce the Convention. A recommendation to suspend trade should be withdrawn as soon as a Party has been restored to full compliance; and

- j) other appropriate measures.

37. The affected Party should be given adequate time to implement the measure(s) recommended.

#### *Monitoring of implementation*

38. The Standing Committee or the Conference of the Parties should monitor the actions taken by the Party concerned to restore compliance through, among other things, its submission of progress reports or the submission of reports by the Secretariat.

39. Specific actions as well as the date when the Party concerned is expected to return to compliance should be noted in such reports. Deadlines established by the Standing Committee or the Conference of the Parties should be adjusted to allow an affected Party that is making good progress to complete the steps needed to restore compliance.

40. The Party concerned should keep the Standing Committee or Conference of the Parties informed of its progress by submitting summary reports on a regular basis.

41. In the event of a failure to return to compliance in a timely manner, the Standing Committee or the Conference of the Parties should consider other measures consistent with the list of measures provided above.

42. Existing recommendations to suspend trade should be reviewed at each Standing Committee meeting.

#### *Return to compliance*

43. The Standing Committee or Conference of the Parties should instruct the Secretariat to notify Parties when it is satisfied that an affected Party has returned to compliance.



Review of overall compliance

44. To ensure the continued effectiveness of these guidelines, the Standing Committee should review them every two years and revise them where appropriate to incorporate experience gained in implementing them or other relevant compliance policy documents.