

**INTERNAL NOTE OF THE PERMANENT SECRETARIAT
REGARDING THE DISCUSSION
ON THE NEXT ORDINARY COMPLIANCE PROCEDURE
(CC27, AGENDA ITEM 6)**

(23.08.2018)

The topic of the scope and reporting interval of the next ordinary compliance procedure was raised in the 26th meeting of the Compliance Committee and discussed in detail under item 6 of the agenda of the 27th meeting of the Compliance Committee. This note gives an account of the main elements addressed and of the decision that ensued from the discussion.

I. LEGAL FRAMEWORK OF THE CURRENT COMPLIANCE MECHANISM

Decision ACXII/A1 as complemented by decision ACXIV/A7 lays down the legal basis of the current compliance mechanism of the Alpine Convention. This mechanism comprises provisions regarding the submission, publication and structure of the Contracting Parties' compliance reports (point I of the mechanism) as well as provisions concerning the composition and the functions of the Compliance Committee and the actual compliance procedure, which consists of two phases, the elaboration of a general compliance report and an in-depth review of specific possible deficiencies (point II of the mechanism). The rules of the mechanism are applied to ordinary compliance procedures based on the regular national compliance reports and *mutatis mutandis* to extraordinary procedures triggered by requests for reviewing of a supposed non-compliance with the Alpine Convention submitted by Contracting Parties and Observers.

The national compliance reports represent the starting point of the ordinary compliance procedure. These reports have to be produced on the base of a comprehensive questionnaire elaborated by the Compliance Committee and approved by the Permanent Committee in its 28th meeting on 27-29 September 2004 in Bolzano/Bozen (document ImplAlp/2004/3/6/1 Rev.1). The current ordinary compliance procedure already makes possible to simplify the reporting, as the Contracting Parties can revise their last national compliance report submitted by using the track change mode (point I.1.2. of the mechanism).

So far, the ordinary compliance procedure has been carried out twice on the basis of national reports that were to be submitted in 2005 and in 2009. The experience made during these procedures lead the Alpine Conference in its 12th meeting in 2012 to amend the compliance mechanism in force at that time by extending the reporting period from four to ten years and by introducing the in-depth review phase. As a consequence, the deadline for submission of the next national compliance reports was fixed at end of August 2019 (point I.1.1. of the mechanism).

Any amendments to the compliance mechanism would require a decision by the Alpine Conference.

II. THREE BASIC CONSIDERATIONS CONCERNING POSSIBLE CHANGES TO THE ORDINARY COMPLIANCE PROCEDURE

The discussion was structured along three basic considerations concerning possible changes to the compliance procedure of the Alpine Convention addressed by the Secretary General. These considerations relate to (1) the purpose of the procedure, (2) the credibility of the compliance system and (3) the management of the procedure.

II.1. PURPOSE OF THE COMPLIANCE PROCEDURE

The ordinary compliance procedure serves three main objectives: a) to regularly remind the administrations of the Contracting Parties of their obligations under the Alpine Convention and its Protocols, b) to safeguard that the non-reciprocal obligations are complied with and c) to create an added value by contributing to an improved implementation of the provisions.

The current two-phase approach is valuable, as it allows to identify within the in-depth review concrete remedies to possible deficiencies found during the regular review of the whole body of provisions of the Alpine Convention and its Protocols.

A uniform reporting date guarantees the comparability of the different measures taken by the Contracting Parties.

II.2. CREDIBILITY OF THE COMPLIANCE SYSTEM

To be credible the Alpine Convention requires a sound compliance mechanism. Credibility is usually rooted in a reasonable frequency of reviewing compliance with the provisions and in the thoroughness of the procedures applied. In comparison to other international treaties, the reporting period of ten years in the Alpine Convention is rather long. However, this finds an explanation in the considerable number of obligations contained in the Convention and the Protocols.

What matters more is that since the adoption of the new compliance mechanism in 2012 the ordinary compliance procedure has not been carried out a single time, as the Contracting Parties have to submit their national compliance reports “for the first time by end of August 2019” (point I.1.1. of the mechanism). Extending the reporting interval and thus postponing the next ordinary compliance procedure could put in question the credibility of the Alpine Convention’ compliance mechanism, in particular as regards the external perception. Any such proposal would therefore need to ensure that these credibility concerns are addressed adequately.

II.3. MANAGEMENT OF THE COMPLIANCE PROCEDURE

The question of manageability relates to the management on the side of the Contracting Parties and to the management on the side of the Permanent Secretariat. The Contracting Parties and the Permanent Secretariat would need to carefully assess the impacts that different possible amendments could likely have for them.

Changing the current ten year reporting interval for the comprehensive national compliance reports covering the Alpine Convention and all Protocols to a system of biannual reports on two Protocols each could have the effect of redefining the nature of the work load over time. The substantial effort once in a decade could turn into one that would be less substantial at any given point in time, but continuous for both, Contracting Parties and Permanent Secretariat.

III. FURTHER ASPECTS MENTIONED

Carrying out only in-depth reviews cannot replace the comprehensive overview gained through a general compliance report.

The elaboration of coherent draft compliance reports by the Permanent Secretariat would be even more difficult in a setting of biannual reporting than in the current ten year reporting, if delays in submitting the national compliance reports occur, as this was frequently observed in the past.

Using the track change mode in national compliance reports would allow concentrating on updates rather than realizing a new full reporting. This, however requires that the initial report is completed.

The reporting should be focused on the effectiveness of the measures implemented.

IV. CONCLUSION

After having considered all arguments the Compliance Committee adopted the following decision:

The Compliance Committee takes the view that the next ordinary compliance procedure should be guided by the following aspects:

- a) The purpose of the procedure is to review compliance with the Alpine Convention and its Protocols. In order to carry out properly this review, it is necessary that the questionnaire elaborated by the Compliance Committee (document ImplAlp/2004/3/6/1 Rev.1) be entirely filled in and the questions relating to the effectiveness be concretely answered;
- b) The ten years deadline foreseen in the compliance mechanism in force has to be kept. With that, the national compliance reports have to be submitted entirely in the four languages of the Alpine Convention by 1 September 2019 at the latest;
- c) The ordinary compliance procedure has to be carried out according to the compliance mechanism laid down in decision ACXII/A1 as completed by decision ACXIV/A7;
- d) The Contracting Parties are free to report only about changes to previous national compliance reports.