

Ad Hoc Working Group Group of Legal Experts
on Non-Compliance with the
Montreal Protocol

Second Meeting
Geneva, 8-10 April 1991

NON-COMPLIANCE PROCEDURE

(Proposal made on behalf of the European Economic Community)

1. The proposal aims to meet the mandate contained in Decision II/5 by the Second Meeting of the Parties to the Montreal Protocol, which requested the Ad Hoc Working Group of Legal Experts inter alia to "elaborate further procedures on non-compliance and terms of reference for the Implementation Committee".
2. The attached procedure reproduces verbatim the texts of paragraphs set out in Annex III to the Report of the Second Meeting of the Parties to the Montreal Protocol, which took place in London from 27 to 29 June 1990 (Doc.UNEP/OzL.Pro.2/3).
3. It is proposed that Annex III should be divided into two parts. Part 1 would deal with the non-compliance procedure proper and contains the texts already adopted by the Second Meeting of the Parties with certain additions to deal with time-limits, possible irregularities with regard to compliance, conflict of interests of members of the Implementation Committee and the functions of the Committee. Part 2 would contain an indicative list of steps to bring about full compliance with the Protocol.

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Annex III

PART 1

NON-COMPLIANCE PROCEDURE

1. (Wording remains as in paragraph 1, Annex III, of Doc.UNEP/OzL.Pro.2/3, page 40.)

2. The Party whose implementation is at issue is to be sent a copy of the submission within two (2) weeks and it shall be given a reasonable opportunity to reply. Any such reply and information in support thereof is to be submitted to the Secretariat and to the Parties involved within three (3) months or such a longer period as the Secretariat considers appropriate. The Secretariat shall then transmit the submission, the reply and the information provided by the Parties to the Implementation Committee referred to in paragraph 4, which shall consider the matter as soon as practicable.^{1/}

3. Where the Secretariat is aware of possible irregularities with regard to the compliance of a Party with its obligations under the Protocol, it may request further information on the matter from the Party concerned. If no satisfactory comment is received within three (3) months or such a longer period as the Secretariat considers appropriate, the Secretariat shall forthwith refer the matter to the Implementation Committee for examination.

4. An Implementation Committee is hereby established. It shall consist of five Parties elected by the Meeting of the Parties for two years, based on equitable geographical distribution. Outgoing Parties may also be re-elected for one immediate consecutive term. At the first election, two Parties shall be elected for a one-year term.

Five substitute Parties shall be elected in accordance with the same rules as for the Members of the Implementation Committee. Where a Party that is a Member of the Implementation Committee is itself involved in a case of non-compliance, it shall be replaced by the substitute Party from the same region.^{2/}

1/ Except where underlined the text remains the same as that in paragraph 2 of Annex III in Doc.UNEP/OzL.Pro.2/3, page 40.

2/ Except where underlined the text remains the same as that in paragraph 3 of Annex III in Doc.UNEP/OzL.Pro.2/3, page 40.

It is additionally proposed that the following statement should be added to the report of the Working Group: "With regard to paragraph 4 the Ad Hoc Working Group of Legal Experts felt it ought to emphasize the importance of Parties nominating as their representatives individuals who are well qualified in the technical, economic or legal field."

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5. The Committee shall meet as necessary to perform its functions; unless it decides otherwise the Committee shall meet twice a year. The Secretariat shall arrange for and service its meetings.^{3/}

6. The functions of the Committee shall be:

- (a) To receive, consider and report on any submission made by one or more Parties in accordance with paragraphs 1, 2 and 3.
- (b) To receive, consider and report on the Secretariat reports based on information received pursuant to Article 7 of the Protocol, and on any information or observations forwarded by the Secretariat in connection with the preparation of the reports referred to in Article 12(c) of the Protocol.
- (c) To be informed of, consider and pursue possible irregularities with regard to the compliance with the obligations under the Protocol.
- (d) To request, where it considers necessary, further information from the Secretariat or the Parties involved.
- (e) To undertake, with the consent of the Parties concerned, any examination necessary to establish the state of compliance with the terms of the Protocol.^{4/}

7. In the course of its examination of the submissions, replies, information and observations referred to in paragraphs 2 and 6 above, the Implementation Committee may:

- address requests for information to Parties, organizations or individuals as appropriate
- send, with the consent of the Party in question, one or more of its Members to the territory of the Party concerned for further clarification of the relevant facts

8. (Wording remains as in paragraph 6 of Annex III in Doc.UNEP/OzL.Pro.2/3, page 40.)

9. The Committee shall report to the Meeting of the Parties with any recommendations it considers appropriate. After receiving a report by the Committee the Parties may, taking into consideration the circumstances of the case, decide upon and call for steps to bring about full compliance with the Protocol, including measures to assist the Party's compliance with the

^{3/} Except where underlined the text remains the same as that in paragraph 4 of Annex III in Doc.UNEP/OzL.Pro.2/3, page 40.

^{4/} Except where underlined the text remains the same as that in paragraph 5 of Annex III in Doc.UNEP/OzL.Pro.2/3, page 40.

Protocol, and to further the Protocol's objectives. An indicative list of possible steps to bring about full compliance with the Protocol appears in Part 2 of this Annex.^{5/}

10. (Wording remains as in paragraph 8 of Annex III in Doc.UNEP/OzL.Pro.2/3, page 40.)

11. (Wording remains as in paragraph 9 of Annex III in Doc.UNEP/OzL.Pro.2/3, page 40.)

12. (Wording remains as in paragraph 10 of Annex III in Doc.UNEP/OzL.Pro.2/3, page 41.)

13. (Wording remains as in paragraph 11 of Annex III in Doc.UNEP/OzL.Pro.2/3, page 41.)

PART 2

INDICATIVE LIST OF STEPS TO BRING ABOUT FULL COMPLIANCE WITH THE PROTOCOL

14. Steps taken by the Meeting of the Parties to ensure full compliance with the Protocol may include but are not limited to the following:

A. For non-compliance with data reporting requirements:

Assistance to Parties in establishing methods and institutional mechanisms to collect and report data.

Determination by the Secretariat of provisional data until data are provided by the Party.

In cases of repeated negligence to report data the Party can be treated as a non-party for the purposes of Article 4 (trade restrictions).

B. For non-compliance with control measures:

In cases of misuse of the entitlements to increase production to satisfy basic domestic needs or for purposes of industrial rationalization, a Party may lose the right to claim such increases for a specific number of years.

In cases of misuse of the right to joint fulfilment, Parties may be requested to comply individually with the provisions of the Protocol.

^{5/} Except where underlined the text remains the same as that in paragraph 7 of Annex III in Doc.UNEP/OzL.Pro.2/3, page 40.

In cases where Parties have received assistance from the Multilateral Fund to enable them to comply with the provisions of the Protocol and they still fail to comply without fulfilling the requirements of Article 5, paragraphs 4-6, such Parties may either be treated as non-parties for the purposes of Article 4 or may lose one or more of their benefits as Article 5, paragraph 1 countries, e.g. the entitlement to delay their compliance with the Protocol for up to ten years or the right to receive funds from the Multilateral Fund.

In cases where Parties do not reduce (freeze) in accordance with the provisions of the Protocol, a Party may be requested to increase its reductions in the following year(s) or it may be treated as a non-party for the purposes of Article 4.

C. For non-compliance with trade provisions:

In cases where a Party does not implement Article 4 with the effect that non-parties benefit from it, such a Party may be treated as a non-party for the purposes of Article 4.

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