**REVIEW MECHANISM AND NATIONAL LEGISLATION PROGRAMME**

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*(Prepared by the COW)*

**PROPOSED OPERATIONAL GUIDELINES FOR THE CMS REVIEW MECHANISM**

1. **Openness and transparency of findings and reports, and the establishment of an online registry for the Review Mechanism.**

*Issue*

Resolution 12.9 stresses that, as a general principle, “findings and reports on implementation matters are treated in an open and transparent manner*”.[[1]](#footnote-2)* However, it lacks a definition of the types of findings and reports that should adhere to this principle, who may access such information, and at which stages of the review. Additionally, Resolution 12.9 establishes that “communications between the Secretariat and individual Parties on specific implementation matters are generally confidential”,*[[2]](#footnote-3)* “unless the Party concerned waives the confidentiality”.[[3]](#footnote-4) The same exception applies to communications between the Party concerned and the Standing Committee (StC) when acting as the Review Body.[[4]](#footnote-5)

The need for guidance on the openness and transparency of findings and reports became apparent during the Secretariat’s work on the first admitted review file (File No. 2021/01, project development at Vjosa-Narta Protected Landscape[[5]](#footnote-6)). The lack of clarity regarding openness and transparency discouraged the Secretariat from sharing information on the admitted file with Parties and the StC during its 53rd meeting, even though the information was already publicly available through other multilateral environmental agreements (MEAs).[[6]](#footnote-7)

While Resolution 12.9 mandates the Secretariat to bring an implementation matter to the attention of the StC only when a Party fails to address it,[[7]](#footnote-8) the StC would benefit from a general understanding of ongoing files. This would help the StC in its role as the Review Body when a file is admitted for review.

The Secretariat has been careful to maintain the confidentiality of communications with Parties concerned. However, making findings and reports public, as envisioned in Resolution 12.9, would enhance access to and the visibility of the Review Mechanism. This could help disseminate valuable best practice and knowledge, aiding compliance with the obligations outlined in Articles III.4, III.5, III.7 and VI.2 of the Convention and encourage the use of the Review Mechanism.

The establishment of an online registry for review or compliance mechanisms is a common practice in other MEAs.[[8]](#footnote-9) For the CMS Review Mechanism, such a registry would offer concerned Parties an easily accessible means to trace information, thereby reducing the workload of the Secretariat from unnecessary individual information requests.

*Guidelines*

The Secretariat will establish an online registry of Review Mechanism files, subject to the availability of funds. This registry will serve as a centralized digital repository, providing general information on both current and past files. It will include details on the status of files, and any milestones, findings and associated reports, in line with Section I.A., paragraph 3, of Resolution 12.9. The registry will be publicly accessible under the Review Mechanism section of the CMS website ([www.cms.int/en/activities/review-mechanism](http://www.cms.int/en/activities/review-mechanism)).

The following information will be published in the online registry:

1. Reference number assigned to the file;
2. File status: received, admitted, dismissed (either by the Secretariat or the StC), under revision by the StC, or closed;
3. Name of the Party(ies) concerned (the Secretariat will take measures to keep the personal details of individual confidential);
4. Issue and Appendix I-listed species involved in the implementation matter;
5. The Convention article(s) subject to review;
6. Milestones in the review process, including dates of submission , admission by the Secretariat, missions, and submission of the file to the StC Review Body;
7. Findings and reports from the review file including:

* any report submitted by the Party concerned commenting/addressing the implementation matter
* reports from any fact-finding missions
* report of the file submission to the StC Review Body[[9]](#footnote-10)
* advice and other capacity-building documents resulting from the StC review[[10]](#footnote-11)
* implementation plans to be submitted to the StC by the Party concerned identifying challenges, appropriate steps, a time frame for completion, and means to assess satisfactory completion[[11]](#footnote-12)
* StC report to the Conference of the Parties on current reviews;

1. Date of the review file’s dismissal/closure.[[12]](#footnote-13)

Parties may waive confidentiality over information and communications exchanged with the Secretariat regarding specific implementation matters, allowing them to be published through the online registry.[[13]](#footnote-14) The Secretariat will grant the StC access to confidential communications with the concerned Parties only after bringing the implementation matter to its attention, in line with Section I.C., paragraph 5, of Resolution 12.9.

1. **Gathering of additional information for handling and screening of implementation matters by the Secretariat.**

*Issue*

Under Resolution 12.9, the Secretariat is tasked with receiving, assessing and, if necessary, requesting additional information on the implementation matter to help decide on its admissibility. Upon admission of the information, and prior to presenting the matter to the StC, the Secretariat may also request information to afford the concerned Party an opportunity to provide comments or address the matter.[[14]](#footnote-15)

The Secretariat’s review of File No. 2021/01 has shown that, following the admission of a file, there are instances where gathering additional information, often in the form of an on-site fact-finding mission, becomes necessary. This is crucial for conducting a comprehensive assessment of the matter or assisting the Party concerned in addressing the implementation issue.[[15]](#footnote-16)

As part of the review of the project development at Vjosa-Narta Protected Landscape, the Secretariat participated in a joint fact-finding mission organized by the Bern Convention and the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA).[[16]](#footnote-17)

While the CMS Secretariat was able to reach an agreement with the Albanian Government on the mission and its terms of reference, Resolution 12.9 lacked guidance on the practice and parameters of fact-finding missions. Within the context of the CMS Review Mechanism, specific guidance is essential to elucidate various aspects of these missions, including expert appointments, terms of reference, funding, the stages of the review process at which fact-finding missions take place, the involvement of stakeholders such as the Parties concerned, and the production of fact-finding mission reports.

Guidelines on gathering additional information through fact-finding missions would grant the Review Mechanism a greater degree of certainty, consistency and transparency. Furthermore, such guidance would help streamline the Secretariat's work by eliminating the need for multiple information requests and enabling the efficient clarification of facts on site, ensuring that “implementation matters are handled in a time-efficient manner”.[[17]](#footnote-18)

*Guidelines*

In situations where the information provided by the individual and/or the Party concerned is deemed insufficient or contradictory, or where on-site conditions are evolving, the Secretariat may request the concerned Party to agree to a fact-finding mission (FFMs) at any point during the handling and screening of the implementation matter. FFMs involve visits by independent experts to gather additional information on the implementation of any of Articles III.4, III.5, III.7 and VI.2 of the Convention.

The Secretariat shall request, in a written communication, the Party concerned to authorize an FFM. The communication shall outline the purpose of the FFM and the specific information that is lacking or contradictory, or the underlying reasons necessitating this request.

An independent expert, appointed by the Secretariat in agreement with the Party concerned, will conduct the FFM. The appointed expert must not represent or have legally represented the Party concerned. Additionally, the expert cannot be a national of the country that is subject to the FFM.

The Secretariat and the concerned Party will work together to develop the terms of reference for the FFM. These terms shall encompass, at a minimum, the following:

1. Background to the implementation matter
2. Objectives of the FFM
3. Composition of the mission team
4. List of national authorities and other stakeholders to be involved, along with their respective contact information
5. Details of funding and organizations involved in the FFM
6. Expected mission deliverables
7. Tentative schedule

The expert shall gather information on site, accompanied by a member of the Secretariat, the Party concerned, national authorities and, where appropriate, other stakeholders such as other MEAs taking part in the mission.

The Secretariat will bear the contracting, travel and subsistence expenses related to the FFM, provided adequate funds are available, and in collaboration with the concerned Party.

The expert shall submit a written report of the FFM findings (in one of the official CMS languages) that includes, at a minimum, the following information:

1. A summary of the collected information
2. A description of the activities undertaken
3. The relevance of the gathered information for the implementation of Articles III.4, III.5, III.7 and VI.2 of the Convention, as applicable, especially the impacts on Appendix I species and their habitats
4. Conclusions from the FFM and recommendations
5. Supporting information

To ensure that “reviews are done in a synergistic and cooperative manner with other relevant processes both within and outside CMS”,[[18]](#footnote-19) the Secretariat will proactively seek collaboration in FFMs if made aware that another MEA is addressing the same implementation matter. Joint FFMs will strive to avoid duplication of efforts and contradictory positions at the international level, and the CMS Secretariat must adhere to these operational guidelines when proposing a joint FFM to a concerned Party.

DRAFT DECISION

**REVIEW MECHANISM AND NATIONAL LEGISLATION PROGRAMME**

***Directed to the Secretariat***

14. AA The Secretariat is requested to:

1. Follow up with Parties that have completed and submitted the National Legislation Programme (NLP) questionnaire on their progress in implementing recommended actions, and provide technical support to assist Parties in drafting adequate national legislation to implement the provisions of Article III, paragraph 5, of the Convention, as possible and appropriate;
2. Encourage Parties that have not yet joined the National Legislation Programme to complete the NLP questionnaire and submit it to the Secretariat;
3. In close collaboration with UNEP, organize a dedicated workshop for UNEP and CMS Parties to support them in strengthening national legal frameworks for the implementation of CMS;
4. Subject to the availability of external resources, commission a study on penalties, including both criminal penalties and administrative sanctions, to determine whether national legislation allows for effective, deterrent and proportionate penalties for Appendix I species taken in violation of the Convention;
5. Develop an online registry of Review Mechanism files and update it with relevant information on ongoing files;
6. Report to the Conference of Parties at its 15th meeting on the progress in implementing this Decision.
7. Continue and enhance the collaboration with existing initiatives facilitating national legislative review such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) National Legislation Project and the Sustainable Wildlife Management Programme led by the Food and Agriculture Organization of the United Nations (FAO) with a consortium of partners including the Center for International Forestry Research (CIFOR), the Centre de Coopération Internationale en Recherche Agronomique pour le Développement (CIRAD), and the Wildlife Conservation Society (WCS).

***Directed to Parties***

14.BB.

1. Parties that have submitted the National Legislation questionnaire and received a National Legislative Profile from the Secretariat are urged to take appropriate measures to implement Article III, paragraph 5, in line with the Secretariat's recommended actions, as indicated in the National Legislative Profile;
2. Parties that have not completed and submitted the questionnaire are strongly encouraged to do so;
3. Parties are reminded to inform the Secretariat of any exceptions made pursuant to Article III, paragraph 5, of the Convention;
4. Parties are invited to provide financial or technical support to further strengthen the legal frameworks and institutional capacity through the implementation of the National Legislation Programme and the Review Mechanism.

1. Resolution 12.9, Section I.A., para. 3 [↑](#footnote-ref-2)
2. Resolution 12.9, Section I.A., para. 3 [↑](#footnote-ref-3)
3. Resolution 12.9, Section I.C., para. 3 [↑](#footnote-ref-4)
4. Resolution 12.9, Section I.F., para. 4 [↑](#footnote-ref-5)
5. SeeAnnex to UNEP/CMS/StC53/Doc.16 on File No. 1 [↑](#footnote-ref-6)
6. Report of the 53rd meeting of the StC, para. 120 and 125 [↑](#footnote-ref-7)
7. Resolution 12.9, Section I.C., para. 5 [↑](#footnote-ref-8)
8. See, for example, para C.9. of document T-PVS/Inf (2022)28 “Case-File System: Proposals for increasing the efficiency and effectiveness of the case-file system going forward”, Convention on the Conservation of European Wildlife and Natural Habitats. [↑](#footnote-ref-9)
9. See Resolution 12.9, Section I.C., para. 5. [↑](#footnote-ref-10)
10. Resolution 12.9, Section I.F., para. 6(a). [↑](#footnote-ref-11)
11. Resolution 12.9, Section I.F., para. 6(g). [↑](#footnote-ref-12)
12. The Secretariat will dismiss information submitted on the grounds of being “trivial” when it is of little importance for compliance with the obligations set out in Articles III.4, III.5, III.7 and VI.2 of the Convention. Information will be regarded as “ill-founded” when it is not based on any proper proof or evidence, or not based on fact or truth. [↑](#footnote-ref-13)
13. In line with Resolution 12.9, Section I.C., para 3. [↑](#footnote-ref-14)
14. Resolution 12.9, Section C.I., para 1(b) and 4 [↑](#footnote-ref-15)
15. Resolution 12.9, Section C.I., para. 4 [↑](#footnote-ref-16)
16. See report on ‘AEWA Implementation Review Process (IRP) – A Joint On-the-spot Assessment Mission by the Bern Convention, AEWA and CMS’. 29 August–2 September 2022. <https://www.unep-aewa.org/sites/default/files/uploads/aewa_final_albania_irp_report_0.pdf> [↑](#footnote-ref-17)
17. Resolution 12.9, Section I.A., para. 2. [↑](#footnote-ref-18)
18. Resolution 12.9, Section I.A., para. 4 [↑](#footnote-ref-19)