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**Implementation Committee under the  
Non-Compliance Procedure for the  
Montreal Protocol  
Thirty-sixth meeting**  
Montreal, 30 June and 1 July 2006  
Item 10 of the provisional agenda\*

**Standardizing recommendations addressing  
routine procedural matters of non-compliance  
with the Montreal Protocol**

**Standardizing recommendations addressing routine procedural  
matters of non-compliance with the Montreal Protocol**

**Report of the Secretariat**

**Executive summary**

1. At its thirty-fifth meeting, held in Dakar from 7 to 9 December 2005, the Implementation Committee under the Non-Compliance Procedure of the Montreal Protocol adopted recommendation 35/49. That recommendation recorded the Committee's agreement to request the Secretariat to prepare a report on the development of standardized recommendations for addressing routine procedural matters of non-compliance, including proposals for standardized recommendations, for the consideration of the Committee at its thirty-sixth meeting.
2. Recommendation 35/49 was adopted in the light of the increasing workload of the Committee and the observation that, historically, the text of recommendations with respect to Parties in similar circumstances sometimes unintentionally differed to the extent that it could lead to confusion or differing interpretations by persons not privy to the Committee's discussions, and might raise concerns with regard to the equitable treatment of Parties subject to the non-compliance procedure.
3. The present report document contains seven sections. Section A introduces the report prepared by the Secretariat in accordance with recommendation 35/49; section B provides a background to the report, including comments received from members in accordance with paragraph (b) of recommendation 35/49; and section C describes the methodology used to prepare the report. Section D defines the term "routine procedural matters" and presents in tables 1 and 2 the 16 matters which were determined to meet that definition for the purposes of preparing the report, including requests to explain a deviation from the control measures of the Montreal Protocol and submit a plan of action to address

\* UNEP/OzL.Pro/ImpCom/36/1.

the deviation, requests to submit outstanding data, and acknowledgements of Parties' return to compliance with Protocol. Section E describes the source material used in the report's preparation and the rationale behind the selection of that material; section F presents the suggested standardized recommendation text for each of the defined "routine procedural matters"; and section G contains the report's conclusion and the Secretariat's suggested recommendation with regard to the report.

4. The report concludes that it is possible to develop standardized recommendation texts for each of the identified routine procedural matters of non-compliance. It therefore suggests that the Committee might wish to agree to use the standardized text contained in section F of the report as a basis for adopting recommendations to address such procedural matters, for the purpose of helping the Committee manage its increasing workload more efficiently and effectively and ensure the equitable treatment of Parties in like circumstances, while also ensuring that the individual circumstances of each Party subject to the non-compliance procedure are taken into account.

## **A. Introduction**

5. The present report has been prepared in accordance with recommendation 35/49, adopted by the Implementation Committee under the Non-compliance Procedure of the Montreal Protocol at its thirty-fifth meeting, held in Dakar from 7 to 9 December 2005. The recommendation recorded the Committee's agreement:

(a) To consider the development of standardized recommendations for addressing routine procedural matters of non-compliance;

(b) To invite the members of the Committee to submit comments on the issue to the Secretariat by 15 February 2006;

(c) To request the Secretariat to prepare a report on the issue, taking into account any comments submitted by members, including proposals for standardized recommendations, for the consideration of the Committee at its thirty-sixth meeting.

6. The present report recalls the basis on which the Committee adopted recommendation 35/49, summarizes the comments received by members pursuant to paragraph (b) of recommendation 35/49, explains the method used by the Secretariat to review the scope for standardizing recommendations for addressing routine procedural matters of non-compliance, presents the findings of the review and the requested proposals for standardized recommendations for the consideration of the present meeting of the Committee.

## **B. Background**

7. At its thirty-fifth meeting, the Committee considered the meeting document UNEP/OzL.Pro/ImpCom/35/7, prepared by a member of the Committee. That document is reproduced in annex I to the present report. The document explained that the member had observed over the course of a four-year term on the Committee that very similar recommendations were adopted at various stages in the application of the non-compliance procedure to commonly occurring compliance matters. The member had also observed that the wording of those recommendations differed slightly, although the issues they addressed appeared identical. The member was of the view that that situation could lead to confusion or differing interpretations by persons not privy to the Committee's discussions, and might raise concerns with regard to the equitable treatment of Parties subject to the non-compliance procedure.

8. The member also noted that the workload of the Committee had risen significantly in recent years, with the number of individual compliance matters reported by the Committee rising from three in 1996 to an average of 35 over the period 2003–2005. The member was of the opinion that that increase reflected the growth in the Parties' obligations under the Protocol, and suggested that the Committee's workload could therefore be expected to increase further with the review of the Parties' compliance with the 2005 control measures for CFCs, halons, carbon tetrachloride, methyl chloroform and methyl bromide.

9. The member therefore proposed that the Committee should consider developing standardized recommendations for addressing routine procedural non-compliance matters, and requesting the Secretariat to provide a report with proposals for such standardized recommendations. Such standardized recommendations, it was suggested, would help the Committee manage its increasing workload more efficiently and effectively by streamlining the consideration of routine procedural

non-compliance matters and enhancing the “blanket approval” approach<sup>1</sup> adopted by the Committee in 2005. It was also suggested that using standardized recommendation texts could reduce the apparent inconsistencies in the adopted recommendations and thereby help ensure the equitable treatment of Parties in like circumstances.

10. The Committee concurred with the proposal of the member, giving effect to it through the adoption of recommendation 35/49.

11. Paragraph (b) of recommendation 35/49 invited the members of the Committee to submit comments on the issue to the Secretariat by 15 February 2006. As of 10 March 2006 two responses had been received by the Secretariat. The responses noted the members’ appreciation for the recommendation adopted by the Committee at its thirty-fifth meeting, supporting any proposal that could contribute to the streamlining of the Committee’s work. To that end, a member expressed support for seeking standardized language for routine procedural matters provided that the meaning of that term is agreed by the Committee to avoid misinterpretation, and that the Committee continues to discuss and agree the text of recommendations that would determine a Party to be in non-compliance.

12. The Secretariat therefore prepared the present document in the light of recommendation 35/49 and the comments submitted by members, aiming to provide a means whereby the Committee can both more effectively manage its increasing workload by streamlining its consideration of instances of non-compliance, while retaining the Committee’s ability to appropriately account for the individual circumstances of each Party subject to the non-compliance procedure.

### C. Methodology

13. Recommendation 35/49 requested the Secretariat to prepare a report on the issue of developing standardized recommendations for addressing routine procedural matters of non-compliance, taking into account any comments submitted by members, including proposals for standardized recommendations.

14. To prepare the report the Secretariat used the following methodology:

- (a) Definition of “routine procedural matters of non-compliance”;
- (b) Selection of the pool of recommendations that would be reviewed for the purpose of preparing the report;
- (c) Review of the selected recommendations to determine the possibility of proposing standardized texts with respect to the defined routine procedural matters;
- (d) Presentation of a list of possible standardized recommendations for addressing the routine procedural matters of non-compliance.

### D. “Routine procedural matters of non-compliance”

15. To define “routine procedural matters of non-compliance”, the Secretariat referred to paragraph 11 of the meeting document UNEP/OzL.Pro/ImpCom/35/7, which contained the suggestion that routine procedural matters of non-compliance that might benefit from consistent language included requests for a Party to submit data, requests for a Party to explain data if inconsistent, requests for a Party to submit a plan of action, monitoring by Committee, noting with appreciation a Party’s continued progress in implementing its plan of action, acknowledging with appreciation a Party’s return to compliance, noting a Party’s previous non-compliance, and agreement to defer consideration of a compliance matter in light of limited time to review information or respond to the request for information.

16. The Secretariat tested the completeness of the above list by preparing the flowcharts set forth in annexes II (a) and II (b) to the present report. The flowcharts illustrate the routine types of recommendations that the Committee might adopt at the various stages of the application of the non-compliance procedure to two commonly occurring non-compliance matters: deviations from the Protocol’s consumption and production control measures and non-reporting of data.

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<sup>1</sup> A process adopted by the Committee to maximize the time available to consider the more complex compliance issues. Prior to each meeting of the Committee, the Secretariat requests the members to identify those draft recommendations contained in the meeting documents that the members wish to discuss in the meeting. Any draft recommendation that is not so identified would be included in the list of recommendations for adoption in the Committee’s executive session, without prior individual discussion during the meeting.

17. On that basis, the Secretariat has defined “routine procedural matters of non-compliance” as shown in the following tables.

**Table 1: Deviations from the Protocol’s consumption and production control measures**

a1: Request for explanation and plan of action	a2: Deferral of compliance assessment in the light of limited time for Party’s response to Secretariat	b1: Acknowledgement of explanation and request for plan of action	b2: Acknowledgement of explanation and resolution of compliance matter
b3: No explanation or plan submitted resulting in forwarding of draft decision to Meeting of the Parties	b4: Acknowledgement of explanation and plan of action and forwarding of draft decision to the Meeting of the Parties	c1: Acknowledgement of plan and forwarding of draft decision to the Meeting of the Parties	c2: No plan, resulting in draft decision forwarded to the Meeting of the Parties
d: Request for report on some/all commitments contained in decision that are due in given year	e1: Acknowledgement of failure to meet some/all ODS reduction commitments in decision due in a given year and request for explanation	e2: Acknowledgement of return to compliance with Protocol	e3: Acknowledgement that implementation of decision in advance of commitment due in given year
e4: Acknowledgement of commitment completion			

**Table 2: Non-reporting of data**

f: Request for outstanding data	g1: Acknowledgement that data not submitted and forwarding of draft decision to the Meeting of the Parties	g2: Acknowledgement that data submitted, resolving data reporting compliance matter	
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## **E. Selection of recommendations to be reviewed**

18. As noted in the meeting document UNEP/OzL.Pro/ImpCom/35/7, the workload of the Committee increased significantly over the period 2003–2005, corresponding to the expansion in the number of Protocol control measures subject to Committee review. This would suggest that the recommendations adopted by the Committee during this period would provide a suitably comprehensive selection of texts covering all the routine procedural matters on non-compliance identified in tables 1 and 2 above.

19. For the purpose of preparing the present report, therefore, the Secretariat referred to the recommendations adopted by the Committee at its thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth and thirty-fifth meetings.

## **F. Review of selected recommendations adopted on routine procedural matters of non-compliance, and options for standardized recommendations**

20. The Secretariat compiled various versions of the recommendations on the defined routine procedural matters on non-compliance from the thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth and thirty-fifth meetings of the Committee. The compilation is available on the secure website of the Committee.

21. The Secretariat’s review of the compilation suggested the following conclusions with regard to the possibility of proposing standardized text for each of the defined routine procedural matters.

### **1. Request for an explanation and a plan of action (routine procedural matter a1)**

22. This routine procedural matter relates to the mid-year meetings of the Committee. In the first year of the 2003–2005 period, the Committee limited its requests with regard to a newly identified case of potential non-compliance to a request for an explanation of the consumption or production deviation. In subsequent years the recommendation was expanded to also request, if relevant, the submission of a plan of action with time-specific benchmarks to return the Party to compliance. This evolution reflected the Committee’s desire to accelerate the operation of the non-compliance procedure and the fact that

many non-compliant Parties were taking the initiative of submitting plans of action along with the explanations for their deviation.

23. The text of recommendations adopted in the 2004–2005 period on this routine procedural matter varies little in substance, supporting the possibility of standardizing the recommendation text. Key components of the text would appear to be a description of the deviation for which the explanation and plan are sought, the date by which the explanation and plan should be submitted to the Secretariat, the possibility that the Party in question may be invited to send a representative to assist the Committee's consideration of the deviation, the agreement of the Committee to seek the endorsement of the Meeting of the Parties to the request through a draft decision should the Party not submit an explanation, and the annexing of the draft decision to the report of the meeting.

24. The standardized recommendation on this matter could read:

“The Committee *agreed*:

(a) To note with concern that [the Party] reported [consumption/production] of [x ODP of ODS] in [year] in excess of the Protocol's requirement to [description of control measure] in that year;

(b) To request [the Party] to submit to the Secretariat as soon as possible, and no later than [date 10 weeks prior to the next Committee meeting], an explanation for this deviation and, if relevant, a plan of action with time-specific benchmarks for ensuring the Party's prompt return to compliance;

(c) To invite [the Party], if necessary, to send a representative to the [no.] meeting of the Committee to discuss the matter;

(d) In the absence of an explanation of the excess [consumption/production], to request the [no.] Meeting of the Parties to endorse the request in (b) above by forwarding the draft decision contained in [annex x (section y)] to the present report to that Meeting for approval.

*Draft decision -/-: Potential non-compliance in [year] with [consumption/production] of the controlled substances in Annex [x] by [the Party], and request for a plan of action*

1. To note that [the Party] ratified the Montreal Protocol on [date and the London Amendment on etc], is classified as a Party [operating/not operating] under paragraph 1 of Article 5 of the Protocol [and had its country programme approved by the Executive Committee in [date]. The Executive Committee/Global Environment Facility has approved [\$\$\$] [from the Multilateral Fund] to enable [the Party's] compliance [in accordance with Article 10 of the Protocol];

2. To note further that [the Party] has reported annual [consumption/production] for the controlled substance in [Annex x (ODS)] for [year] of [x] ODP-tonnes, which exceeds the Party's maximum allowable [consumption/production] level of [x] ODP-tonnes for those controlled substances for that year, and that in the absence of further clarification, [the Party] is therefore presumed to be in non-compliance with the control measures under the Protocol;

3. To request [the Party], as a matter of urgency, to submit to the Implementation Committee for consideration at its next meeting an explanation for its excess [consumption/production], together with a plan of action with time-specific benchmarks to ensure a prompt return to compliance. [the Party] may wish to consider including in its plan of action the establishment of [import quotas to support the phase-out schedule, a ban on imports of ozone-depleting-substance-using equipment, and] policy and regulatory instruments that will ensure progress in achieving the phase-out;

4. To monitor closely the progress of [the Party] with regard to the phase-out of [ODS]. To the degree that the Party is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, [the Party] should continue to receive international assistance to enable it to meet its commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Meeting of the Parties cautions [the Party], in accordance with item B of the indicative list of measures, that, in the event that it fails to return to compliance in a timely manner, the Meeting of the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of [ODS] that are the subject of non-compliance is ceased so that [exporting/importing] Parties are not contributing to a continuing situation of non-compliance.”

**2. Deferral of compliance assessment in the light of limited time for the Party's response to the Secretariat (routine procedural matter a2)**

25. This routine procedural matter relates to both the mid-year and end-of-year meetings of the Committee, and became a routine procedural matter in 2005. The Secretariat makes every effort to ensure that any data reported in accordance with Article 7 of the Protocol prior to a Committee meeting is included in its data report to that meeting. The Secretariat makes every effort to seek clarifications of all deviations from the Protocol's consumption and production control measures that arise from that data report, prior to the Committee meetings. The closer to the meeting that data is reported, however, the shorter the length of time available to Parties to respond to the Secretariat's requests for clarification. Consequently, the Committee has in some cases adopted the approach of deferring its consideration of such cases until its next meeting.

26. The text of recommendations adopted on this routine procedural matter varies little in substance, supporting the possibility of standardizing the recommendation text. Key components of the text would appear to be the agreement to defer consideration of the Party's compliance with the Protocol's controls measures in the given year, the reason for the deferral including a description of the clarification sought by the Secretariat, and the time at which the Party's compliance will be reviewed by the Committee.

27. The standardized recommendation on this matter could read:

"The Committee *agreed* to defer consideration of the Party's compliance with the Protocol's control measures in [year] until its [x] meeting, in the light of the limited time which [the Party] had had to review the data reports generated by the Secretariat from its [year] data submission and to respond to the Secretariat's request for information on the apparent deviation[s] from its requirement to [control measure description] in that year."

**3. Acknowledgement of the explanation and request for a plan of action (routine procedural matter b1)**

28. This routine procedural matter relates to the mid-year meetings of the Committee. It is becoming less common as, with the growth in the ozone community's understanding of the non-compliance procedure, it is more likely that a Party submitting an explanation for a deviation which confirms their non-compliance will at the same time submit a plan of action to address that non-compliance. This is particularly likely to be the case if the Party has already been subject to a recommendation pursuant to routine procedural matter a1.

29. The text of recommendations adopted on this routine procedural matter varies little in substance, and has a lot in common with the text for routine procedural matter a1, supporting the possibility of standardizing the recommendation text. Key components of the text would appear to be acknowledgment of the explanation, description of the deviation, request for the plan of action with time-specific benchmarks for returning to compliance, the date by which the plan should be submitted to the Secretariat, the possibility that the Party in question may be invited to send a representative to assist the Committee's consideration of the plan, the agreement of the Committee to seek the endorsement of the Meeting of the Parties to the request through a draft decision should the Party not submit a plan, and the annexing of the draft decision to the report of the meeting.

30. The standardized recommendation on this matter could read:

"The Committee therefore *agreed*:

(a) To note with appreciation [the Party's] explanation for its reported [consumption/production] of [x ODPT of ODS] in [year] in excess of the Protocol's requirement to [description of the control measure] in that year;

(b) To request [the Party] to submit to the Secretariat as soon as possible, and no later than [date 10 weeks prior to the next Committee meeting], a plan of action with time-specific benchmarks for ensuring the Party's prompt return to compliance;

(c) To invite [the Party], if necessary, to send a representative to the [no.] meeting of the Committee to discuss the matter;

(d) In the absence of the submission of a plan of action, to request the [no.] Meeting of the Parties to endorse the request in (b) above by forwarding to that Meeting for approval the draft decision contained in [annex x (section y)] to the present report.

*Draft decision -/-: Non-compliance with the Montreal Protocol by [the Party] and request for a plan of action*

1. To note that [the Party] ratified the Montreal Protocol on [date and the London Amendment on etc] and is classified as a Party [operating/not operating] under paragraph 1 of Article 5 of the Protocol [and had its country programme approved by the Executive Committee in [date]. The Executive Committee/Global Environment Facility has approved [\$xxx] [from the Multilateral Fund] to enable [the Party]'s compliance [in accordance with Article 10 of the Protocol]];

2. To note also that [the Party] has reported annual [consumption/production] for the controlled substance in [Annex x] for [year] of [x] ODP-tonnes, which exceeds the Party's maximum allowable [consumption/production] level of [x] ODP-tonnes for that controlled substance for that year, and that [the Party] is therefore in non-compliance with the control measures for [ODS] under the Protocol;

3. To request [the Party], as a matter of urgency, to submit to the Implementation Committee for consideration at its next meeting a plan of action with time-specific benchmarks to ensure a prompt return to compliance. [The Party] may wish to consider including in its plan of action the establishment of [import quotas to support the phase-out schedule, a ban on imports of ozone-depleting-substance-using equipment, and] policy and regulatory instruments that will ensure progress in achieving the phase-out;

4. To monitor closely the progress of [the Party] with regard to the phase-out of the controlled substance in [Annex x (ODS)]. To the degree that the Party is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, [the Party] should continue to receive international assistance to enable it to meet its commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Meeting of the Parties cautions [the Party], in accordance with item B of the indicative list of measures, that, in the event that it fails to return to compliance in a timely manner, the Meeting of the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of the controlled substance in [Annex x (ODS)] that is the substance that is the subject of non-compliance is ceased so that [importing/exporting] Parties are not contributing to a continuing situation of non-compliance."

#### **4. Acknowledgement of the explanation and resolution of the compliance matter (routine procedural matter b2)**

31. This routine procedural matter relates to both the mid-year and end-of-year meetings of the Committee. It arose as a consequence of the Committee's efforts to improve the transparency of the operation of the non-compliance procedure. That is, instances of potential non-compliance that are found, in the light of further information from the Party concerned, to be instances of compliance are recorded in a recommendation of the Committee. This applies to instances of potential non-compliance with provisions of the Protocol or commitments contained in plans of action endorsed by a decision of the Meeting of the Parties. The text of recommendations adopted on this routine procedural matter varies little in substance, supporting the possibility of standardizing the recommendation text. Key components of the text would appear to be an acknowledgement of the explanation, description of the explanation and confirmation that the explanation places the Party in compliance in a given year.

32. The standardized recommendation on this matter could read:

"The Committee *agreed* to note with appreciation that [the Party] had [description of explanation. E.g., "submitted revised data for 2004 to correct the misclassification of imports as methyl chloroform and Annex B group I substances (other fully halogenated CFCs)"], which confirmed that the Party was in compliance with the Protocol's control measures in [year] / the commitment(s) contained in decision [-/-] to [description of commitment(s)]."

#### **5. No explanation or plan submitted and forwarding of the draft decision to the Meeting of the Parties (routine procedural matter b3)**

33. This routine procedural matter relates to the end-of-year meetings of the Committee. This routine procedural matter is becoming less common now that the Parties are increasingly reporting their data prior to the mid-year meeting of the Committee, and therefore becoming subject to an a l

recommendation at that meeting if the reported data indicates potential non-compliance. An a1 recommendation agrees, amongst other things, that if a Party does not submit an explanation for its deviation to the Committee's end of year meeting, a draft decision requesting the submission of an explanation and plan of action would be automatically forwarded to the Meeting of the Parties for possible adoption.

34. The draft decision contained in a recommendation pertaining to a b3 routine procedural matter is the same as the draft decision contained in a recommendation pertaining to an a1 matter. The difference between the recommendations lies in the fact that a1 recommendations must contain a caveat that the draft decision might not be forwarded to the end-of-year meeting if the Party submits the requested explanation to the Committee at its end-of-year meeting, because that meeting must then reconsider the need to request the Meeting of the Parties to take a decision on the matter.

35. Given its similarities with routine procedural matter a1, it would be possible to standardize the recommendation text for this procedural matter. Key components of the text would appear to be a description of the deviation for which the explanation and plan are sought, the date by which the explanation and plan should be submitted to the Secretariat, the possibility that the Party in question may be invited to send a representative to assist the Committee's consideration of the deviation, an agreement to seek the endorsement of the Meeting of the Parties to the request through a draft decision, and the annexing of the draft decision to the report of the meeting.

36. The standardized recommendation on this matter could read:

“The Committee *agreed*:

(a) To note with concern that [the Party] reported [consumption/production] of [x ODPT of ODS] in [year] in excess of the Protocol's requirement to [description of the control measure] in that year;

(b) To request [the Party] to submit to the Secretariat as soon as possible, and no later than [date 10 weeks prior to the next Committee meeting], an explanation for this deviation and, if relevant, a plan of action with time-specific benchmarks for ensuring the Party's prompt return to compliance;

(c) To invite [the Party], if necessary, to send a representative to the [no.] meeting of the Committee to discuss the matter;

(d) To request the [no.] Meeting of the Parties to endorse the request in (b) above by forwarding the draft decision contained in [annex x (section y)] to the present report to that Meeting for approval.

*Draft decision -/- Potential non-compliance in [year] with [consumption/production] of the controlled substances in Annex [x] by [the Party], and request for a plan of action*

[Refer to the draft decision text in paragraph 24 above.]”

## **6. Acknowledgment of the explanation and plan and forwarding of the draft decision to the Meeting of the Parties (routine procedural matter b4)**

37. This routine procedural matter relates to both the mid-year and end-of-year meetings of the Committee. It has become increasingly common since the Committee adopted the approach of combining its request for an explanation and request for a plan of action in the same recommendation. A greater awareness of the operation of the non-compliance procedure amongst the Parties has also accelerated their response to situations of non-compliance, resulting in some Parties submitting their explanation and plan of action even in advance of a request from the Committee.

38. The text of recommendations adopted in the 2003–2005 period on this routine procedural matter varies little in substance, supporting the possibility of standardizing the recommendation text. Key components of the text would appear to be an acknowledgement of the submission of an explanation for the deviation and plan of action to address the situation, a description of the deviation, the date the plan would return the Party to compliance, the agreement of the Committee to seek the endorsement of the Meeting of the Parties for the plan through a draft decision, and the annexing of the draft decision to the report of the meeting.

39. The standardized recommendation on this matter could read:

“The Committee therefore *agreed*:

(a) To note with appreciation [the Party's] explanation for its reported [consumption/production] of [x ODPT of ODS] in [year] in excess of the Protocol's requirement to [control measure] in that year;

(b) Also to note with appreciation the Party's submission of a plan of action for returning to compliance with the Protocol's control measures for that ODS in [year];

(c) To forward to the [no.] Meeting of the Parties for its consideration a draft decision incorporating the plan of action, as contained in [annex x (section y)] to the present report.

*Draft decision -/-: Non-compliance with the Montreal Protocol by [the Party]*

1. To note that [the Party] ratified the Montreal Protocol on [date and the London Amendment on etc], is classified as a Party [operating/not operating] under paragraph 1 of Article 5 of the Protocol [and had its country programme approved by the Executive Committee in [date]]. The [Executive Committee/Global Environment Facility] has approved [\$xxx] [from the Multilateral Fund] to enable [the Party's] compliance [in accordance with Article 10 of the Protocol];

2. To note further that [the Party] has reported annual [consumption/production] for the controlled substance in [Annex x] for [year] of [x] ODP-tonnes, which exceeds the Party's maximum allowable [consumption/production] level of [x] ODP-tonnes for that controlled substance for that year, and that [the Party] is therefore in non-compliance with the control measures for [ODS] under the Protocol;

3. To note with appreciation [the Party's] submission of a plan of action to ensure a prompt return to compliance with the Protocol's [ODS] control measures and to note that, under the plan, without prejudice to the operation of the financial mechanism of the Protocol, [the Party] specifically commits itself:

[(a) To time-specific benchmarks for reducing consumption/production to compliance levels];

(b) To [monitoring/introduce by [date]] [regulatory measures including a licensing and quota system, import ban on bulk and equipment-containing the ODS];

4. To note that the measures listed in paragraph 3 above should enable [the Party] to return to compliance in [year] and to urge [the Party] to work with the relevant implementing agencies to implement the plan of action to phase out consumption of the controlled substance in Annex [x];

5. To monitor closely the progress of [the Party] with regard to the implementation of its plan of action and the phase-out of [ODS]. To the degree that the Party is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, [the Party] should continue to receive international assistance to enable it to meet those commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Parties caution [the Party], in accordance with item B of the indicative list of measures, that, in the event that it fails to remain in compliance, the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of [ODS] that is, the substance that is the subject of non-compliance is ceased so that [importing/exporting] Parties are not contributing to a continuing situation of non-compliance."

**7. Acknowledgement of the plan and forwarding of the draft decision to the Meeting of the Parties (routine procedural matter c1)**

40. This routine procedural matter relates to both the mid-year and end-of-year meetings of the Committee. As illustrated in the flowchart in annex II (a) to the present report, this routine procedural matter usually follows a b1 recommendation of the Committee acknowledging the submission of an explanation for a deviation and requesting the submission of a plan of action to address the deviation. As noted in section 3 above, on routine procedural matter b1, these procedural matters are becoming less common with the growth in the ozone community's understanding of the non-compliance procedure, as it is more likely that a Party submitting an explanation for a deviation which confirms their non-compliance will at the same time submit a plan of action to address that non-compliance. This procedural matter does, however, also arise when a Party is responding to a decision of the Meeting of the Parties that noted the Party's explanation for a deviation which placed the Party in non-compliance and requested the Party to submit a plan of action to address the deviation. The procedural matter may also arise when the Committee must consult a Party over successive meetings to clarify elements of its plan of action, in which case the Party may also have been subject to non-routine recommendations.

41. The text of recommendations on this routine procedural matter varies little in substance over the 2003–2005 period, supporting the possibility of standardizing the recommendation text. Key components of the text would appear to be an acknowledgement of the submission of the plan of action to return the Party to compliance, the date the plan would return the Party to compliance, an agreement of the Committee to seek the endorsement of the Meeting of the Parties for the plan through a draft decision, and the annexing of the draft decision to the report of the meeting.

42. The standardized recommendation on this matter could read:

“The Committee therefore *agreed*:

(a) To note with appreciation [the Party’s] submission[, in accordance with recommendation -/- or decision -/-], of a plan of action for returning to compliance with the Protocol’s [ODS] control measures by [date];

(b) To forward to the [no.] Meeting of the Parties for its consideration a draft decision incorporating the plan of action, as contained in [annex x (section y)] to the present report.

*Draft decision -/-: Non-compliance with the Montreal Protocol by [the Party]*

[Refer to the draft decision text in paragraph 39 above.]

**8. No plan submitted, resulting in forwarding of the draft decision to Meeting of the Parties (routine procedural matter c2)**

43. This routine procedural matter relates to the end-of-year meetings of the Committee. Similar to the routine procedural matter b3 above, this matter is becoming less common now that the Parties are increasingly reporting their data prior to the mid-year meeting of the Committee. This is because instances of potential non-compliance arising from data reported to the mid-year meeting that are accompanied by a Party’s explanation confirming the non-compliance are likely to result in a b1 recommendation described above. A b1 recommendation agrees, amongst other things, that if a Party does not submit a plan of action to address the deviation to the Committee’s end of year meeting, a draft decision requesting the submission of a plan of action would be forwarded to the Meeting of the Parties for possible adoption.

44. The draft decision contained in a recommendation pertaining to a c2 routine procedural matter is the same as a draft decision contained in a recommendation pertaining to a b1 matter. The difference between the recommendations lies in the fact that b1 recommendations must contain a caveat that the draft decision might not be forwarded to the end of year meeting if the Party submits the requested plan of action to the Committee at its end-of-year meeting, because that meeting must then reconsider the need to revise its draft decision to incorporate the plan for possible adoption by the Meeting of the Parties.

45. Given its similarities with routine procedural matter b1, it should also be possible to standardize the recommendation text for this matter. Key components of the text would appear to be acknowledgment of the explanation, description of the deviation, request for the plan with time-specific benchmarks for returning to compliance, the date by which the plan should be submitted to the Secretariat, the possibility that the Party in question may be invited to send a representative to assist the Committee’s consideration of the deviation, the agreement to seek the endorsement of the Meeting of the Parties to the request through a draft decision, and the annexing of the draft decision to the report of the meeting.

46. The standardized recommendation on this matter could read:

“The Committee therefore *agreed*:

(a) To note with appreciation [the Party’s] explanation for its reported [consumption/production] of [x ODPT of ODS] in [year] in excess of the Protocol’s requirement to [control measure] in that year;

(b) To request [the Party] to submit to the Secretariat as soon as possible, and no later than [date 10 weeks prior to the next Committee meeting], a plan of action with time-specific benchmarks for ensuring the Party’s prompt return to compliance;

(c) To invite [the Party], if necessary, to send a representative to the [no.] meeting of the Committee to discuss the matter;

(d) To request the [no.] Meeting of the Parties to endorse the request in (b) above by forwarding the draft decision contained in [annex x (section y)] to the present report to that Meeting for approval.

*Draft decision -/-: Non-compliance with the Montreal Protocol by [the Party] and request for a plan of action*

1. To note that [the Party] ratified the Montreal Protocol on [date and the London Amendment on etc] and is classified as a Party [operating/not operating] under paragraph 1 of Article 5 of the Protocol [and had its country programme approved by the Executive Committee in [date]]. The [Executive Committee/Global Environment Facility] has approved [\$xxx] [from the Multilateral Fund] to enable [the Party]'s compliance [in accordance with Article 10 of the Protocol];
2. To note also that [the Party] has reported annual [consumption/production] for the controlled substance in [Annex x] for [year] of [x] ODP-tonnes, which exceeds the Party's maximum allowable [consumption/production] level of [x] ODP-tonnes for that controlled substance for that year, and that [the Party] is therefore in non-compliance with the control measures for [ODS] under the Protocol;
3. To request [the Party], as a matter of urgency, to submit to the Implementation Committee for consideration at its next meeting a plan of action with time-specific benchmarks to ensure a prompt return to compliance. [The Party] may wish to consider including in its plan of action the establishment of [import quotas to support the phase-out schedule, a ban on imports of ozone-depleting-substance-using equipment, and] policy and regulatory instruments that will ensure progress in achieving the phase-out;
4. To monitor closely the progress of [the Party] with regard to the phase-out of the controlled substance in [Annex x (ODS)]. To the degree that the Party is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, [the Party] should continue to receive international assistance to enable it to meet its commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through the present decision, however, the Meeting of the Parties cautions [the Party], in accordance with item B of the indicative list of measures, that, in the event that it fails to return to compliance in a timely manner, the Meeting of the Parties will consider measures consistent with item C of the indicative list of measures. Those measures may include the possibility of actions available under Article 4, such as ensuring that the supply of the controlled substance in [Annex x (ODS)] that is the substance that is the subject of non-compliance is ceased so that [importing/exporting] Parties are not contributing to a continuing situation of non-compliance."

**9. Request for a report on some or all commitments contained in the decision that are due in a given year (routine procedural matter d)**

47. This routine procedural matter relates to the mid-year and end-of-year meetings of the Committee. A Party subject to a decision detailing the various commitments it has undertaken to ensure its return to compliance should report to the Secretariat on its implementation of any commitments due in a given year. This routine procedural matter therefore arises when a Party fails to report on its implementation of any or all of the commitments due for completion by the time of each meeting of the Committee.
48. The text of recommendations on this routine procedural matter has common components but does vary, reflecting the length of delay in the submission of an outstanding report. Some standardization of the text for recommendations on this matter should be possible, however, and would improve the consistency of treatment of Parties subject to the non-compliance procedure. To date, Parties have usually responded to the first or second request from the Committee for the submission of the report and so those two instances are the focus of the options for standardized text.
49. Key components of the text would appear to be a description of the commitment or commitments, the request for the submission of the report, and the date by which the report should be submitted to the Secretariat.

50. With regard to a situation where the Committee is requesting a report on the implementation of a particular commitment or commitments for the first time, the standardized recommendation on this matter could read:

“The Committee *agreed* to urge [the Party] to report to the Secretariat as soon as possible, and no later than [the date 10 weeks prior to the next Committee meeting or 30 September for commitments relating to data due in that year], on the status of its commitment contained in decision [-/-] to [description of commitment(s)], in time for consideration by the Committee at its [no.] meeting.”

51. With regard to a situation where the Committee is requesting a report on the implementation of a particular commitment or commitments for a second time, the standardized recommendation on this matter could read:

“The Committee therefore *agreed*:

(a) To note with concern that [the Party] had not reported, in accordance with recommendation [-/-], on the status of its commitment(s) contained in decision [-/-] to [description of commitment(s)];

(b) To urge [the Party] to submit to the Secretariat, as a matter of priority, the information referred to in subparagraph (a) above no later than [the date 10 weeks prior to the next Committee meeting], in time for consideration by the Committee at its [no.] meeting.”

#### **10. Acknowledgement of failure to meet some or all ODS reduction commitments in the decision due in a given year and request for an explanation**

52. This routine procedural matter relates to the mid-year and end-of-year meetings of the Committee. In the 2003–2005 period, few Parties have failed to meet their time-specific benchmarks, contained in a decision of the Meeting of the Parties, for reducing their ODS consumption or production to a level consistent with the Protocol’s control measures. The text of recommendations on this routine procedural matter does vary but would benefit from some degree of standardization to improve the consistency of treatment of Parties on this critical matter.

53. It would appear useful to adjust the key components of the text to reflect whether the recommendation is to be adopted at a mid-year or end-of-year Committee meeting. That is, for the end-of-year meeting, the recommendation could acknowledge the Party’s data report, acknowledge the Party’s failure to meet some or all of its ODS phase-out commitments, request an explanation for this failure, specify the date by which the explanation should be submitted to the Secretariat, indicate the possibility that the Party might be invited to send a representative to assist the Committee’s consideration of the deviation, record the agreement of the Committee to seek the endorsement of the Meeting of the Parties to the request through a draft decision, and annex the draft decision to the report of the meeting. The recommendation for the mid-year meeting could contain the same components, with the adjustment that the Committee would only seek the endorsement of the Meeting of the Parties to the request for an explanation if the Party did not submit the explanation to the Committee’s end-of-year meeting. This approach is consistent with the approach followed in routine procedural matters a1 and b1. The approach allows the Committee to use the time available at its end-of-year meeting more strategically by reconsidering only those Parties whose situation have changed since its mid-year meeting.

54. Therefore, with regard to a Party that reported its failure to meet a commitment or commitments to a mid-year meeting of the Committee, the standardized recommendation on this matter could read:

“The Committee therefore *agreed*:

(a) To note [the Party] has submitted its ODS data for [year], reporting [consumption/production] of [x ODPT of ODS], [which represents a reduction/increase in consumption/production from the preceding year];

(b) To note with concern that this [consumption/production] is inconsistent with the Party’s commitment(s) contained in decision [-/-] to [description of time-specific benchmark];

(c) To request [the Party] to submit to the Secretariat as soon as possible, and no later than [date 10 weeks prior to the next Committee meeting], an explanation for this deviation;

(d) To invite [the Party], if necessary, to send a representative to the [no.] meeting of the Committee to discuss the matter;

(e) In the absence of an explanation of the deviation, to request the [no.] Meeting of the Parties to endorse the request in (c) above by forwarding the draft decision contained in [annex x (section y)] to the present report to that Meeting for approval;

*Draft decision -/-: Potential non-compliance in [year] with decision [x] by [the Party]*

1. To recall decision -/-, which noted that [the Party] was in non-compliance [in/from [year(s)] with its obligations under Article [xx] of the Montreal Protocol to [description of control measure], but also noted with appreciation the plan of action submitted by [the Party] to ensure its prompt return to compliance;

2. To note with concern, however, that [the Party] reported annual [consumption/production] for the controlled substances in Annex [x], group [y] in [year] of [x] ODP-tonnes, which is inconsistent with the Party's commitment contained in decision -/- to [description of time-specific benchmark];

3. To note also with concern that [the Party] has not submitted to the Implementation Committee the requested explanation for this deviation and strongly to urge the Party to submit this information, as a matter of priority, in time for consideration by the Committee at its next meeting;

4. To remind the Party of paragraph [x] of decision [-/-], which records the agreement of the [no.] Meeting of the Parties to monitor the progress of [the Party] with regard to the phase-out of [ODS], particularly towards meeting the specific commitments contained in decision [-/-]. To the degree that [the Party] is working towards and meeting the specific Protocol control measures, it should continue to be treated in the same manner as a Party in good standing. In that regard, [the Party] should continue to receive international assistance to enable it to meet those commitments in accordance with item A of the indicative list of measures that may be taken by a Meeting of the Parties in respect of non-compliance. Through decision [-/-], however, the Parties cautioned [the Party], in accordance with item B of the indicative list of measures, that, in the event that the country fails to meet the commitments noted above in the times specified, the Parties shall consider measures, consistent with item C of the indicative list of measures. These measures could include the possibility of actions that may be available under Article 4, designed to ensure that the supply of [ODS] that are the subject of non-compliance is ceased, and that [importing/exporting] Parties are not contributing to a continuing situation of non-compliance.”

55. With regard to a Party that reported its failure to meet a commitment or commitments to an end-of-year meeting of the Committee, the standardized recommendation on this matter could read:

“The Committee therefore *agreed*:

(a) To note that [the Party] has submitted its ODS data for [year], reporting [consumption/production] of [x ODPT of ODS], [which represents a reduction/increase in consumption/production from the preceding year];

(b) To note with concern that this [consumption/production] is inconsistent with the Party's commitment(s) contained in decision [-/-] to [description of time-specific benchmark];

(c) To request [the Party] to submit to the Secretariat as soon as possible, and no later than [date 10 weeks prior to the next Committee meeting], an explanation for this deviation;

(d) To invite [the Party], if necessary, to send a representative to the [no.] meeting of the Committee to discuss the matter;

(e) To request the [no.] Meeting of the Parties to endorse the request in (c) above by forwarding the draft decision contained in [annex x (section y)] to the present report to that Meeting for approval.

*Draft decision -/-: Potential non-compliance in [year] with decision [x] by [the Party]*

[Refer to the draft decision text contained in paragraph 54 above.]

## **11. Acknowledgement of return to compliance with the Protocol (routine procedural matter e2)**

56. This routine procedural matter relates to the mid-year and end-of-year meetings of the Committee. It has arisen as a consequence of the Committee's efforts to improve the transparency of the non-compliance procedure. That is, the Committee has adopted the approach of recording through a recommendation the year in which data reports confirm that a Party implementing a decision of the

Meeting of the Parties on non-compliance returns to compliance with the Protocol's control measures for a particular ODS.

57. The text of recommendations adopted on this routine procedural matter varies little in substance, supporting the possibility of standardizing the recommendation text. Key components of the text would appear to be an acknowledgement of the Party's return to compliance, description of the control measures with which the Party is now in compliance and indication of the year in which the Party returned to compliance.

58. The standardized recommendation on this matter could read:

"The Committee therefore *agreed* to congratulate [the Party] on its return to compliance in [year] with the [ODS] control measures of the Montreal Protocol as well as its implementation of the commitment(s) contained in decision [-/-] to [description of commitment(s)], as indicated by the Party's data report for [year]."

**12. Acknowledgement that implementation is in advance of a commitment due in a given year (routine procedural matter e3)**

59. This routine procedural matter relates to the mid-year and end-of-year meetings of the Committee. More than half the Parties currently subject to decisions on non-compliance are in advance of some of the commitments contained in their decisions for returning them to compliance. Consequently, this is a common, routine procedural matter.

60. To date the key components of recommendations adopted on this routine procedural matter have varied little, but the text has differed such that it has sometimes been difficult to clearly determine whether the Party concerned is in advance of its commitments. This suggests that the routine procedural matter would benefit from standardized recommendation text. Key components of the text would appear to be an acknowledgement that the Party is in advance of its commitment or commitments due for completion in a specified year and a description of the commitment or commitments.

61. With regard to ODS consumption or production commitments, the standardized recommendation on this matter could read:

"The Committee *agreed* to note with appreciation that [the Party] had reported data for the [consumption/production of Annex x group y substances (ODS)] in [year] that showed that it was in advance of its commitment contained in decision [-/-] to [description of commitment] in that year."

62. With regard to regulatory measure commitments, the standardized recommendation on this matter could read:

"The Committee *agreed* to note with appreciation that [the Party] had reported the [establishment/introduction] of [description of regulatory measure] in [year], in advance of its commitment(s) contained in decision [-/-] to [description of commitment(s) including year in which implementation of commitment due]."

**13. Acknowledgement of the completion of a commitment due in a given year (routine procedural matter e4)**

63. This routine procedural matter relates to the mid-year and end-of-year meetings of the Committee. The majority of Parties subject to decision on non-compliance are meeting, if not exceeding, the commitments contained in those decisions for returning them to compliance. Consequently, this is a common, routine procedural matter. To date the key components of recommendations adopted on this routine procedural matter have varied little but the text has differed such that it has sometimes been difficult to determine clearly which commitments have been completed and whether they have been completed on time or after some delay, suggesting that the routine procedural matter would benefit from standardized recommendation text.

64. Key components of the text would appear to be an acknowledgement that the Party has completed implementation of the commitment or commitments due for completion in a specified year and a description of the commitment or commitments.

65. The standardized recommendation on this matter could read:

"The Committee *agreed* to note with appreciation [the Party] has completed implementation in [year] of the commitment(s) contained in decision [-/-] to [description of commitment including year implementation of commitment due]."

#### 14. Request for outstanding data (routine procedural matter f)

66. This routine procedural matter relates to the mid-year meetings of the Committee. The number of Parties subject to the routine procedural matter of requesting the submission of outstanding baseline, base year and annual data is declining due to the improvement in the Parties' understanding of their data reporting obligations and their skills and experience in data collection, and decisions of the Parties encouraging the submission of annual data in advance of the 30 September deadline prescribed by Article 7, paragraph 3, of the Protocol.

67. With regard to outstanding base year and baseline data reporting, this matter is most likely to apply to Parties operating under Article 5 of the Protocol (Article 5 Parties) that have only recently ratified an Amendment to the Protocol. This is because all Parties not operating under Article 5 of the Protocol have reported base year and baseline data for the Protocol and all its Amendments, while some Article 5 Parties are yet to report base year and baseline data pertaining to a number of the Amendments of the Protocol.

68. The text of recommendations on this routine procedural matter therefore varies with the nature of the outstanding data. It also varies depending on whether the Committee is to considering a Party only with regard to outstanding data. The text varies with the nature of the outstanding data because the submission of baseline data by an Article 5 Party is critical to the assessment of that Party's compliance with the Protocol's control measures, whereas its submission of base year data is not. In addition, the Protocol provides that estimated data will satisfy the base year data reporting requirement. The text will also vary depending on whether the Committee is considering a Party only with regard to outstanding data because Parties with only outstanding data reporting issues are grouped together in a single recommendation, while Parties with additional compliance issues for consideration are addressed through individual, Party-specific recommendations.

69. Despite the variations in circumstance, some standardization of the recommendation text would appear possible. Key components of the text for recommendation relating to groups of Parties or individual Parties alone would appear to be a request to report the outstanding data, and the date by which the report should be submitted to the Secretariat. In addition, when the text relates to an individual Party, the exact nature of the outstanding data could be specified. Should the individual Party have outstanding baseline data or annual data for the year preceding the meeting, the recommendation could also note the importance of the data in enabling the assessment of the Party's current compliance status. Should the Party have outstanding base year data, the recommendation could note that the Protocol makes provision for the submission of estimated data. Also, a distinction would need to be made between recommendation text relating to outstanding base year and baseline data, and text relating to annual data yet to be reported for the immediately preceding year. As the mid-year meeting of the Committee is held prior to the 30 September deadline set out in the Protocol for the submission of annual data for the preceding year, a Party that had not reported their annual data for the immediately preceding year (for example, 2005 annual data in 2006) by the time of the mid-year meeting could not be considered to be in non-compliance with that data reporting obligation.

70. The standardized group recommendation on this matter for outstanding base year, baseline and annual data, where the annual data was due for submission in a previous year (for example, annual data for the year 2004 and preceding years) could read:

“The Committee *agreed* to remind the Parties in non-compliance with their base year, baseline or year [year(s)] annual data reporting obligations under the Protocol to submit their outstanding data as soon as possible, and no later than [date 10 weeks prior to the next Committee meeting], for consideration by the Committee at its [no.] meeting.”

71. The standardized group recommendation on this matter for annual data that are yet to be reported for the immediately preceding year could read:

“The Committee *agreed* to urge the Parties yet to report their data for the year [year immediately preceding the meeting] to submit that data as soon as possible, in accordance with Article 7 paragraphs 3 to 4 of the Protocol, and preferably no later than [date 10 weeks prior to the next Committee meeting] in order that the Committee might assess the Parties' compliance with the Protocol at its [no.] meeting.”

72. The standardized Party-specific recommendation on this matter with regard to outstanding baseline data could read:

“The Committee *agreed* to urge [the Party] to submit its baseline data for the ozone-depleting substances in Annexes [x,y,z] of the Protocol, as a matter of priority and no later than [date 10 weeks prior to the next Committee meeting], in order that the Committee might assess the Party’s compliance with the Protocol at its [no.] meeting.”

73. The standardized Party-specific recommendation on this matter with regard to outstanding base year data could read:

“The Committee *agreed*:

(a) To request [the Party] to submit its base year data for the ozone-depleting substances in Annexes [x,y,z] of the Protocol, as soon as possible and no later than [date 10 weeks prior to the next Committee meeting], for consideration by the Committee at its [no.] meeting;

(b) To recall that the Protocol states that best possible estimates of base year data may be submitted where actual data are not available”.

74. The standardized Party-specific recommendation on this matter with regard to outstanding annual data due for submission in the immediately preceding year could read:

“The Committee *agreed* to remind [the Party] to submit its data for the year [year preceding the meeting], in accordance with Article 7 paragraphs 3 to 4 of the Protocol, and preferably no later than [date 10 weeks prior to the next Committee meeting] in order that the Committee might assess the Party’s compliance with the Protocol at its [no.] meeting.”

75. The standardized Party-specific recommendation on this matter with regard to outstanding annual data due for submission in other previous years could read:

“The Committee *agreed* to request [the Party] to submit its data for the year(s) [year(s)], as soon as possible and no later than [date 10 weeks prior to the next Committee meeting], for consideration by the Committee at its [no.] meeting.”

**15. Acknowledgement that data not submitted and forwarding of draft decision to the Meeting of the Parties (routine procedural matter g1)**

76. This routine procedural matter relates to the end-of-year meetings of the Committee. The number of Parties subject to this matter is declining due to the improvement in the Parties’ understanding of their data reporting obligations and their skills and experience in data collection. This matter relates to all forms of data reporting obligations specified by the Protocol, thereby resulting in some variation in the text of associated recommendations.

77. Any Party might be subject to a recommendation requesting the submission of their outstanding annual consumption and production data. As noted, however, in routine procedural matter f above, only Article 5 Parties are likely to be subject to a recommendation requesting the submission of outstanding baseline or base year data. This is because all Parties not operating under Article 5 of the Protocol have reported base year and baseline data for the Protocol and all its Amendments, while some Article 5 Parties are yet to report base year and baseline data pertaining to a number of the Amendments of the Protocol.

78. Despite the variation in the text of recommendations on this routine procedural matter, some standardization of recommendation text should be possible. Key components would appear to be an acknowledgement that the data has not been submitted, description of the outstanding data, request to submit the data, date by which the data should be submitted to the Secretariat, the agreement of the Committee to seek the endorsement of the Meeting of the Parties to the request through a draft decision should the Party not submit the data prior to the Meeting’s adoption of the draft decision, and the annexing of the draft decision to the report of the meeting.

79. The standardized recommendation on this matter with regard to outstanding baseline data could read:

“The Committee therefore *agreed*:

(a) To note that [the Party] has not reported its outstanding baseline data for the controlled substances in Annex [x];

(b) To therefore include the Party in the draft decision contained in [annex x (section y)] to the present report in the event that the Party does not report the outstanding data prior to the adoption of the draft decision by the [no.] Meeting of the Parties.

*Draft decision -/-: Non-compliance with data-reporting requirements for the purpose of establishing baselines under Article 5, paragraphs 3 and 8 ter (d)*

1. To note that the following Parties have not reported data for one or more of the years which are required for the establishment of baselines for Annex [x] to the Protocol, as provided for by Article 5, paragraphs 3 and 8 ter (d):

(a) For Annex [x]: [the Parties];

2. To note that that places those Parties in non-compliance with their data-reporting obligations under the Montreal Protocol until such time as the Secretariat receives the outstanding data;

3. To stress that compliance by those Parties with the Montreal Protocol cannot be determined without knowledge of those data;

4. [To acknowledge that all those Parties have only recently ratified either the Montreal Protocol or the amendments to the Protocol to which the data-reporting obligation relates, but also to note that the Parties have received assistance with data collection from the Multilateral Fund through the implementing agencies;]

5. To urge those Parties to work together with the United Nations Environment Programme under the compliance assistance programme and with other implementing agencies of the Multilateral Fund to report the data as a matter of urgency to the Secretariat and to request the Implementation Committee to review the situation of those Parties with respect to data reporting at its next meeting;”

80. The standardized recommendation on this matter with regard to outstanding base year data could read:

“The Committee therefore *agreed*:

(a) To note that [the Party] has not reported its outstanding base year data for the controlled substances in Annex [x];

(b) To therefore include the Party in the draft decision contained in [annex x (section y)] to the present report in the event that the Party does not report the outstanding data prior to the adoption of the draft decision by the [no.] Meeting of the Parties.

*Draft decision -/-: Non-compliance with data reporting requirements under Article 7, paragraphs 1 and 2 of the Montreal Protocol*

1. To note that the following Parties have not reported data for one or more of the base years (1986, 1989 or 1991) for one or more groups of controlled substances, as required by Article 7, paragraphs 1 and 2 of the Montreal Protocol: [the Parties];

2. To note that that places those Parties in non-compliance with their data-reporting obligations under the Montreal Protocol until such time as the Secretariat receives the outstanding data;

3. [To acknowledge that all those Parties have only recently ratified either the Montreal Protocol or the amendments to the Protocol to which the data-reporting obligation relates, but also to note that the Parties have received assistance with data collection from the Multilateral Fund through the implementing agencies;]

4. To note further that Article 7, paragraphs 1 and 2 of the Protocol provide for Parties to submit best possible estimates of the data referred to in those provisions where actual data are not available;

5. To request the relevant implementing agencies of the Multilateral Fund to make available to the Secretariat any data they have obtained which may be relevant;

6. To request the Secretariat to communicate with the Parties referred to in paragraph 1 above and to offer assistance in reporting such estimates in accordance with Article 7, paragraphs 1 and 2;

7. To request the Implementation Committee to review the situation of those Parties with respect to data reporting at its next meeting;”

81. The standardized recommendation on this matter with regard to outstanding annual consumption and production data could read:

“Recalling the data report contained in documents [citation of the Secretariat’s report on Article 7 data], the Committee *agreed* to include in the draft decision contained in [annex x (section y)] to the present report those Parties that had not yet submitted their ODS data for [year] in accordance with Article 7 of the Montreal Protocol prior to the adoption of the draft decision by the [no.] Meeting of the Parties.”

*Draft decision -/-: Data and information provided by the Parties in accordance with Article 7 of the Montreal Protocol*

1. To note with appreciation that [x] Parties out of the [y] that should have reported data for [year] have done so, and that [z] of those Parties reported their data by 30 June [year] in conformance with decision XV/15;
2. To note, however, that the following Parties have still not reported [year] data: [the Parties];
3. To note that that places the Parties listed in paragraph 2 in non-compliance with their data-reporting obligations under the Montreal Protocol until such time as the Secretariat receives their outstanding data;
4. To urge the Parties listed in paragraph 2, where appropriate, to work closely with the implementing agencies to report the required data to the Secretariat as a matter of urgency, and to request the Implementation Committee to review the situation of those Parties at its next meeting;
5. To note that lack of timely data reporting by Parties impedes effective monitoring and assessment of Parties’ compliance with their obligations under the Montreal Protocol;
6. To note also that reporting by 30 June each year greatly facilitates the work of the Executive Committee of the Multilateral Fund for the Implementation of the Montreal Protocol in assisting Parties operating under paragraph 1 of Article 5 of the Protocol to comply with the Protocol’s control measures;
7. To encourage Parties to continue to report consumption and production data as soon as figures are available, and preferably by 30 June each year, as agreed in decision XV/15;”

## 16. Acknowledgement that data submitted, resolving data reporting compliance matter (routine procedural matter g2)

82. This routine procedural matter relates to the mid-year and end-of-year meetings of the Committee. It arises out of recommendations adopted pursuant to routine procedural matter f above, and decisions of the Meetings of the Parties, as illustrated in section 15 above, on routine procedural matter g1. The text of associated recommendations adopted in the 2003–2005 period varies little in substance, supporting the possibility of standardizing the recommendation text. Key components of the text would appear to be an acknowledgement of the submission of the outstanding data, acknowledgement that this satisfies the Party’s data reporting obligation under the Protocol and a reference to the decision or recommendation that requested the submission of the outstanding data.

83. The standardized recommendation on this matter could read:

“The Committee *agreed* to note with appreciation [the Party’s] submission of all outstanding data in accordance with its data-reporting obligations under the Protocol and [decision/recommendation reference].”

## G. Conclusion

84. The review of the recommendations adopted pursuant to routine procedural matters of non-compliance suggests that it is possible to develop standardized recommendation texts for each matter. In accordance with recommendation 35/49, the Secretariat has therefore included in section F above proposals for standardized recommendations.

85. For some routine procedural matters of non-compliance, specifically matters d, e1, e2, e3, f and g1, multiple standardized texts were developed. This was to accommodate the different scenarios common to these matters, such as the number of times that the matter had arisen with respect to a particular Party, the Committee meeting at which the matter is to be considered, and the nature of the commitment or compliance measure that was the subject of the routine procedural matter.

86. The Secretariat understands that the Committee sought to develop standardized recommendations for addressing these routine procedural matters of non-compliance in order to help the Committee manage its increasing workload more efficiently and effectively and ensure the equitable treatment of Parties in like circumstances. The Secretariat would suggest that the reference to “like circumstances” is key to the appropriate application of the standardized recommendations.

87. This is because, while a matter may be routine and procedural in nature, the circumstances that have brought a particular Party to that point in the non-compliance procedure may be unlike the circumstances of other Parties. This suggests that, in the interests of ensuring the adoption of recommendations that most effectively facilitate each individual Party’s prompt return to compliance, some deviation from the standardized recommendations may at times be desirable.

88. On this basis, the Committee may wish:

(a) To agree to use the standardized recommendations contained in section F of the present report as a basis for adopting recommendations to address the following routine procedural matters of non-compliance identified in that section, for the purpose of helping the Committee manage its increasing workload more efficiently and effectively and ensure the equitable treatment of Parties in like circumstances, while also ensuring that the individual circumstances of each Party subject to the non-compliance procedure are taken into account:

- a1: Request for explanation and plan of action
- a2: Deferral of compliance assessment in the light of limited time for Party’s response to Secretariat
- b1: Acknowledgement of explanation and request for plan of action
- b2: Acknowledgement of explanation and resolution of compliance matter
- b3: No explanation or plan submitted resulting in forwarding of draft decision to Meeting of Parties
- b4: Acknowledgement of explanation and plan of action and forwarding of draft decision to the Meeting of the Parties
- c1: Acknowledgement of plan and forwarding of draft decision to the Meeting of the Parties
- c2: No plan, resulting in draft decision forwarded to the Meeting of the Parties
- d: Request for report on some/all commitments contained in decision that are due in given year
- e1: Acknowledgement of failure to meet some/all ODS reduction commitments in decision due in a given year and request for explanation
- e2: Acknowledgement of return to compliance with Protocol
- e3: Acknowledgement that implementation of decision in advance of commitment due in given year
- e4: Acknowledgement of commitment completion
- f: Request for outstanding base year and baseline data
- g1: Acknowledgement that data submitted, resolving data reporting compliance matter
- g2: Acknowledgement that data not submitted and forwarding of draft decision to the Meeting of the Parties;

(b) To request the Secretariat to post the list of routine procedural matters of non-compliance and standardized recommendations on its secure website for the reference of Committee members.

## Annex I

### **Reproduction of the proposal submitted by Australia to the thirty-fifth meeting of the Implementation Committee on standardizing recommendations addressing compliance matters considered by the Committee**

1. This annex reproduces the proposal presented by Australia to the thirty-fifth meeting of the Implementation Committee, and contained in that meeting's document UNEP/OzL.Pro/ImpCom/35/7.

### **Standardizing recommendations addressing compliance matters considered by the Implementation Committee**

#### **A. Introduction**

2. This note considers the increasing number and complexity of matters for consideration by the Implementation Committee under the Non-Compliance Procedure of the Montreal Protocol.

3. The Government of Australia proposes that the Committee may wish to consider standardizing, where possible, the format of Committee recommendations. A set of standardized recommendations could help to streamline the process of considering non-compliance and assist the Committee to manage its increasing workload more efficiently. Standardized recommendations could also reduce apparent inconsistencies between some recommendations and thereby increase inter-party equity.

#### **B. Background**

4. Established in 1992, the Non-Compliance Procedure of the Montreal Protocol has evolved to represent a flexible and sophisticated compliance system, widely regarded as a model for other multilateral environmental agreements. Over the period 2003-2005 an average of 35 individual compliance matters were reported by the Implementation Committee at each meeting. These compliance matters resulted in between 8-20 requests for Parties to submit a plan of action to address non-compliance and return the Party to compliance as soon as possible. This level of activity compares with 16 individual compliance matters reported by the Committee in 2000, and 3 matters of individual compliance reported by the Committee in 1996.

5. The comparatively recent increase in the Implementation Committee's activities reflects an increase in the commitments undertaken by the Parties to the Montreal Protocol: during 1999, Parties operating under Article 5 of the Protocol undertook controls on Annex A group I (CFC); in 2002, controls on Annex A group II (halons), Annex C group III (BCM), Annex E (methyl bromide) controlled substances; in 2003, they undertook controls on Annex B group I (other CFCs) and Annex B group III (methyl chloroform) controlled substances. In addition, Parties not operating under Article 5 of the Protocol undertook additional methyl bromide controls in 2001 and 2003 and Annex C group I (HCFC) controls in 2004. The current year, 2005, will see Parties undertake commitments to further controls on CFCs, halons, carbon tetrachloride, methyl chloroform and methyl bromide. This can be reasonably expected to further increase the number of issues brought to the attention of the Implementation Committee.

#### **C. Standardizing recommendations**

6. Under decision IV/5 the Implementation Committee reports to the Meeting of the Parties on compliance matters, including any recommendations it considers appropriate. The official report of the Committee meeting summarises information presented on the matter, the discussions of the Committee, and any conclusions and reached with respect to the matter. The official report of Committee meetings presents formal recommendations and draft decisions for consideration.

7. The consideration of non-compliance matters follows a process of review and resolution through a series of stages. The six stages are:

- Identification and notification.
- Preliminary clarification.
- Committee consideration.

- Committee reporting.
- Meeting of the Parties decision.
- Monitoring and final resolution.

8. A Party's progress through the cycle is marked by Committee recommendations which are very similar when referring to specific stages, for example, the request for data to be submitted, the request for a plan of action to be submitted, and the acknowledgement of a return to compliance by the Party. This process has not, however, managed to consistently represent the progress or resolution of compliance matters and raises concerns for inter-Party equity.

9. The following examples illustrate how three differently worded recommendations, which should have been the same for a Party whose status has not changed over consecutive meetings, can lead to different interpretations of those recommendations, and create apparent inequities between Parties.

(a) Report of the thirty-fourth meeting of the Implementation Committee:

- (i) Party A had been listed for consideration because of a previous decision of the Parties (decision XYZ) which contained the Party's plan of action for returning to compliance with the Protocol's CFC control measures.
- (ii) The Committee *agreed* "to note with appreciation Party A's progress in implementing its plan of action to phase out CFCs and its **continued efforts to comply** with the Protocol's control measures for CFCs."

(b) Meeting room paper of the thirty-fourth meeting of the Implementation Committee – "Draft Summary of recommendations":

- (i) The Committee therefore *agreed* "To note with appreciation Party A's progress in implementing its plan of action to phase out CFCs and its continued compliance with the Protocol's CFC control measures."

(c) Report of the thirty-third meeting of the Implementation Committee:

- (ii) The representative of the Secretariat noted that decision XYZ had committed Party A to a plan of action to maintain its CFC consumption at the same level in 2003 as in 2002, and to establish licensing and quota systems for imports and exports of ODS. Party A had reported data for CFC consumption in 2003 meeting its benchmark, and had established the licensing and quota system. "The Committee noted with appreciation Party A's **progress towards complying** with its commitments set out in decision XYZ."

10. The use of different terms, "continued efforts to comply", "continued compliance", and "progress towards complying" can convey very different messages. The first statement implies the Party is trying to comply, but is possibly in non-compliance. The second implies that the Party is in compliance, as per previous report. The third statement, from the previous report, implies the Party is progressing but is essentially in non-compliance.

11. A standardized recommendation for this compliance matter would remove apparent inconsistencies and improve inter-party equity across Committee reports.

12. Commonly occurring compliance matters which are routinely considered and which may benefit from consistent language include inter alia: requests for a Party to submit data; requests for a Party to explain data if inconsistent; requests for a Party to submit a plan of action; monitoring by Committee; noting with appreciation a Party's continued progress in implementing its plan of action; acknowledging with appreciation a Party's return to compliance; noting a Party's previous non-compliance; agreement to defer consideration of a compliance matter in light of limited time to review information or respond to the request for information.

13. Standardized recommendations would have an additional benefit, in terms of managing the workload of the Committee, as standardized responses to the same compliance situation would streamline administration and official reporting of the Committee. This approach could also be of assistance in implementing a 'blanket approval' approach to routine procedural matters of non-compliance, as trialled at the thirty-fourth meeting of the Committee.

14. Standardized recommendations would contribute to the Committee addressing routine procedural matters of non-compliance efficiently and effectively, and thereby allow the Committee more time to focus on compliance matters requiring individual consideration.

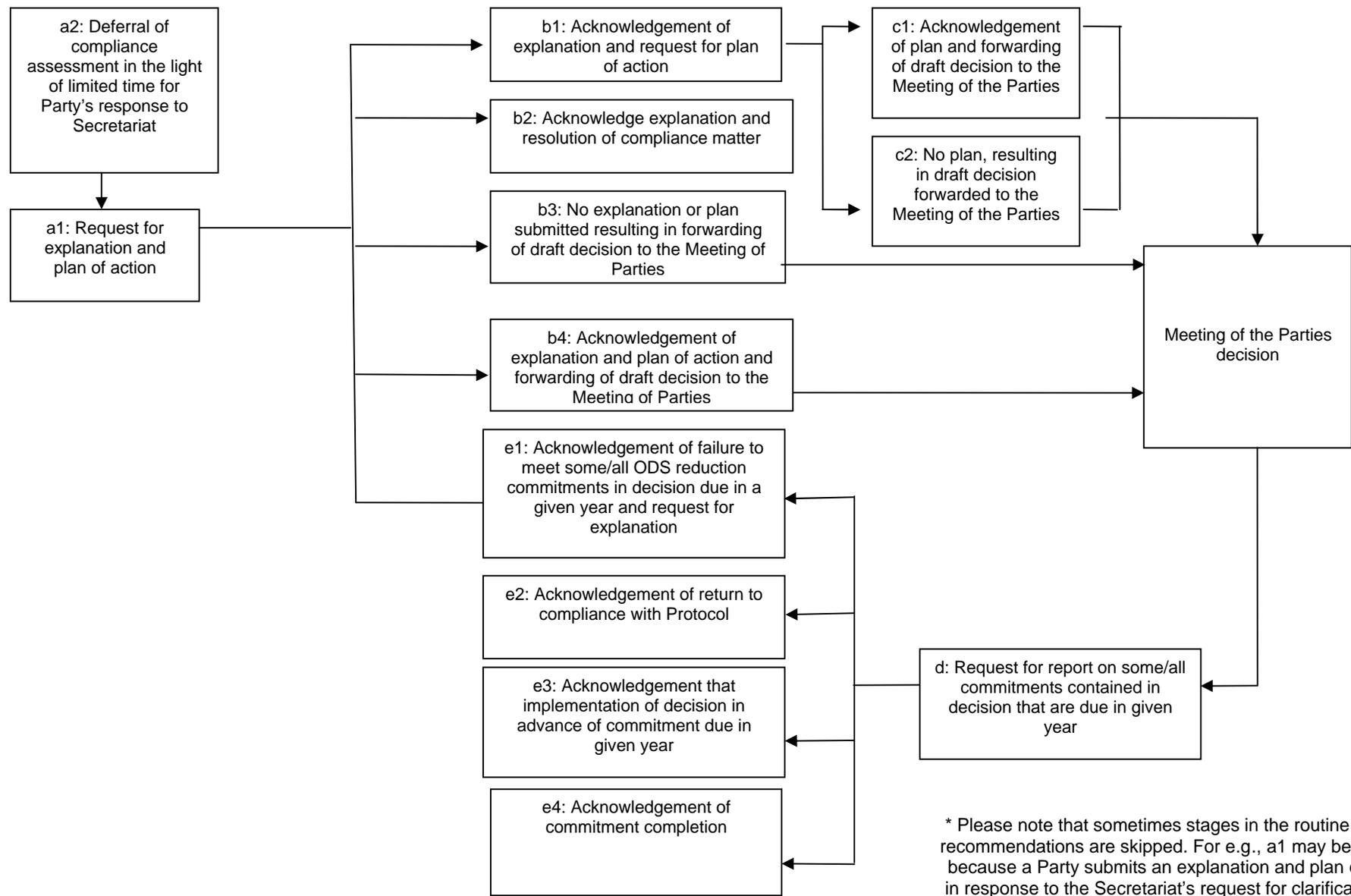
**D. Proposal**

15. The Implementation Committee may wish to record in the report of the present meeting its agreement that:

(a) Consideration is given to the development of standardized recommendations for addressing routine procedural matters of non-compliance.

(b) The Secretariat provides a report, with proposals for standardized recommendations, to the Implementation Committee for consideration at its thirty-sixth meeting.

**Annex II (a):** Flowchart of routine types of recommendations that the Committee might adopt at the various stages of the application of the non-compliance procedure to non-compliance / potential non-compliance with ODS phase out schedules\*



\* Please note that sometimes stages in the routine types of recommendations are skipped. For e.g., a1 may be skipped because a Party submits an explanation and plan of action in response to the Secretariat's request for clarification of a deviation arising from the Party's annual data report.

**Annex II (b)** Flowchart of routine types of recommendations that the Committee might adopt at the various stages of the application of the non-compliance procedure to non-compliance with data-reporting obligations

