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Entry into force of Measure 4 (2004)

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Working Paper submitted by France, the United Kingdom, Chile, Finland, the Netherlands, New Zealand and South Africa

Abstract

Given the **increasing diversity of tourism and non-governmental activities in Antarctica and associated risks**, the objectives pursued by Measure 4 (2004) “Insurance and contingency planning for tourism and non-governmental activities in the Antarctic Treaty area” are more relevant than ever. However, this Measure has not yet entered into force, as only 11 out of the 27 required Consultative Parties have approved it.

Adventure and deep-field tourism in Antarctica is now more visible (for example through the media) and its popularity may increase significantly in the future. It is therefore crucial that such activities are effectively managed and further regulation may be necessary. However, as a first step, it is also crucial to encourage the entry into force of existing agreed ATCM instruments, such as Measure 4 (2004), and to recall to all Parties that it is important to complete **the internal procedures for approval of this Measure. Consistent with Resolution 4 (2004), the proponents also invite Parties to implement the requirements of Measure 4 (2004) in their domestic procedures, wherever practicable.**

A decade after the adoption of Measure 4 (2014), it is time for its entry into force in order to assert the efficiency of the Antarctic Treaty System and its concerns for tourism and non-governmental activities.

Background

The Report of the Informal Contact Group on the “Increasing Diversity of Tourism and other Non-Governmental Activities in Antarctica” (WP 047, ATCM XXXVI) presented by the Netherlands highlights **the development, in recent years, of expeditions entailing a higher level of risks and presenting new management challenges**, e.g. sport activities or activities with the primary purpose of accomplishing a particular challenge in Antarctica.

This Report also highlights **the differences that may exist in implementing the Protocol’s provisions, and other relevant Recommendations, Measures and Resolutions, relating to authorisation procedures, into national laws** (permit system, certification system or general notification requirement). Thus **the level of requirement may substantially differ from one state to another**. Moreover, divergences may also occur in the retained approach concerning the obligation to submit tourism and non-governmental activities to a prior environmental impact assessment (EIA), i.e. preliminary assessment or IEE.

On the occasion of this ICG, some Parties **have declared that they would support the adoption of a legal basis that would allow them to forbid an activity, for instance for safety reasons**. Indeed, whilst any activity conducted in Antarctica entails a high level of risk due to the local conditions, some kind of activities are inherently high risk (mountain climbing, base jumping, skydiving etc.) and undertaking them in Antarctica renders them of even higher risk. This high level of risk concerns not only people undertaking the activity, but also those who may be involved in rescue operations if needed

There is a view among many Parties that **further regulation is necessary** to address new challenges related to adventure and deep-field tourism.

Nevertheless, for the time being, it appears that some pieces of relevant regulation have already been negotiated and agreed between the Parties, but are not in force yet. Injecting greater urgency into the need to ensure the entry into force of such measures is a first step that will contribute to tackle some of the issues discussed above. Bringing the existing relevant measures into force would also enable the Parties to have a clearer picture of what, if any, further regulation is needed in future.

Why is measure 4 (2004) relevant?

Measure 4 (2004) aims at taking into consideration the potential impacts that some tourism and non-governmental activities may incur, such as additional costs on national programmes in case of emergency, risks to the safety involved by the activity itself but also for those involved in SAR operations.

Measure 4 (2004) also ambitions to minimise the risks of tourism and non-governmental activities undertaken in Antarctica and provides that they must be carried out in a self and sufficient manner.

As a consequence Measure 4 (2004) reads as follows (emphasis added):

“That Parties shall require those under their jurisdiction organising or conducting tourist or other non-governmental activities in the Antarctic Treaty Area, for which advance notification is required in accordance with Article VII (5) of the Antarctic Treaty, to demonstrate compliance with the following requirements:

- *that appropriate **contingency plans** and **sufficient arrangements for health and safety, search and rescue (SAR), and medical care and evacuation** have been drawn up and are in place prior to the start of the activity. Such plans and arrangements shall not be reliant on support from other operators or national programmes without their express written agreement; and*
- *that **adequate insurance or other arrangements** are in place **to cover any costs** associated with search and rescue and medical care and evacuation.”*

However, for the time being, Measure 4 (2004) is not in force, as it requires to be approved by the 27 Consultative Parties present at the time of its adoption. Only 11 of them have done so.

At the time of adoption of Measure 4 (2004), Resolution 4 (2004) was also approved, to reflect Parties’ desire ‘*to take certain steps before it enters into force to promote its objectives*’. In the experience of France and the UK, taking into account the requirements of Measure 4(2004) in national practices enables a greater dialogue with those planning to travel to Antarctica, not only on potential environmental impacts, but also on whether their planning, contingency arrangements and insurance cover is adequate. Whilst by no means foolproof, this process has proved beneficial in improving the safety and self-sufficiency of some adventure and deep-field activities undertaken in recent years.

Therefore, the proponents recommend that the meeting addresses the issues raised by adventure and deep field tourism, notably by:

1. urging all Parties that have not yet approved Measure 4(2004) to complete their internal procedures to approve this Measure, so that it will enter into force;
2. encouraging Consultative Parties that have already approved Measure 4(2004) to take such steps that are needed at the national level to give domestic legal effect to the Measure; and
3. without prejudice to the foregoing and noting Resolution 4(2004), urging all Consultative Parties to consider applying Measure 4(2004) on an informal basis at the national level, until such time as Measure 4(2004) has been fully brought into legal force.