

**Complementary information to the document:  
Approaches to compliance mechanisms under United Nations Economic  
Commission for Europe multilateral environmental agreements: an  
overview (ECE/CP.TEIA/2014/10)**

**I. Introduction**

The present document provides complementary information to the official document “Approaches to compliance mechanisms under United Nations Economic Commission for Europe multilateral environmental agreements: an overview” (ECE/CP.TEIA/2014/10).

**II. Complementary information concerning compliance mechanism  
under other ECE Multilateral Environmental Agreements**

The following compliance mechanism set up by the ECE multilateral environmental agreement are considered in the present document, as well as in the related official document (see above):

- (a) Implementation Committee of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment (Protocol on SEA). The Committee is a joint body for both instruments after the entry into force of the Protocol, on the basis of Decision V/6-1/6<sup>1</sup>.
- (b) Compliance Committee of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Conventions)<sup>2</sup> and Compliance Committee of its Protocol on Pollutant Release and Transfer Registers (Protocol on PRTRs)<sup>3</sup>
- (c) Implementation Committee of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention)<sup>4</sup>, and Compliance Committee of its Protocol on Water and Health.<sup>5</sup>
- (d) Implementation Committee of the Convention on Long-Range Transboundary Air Pollution (Air Convention)<sup>6</sup>.

---

<sup>1</sup> Please see also Structure and functions of the Implementation Committee, as per Decision III/2, as amended by Decision VI/2 annex ; and Operating rules of the Implementation Committee, as per Decision IV/2 annex IV, as amended by Decision V/4 and VI/2 annex II

<sup>2</sup> Structure and functions of the Compliance Committee and procedures for the review of compliance, as per Decision I/7 on review of compliance, see <http://www.unece.org/env/pp/ccbackground.html>

<sup>3</sup> Structure and functions of the Compliance Committee and procedures for the review of compliance, as contained in decision I/2 on the review of compliance, see <http://www.unece.org/env/pp/prtr-cc.html>

<sup>4</sup> Mechanism to support implementation and compliance, as contained in draft decision on support to implementation and compliance, prepared by the Chair of the Legal Board, as contained in ECE/MP.WAT/2012/L.4, see [http://www.unece.org/fileadmin/DAM/env/water/mop\\_6\\_Rome/Official\\_documents/ECE\\_MP.WAT\\_2012\\_L.4\\_e.pdf](http://www.unece.org/fileadmin/DAM/env/water/mop_6_Rome/Official_documents/ECE_MP.WAT_2012_L.4_e.pdf)

<sup>5</sup> Rules of procedure of the Compliance Committee, see [http://www.unece.org/env/water/pwh\\_bodies/cc.html](http://www.unece.org/env/water/pwh_bodies/cc.html)

<sup>6</sup> Executive Body Decision 2012/25 on Improving the functioning of the Implementation Committee,

This document provides further information on elements for further consideration by the body charged with consideration of the Terms of a compliance mechanism, should the 8<sup>th</sup> meeting of the Conference of the Parties on the Convention on the Transboundary Effects of Industrial Accidents decide to establish a compliance mechanism (see para 22 ECE/CP.TEIA/2014/10).

### III. Triggering of the compliance procedure

The identification of possibilities to initiate a non-compliance procedure, that is “triggers” is an important element to be considered and discussed before any decision concerning compliance mechanisms. The triggers listed below are included in the Terms of Reference of the compliance mechanisms established by ECE multilateral environmental agreements.:

#### 1. Submissions by Parties

##### 1.1 Self-submission

A submission may be brought before the Committee by a Party itself, requesting advice or assistance concerning a question of implementation or compliance with the Convention. Standard provisions in MEAs state that a Party can initiate that trigger if *“it concludes that, despite its best endeavours, it is or will be unable, to comply fully with the Convention”*. Such submissions are to be addressed in writing to the secretariat and are to explain, in particular, the specific circumstances that the Party considers to be the cause of its non-compliance. All ECE MEAs compliance mechanisms foresee self-submissions.

##### 1.2 Party-to-Party submission

A submission may be brought before the Committee by one or more Parties with respect to another Party. It is to be noted that the function of the Committee in this situation would be non-confrontational and of an advisory nature. Provisions for Party-to-Party submissions are currently also included in all ECE MEAs.

In the case of submissions, it is the secretariat’s role to make these submissions available to the Parties concerned who should respond within a certain period (normally 6 months), and to also make available the response and information from the concerned Party.

#### 2. Referrals by the secretariat

In ECE, provisions for secretariat referrals are included in the Terms of Reference of the Implementation/Compliance Committees of the Air Convention, Aarhus Convention, Protocol on PRTRs and the Protocol on Water and Health. Standard language for secretariat referrals reads: *“Where the secretariat, (in particular upon considering reports submitted in accordance with the Protocol’s reporting requirements), becomes aware of a possible situation of non-compliance by a Party, it may request the Party concerned to furnish necessary information about it. If there is no response or the matter is not resolved within three months, or such longer period as the circumstances of the matter may require, (but in no case later than six months), the secretariat shall bring the matter to the attention of the Committee, which shall consider the matter as soon as practicable”*. The language “may” provides the secretariat with the possibility to take information at its disposal into account, such as national reports and information from the centres, when deciding whether to triggering the compliance procedure.

When deciding on an institutional and procedural mechanism under the Water Convention, the drafting group expressed the view that *“referrals by the secretariat would undermine*

---

contained in ECE/EB.AIR/113/Add.1, amending the previous terms of reference as per Executive Body Decision 2006/2, contained in ECE/EB.AIR/89/Add.1, see [http://www.unece.org/fileadmin/DAM/env/documents/2006/eb/EB/EB%20Decisions/Decision%](http://www.unece.org/fileadmin/DAM/env/documents/2006/eb/EB/EB%20Decisions/Decision%202006/2006_2_01_e.pdf)

*the independence of the secretariat*<sup>7</sup> and decided not to include them in the mechanism proposed for adoption by the governing body.

ECE MEAs Conventions' secretariat rarely takes advantage of this possibility, to maintain as much as possible a neutral position with the Parties. In the case of the Aarhus Convention and its Protocol on PRTRs as well as Protocol on Water and Health, secretariat referrals have never been made to date.

### **3. Committee initiative**

When the Committee becomes aware of possible difficulties in the implementation by a Party or possible non-compliance by a Party with the text of the Convention in concern, it may request the Party concerned to provide the necessary information on the matter. Any reply and relevant information are to be provided to the Committee within a given period. The Committee is to consider the matter as soon as possible in the light of any reply that the Party may provide.

A Committee initiative is foreseen the Implementation Committee established under the Espoo Convention and its Protocol on SEA, as well as by the Implementation Committee under the Water Convention.

### **4. Communications from the public**

Several implementation/compliance mechanisms include provisions with regard to communications by the public stipulating that such may be brought before the Committee by one or more members of the public concerning that Party's implementation of and/or compliance with the Convention/Protocol in questions.

Provisions for communications by the public are foreseen in the Compliance/Implementation Committees of the Aarhus Convention and Protocol on PRTRs, the Water Convention and its Protocol on Water and Health. In the Implementation Committee of the Espoo Convention and its Protocol on SEA, information from members of the public, including NGOs or concerns arising from the reporting exercise can be used by the Implementation Committee as basis for triggering a compliance procedure.

## **IV. Membership of the compliance body**

Members of a compliance body are normally nominated by the main governing body for a term of office (usually for two intersessional periods, which, depending on the frequency of the meeting of the governing body, can be for four or six years). Members can usually run for election for a second term. Exceptions to the rule of elections for two terms are allowed in a few cases and upon the decision of the governing body. The election of members is also usually based on principles of balanced geographical representation, assured through rotation. This approach is reflected in practically all UN Implementation and Compliance Committees, in a more or less explicit manner.

The average number of members for ECE MEAs is usually between 8 and 9. An odd number would be recommended in case of voting. It is usually the case that members of the Committee elect the chair and vice-chairs among themselves.

Members of Compliance/Implementation Committees can have different types of status: they can be elected as representatives of a Party, or they can be elected, in their personal capacities, therefore having an independent status from their respective countries. In the former approach, Parties selected as representatives of a Party may nominate a person to serve in the Committee to represent the Party. The person nominated could be a government representative, a representative of academia or an NGO, as long as the Party nominates the person as representing it. Should the person, for any reason, have become no

---

<sup>7</sup> Possible drafting language for a mechanism to facilitate and support implementation and compliance (ECE/MP.WAT/AC.4/2011/3)

more available to fulfil the role of Committee member, the Party could nominate another person to replace the former Committee member.

In case of members elected in their own capacity, should an expert not anymore be available to fulfil his or her functions, a decision by the governing body, or possibly the Bureau or Working Group of the Parties is required in order to find another suitable expert to replace him or her. This expert could then be from another Party, as the decision should be mainly based on the required expertise. Especially in this case, members non-working for the governments can be elected as members (for instance they might be members of universities or NGOs).

In some cases, no matter whether members are elected as representatives of Parties or in their personal capacity, the Terms of Reference require a composition of the body that would represent technical and legal expertise.

## V. Outcome of the compliance procedure

It is important to give consideration to the desired outcome of a compliance procedure. A report of the body in charge of compliance issues usually contains its findings, recommendations and advice. These are normally presented directly to the governing body to whom the body charged with reviewing compliance directly reports. Recommendations take the form of draft decisions for review and eventual adoption by the governing body, in accordance with the procedures established under the ECE MEAs.

In case the compliance procedure identifies a situation of non-compliance, the compliance body has the possibility of taking several measures. Among the ECE MEAs, the most exhaustive scheme of measures can be found in the Aarhus Convention (Decision I-7 on Compliance) stating that: “the Meeting of the Parties may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention. (...)

The Meeting of the Parties may, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:

- a) Provide advice and facilitate assistance to individual Parties regarding the implementation of the Convention;
- b) Make recommendations to the Party concerned;
- c) Request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
- d) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;
- e) Issue declarations of non-compliance;
- f) Issue cautions;
- g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;
- h) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.”

Amongst this catalogue of possible measures, those used by other ECE compliance mechanisms mostly pertain to draft decisions on non-compliance, the provision of advice, recommendations and requests to Parties to submit a list of measures taken.

Though theoretically possible, cautions are rarely used by the Aarhus Convention Compliance Committee. Also, suspension of a Party is a measure that is regarded as

extrema ratio, since it would not reach the scope of supporting the compliance and implementation of the instrument in concern.

## **VI. Possible budgetary implications with regard to establishing a compliance regime**

The introduction of a compliance mechanism per se will not entail further budgetary implications for Parties. At the same time, there might be budgetary implications linked to the functioning of the mechanism and to the meetings of the body in charge of it.

Budgetary implication may differ, in accordance with the decisions taken when determining the terms of reference, including with regard to the membership of the compliance body.

In case the members of the body are to be elected in their personal capacity, their participation in the meetings of the body would be financially supported through the trust fund of the Convention. Should the governing bodies elect representatives of the Parties, covering the cost of the participation of the Party-representatives in the Committee meetings will be up to the respective governments, apart from the participation of representatives of countries with economies in transition. The latter case would be similar to the current practice of the Working Group on Implementation, the members of which are elected in their personal capacities, as representatives of Parties by the Conference of the Parties. Parties cover the costs for the participation of Working Group members in Working Group meetings (apart from the representatives of countries of countries with economies in transition whose participation is covered through the Convention's trust fund).

---