



Economic and Social Council

Distr.: General
19 September 2014

Original: English

Economic Commission for Europe

Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents

Eighth meeting

Geneva, 3–5 December 2014

Item 7 (c) of the provisional agenda

**Development of the Convention: other possible amendments to the
Convention and guidance from the Conference of the Parties**

Approaches to compliance mechanisms under United Nations Economic Commission for Europe multilateral environmental agreements: an overview

Note by the secretariat

Summary

The Working Group on the Development of the Convention at its fourth meeting (Geneva, 28–29 April 2014) recommended that the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents consider introducing a compliance mechanism under the Convention. To facilitate discussion, the Working Group requested the secretariat to prepare a background document giving an overview of the experiences of other United Nations Economic Commission for Europe compliance mechanisms for the consideration of delegations at the eighth meeting of the Conference of the Parties (ECE/CP.TEIA/WG.1/2014/3, para. 64).

The present note, prepared by the secretariat, provides such an overview as well as elements of a possible compliance mechanism under the Convention.



Contents

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1–2	3
I. Implementation and compliance	3–13	3
II. Compliance mechanisms under other United Nations Economic Commission for Europe multilateral environmental agreements	14–16	5
III. Questions and issues arising from discussions held by the Working Group on the Development of the Convention on a compliance mechanism.....	17	6
IV. Objectives of compliance procedures.....	18–21	6
V. Elements for consideration	22	7
VI. The way forward and next steps with regard to the possible introduction of a compliance mechanism	23–27	7
A. Identification of a subsidiary body to lead the discussions	23–25	7
B. Elements for consideration with regard to the mandate from the Conference of the Parties	26–27	8
Annex		
Key features of the United Nations Economic Commission for Europe multilateral environmental agreement compliance and implementation bodies.....		9

Introduction

1. At its fourth meeting (Geneva, 29–30 April 2014), the Working Group on the Development of the Convention (Working Group on Development) under the Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention) discussed the possibility of amending the Industrial Accidents Convention to introduce a compliance mechanism. Following its deliberations, the Working Group agreed that an amendment was not needed, as the Conference of the Parties (CoP) was granted sufficient power under article 18 of the Convention to establish such a mechanism itself.¹ Consequently, the Working Group decided to recommend to the CoP to consider introducing a compliance mechanism and to give a mandate to a suitable subsidiary body or group to consider the terms of such a mechanism, with due regard to the mandate and functioning of the Working Group on Implementation. A CoP decision could then be drafted by the respective subsidiary group and submitted to the CoP for adoption at its ninth meeting (ECE/CP.TEIA/WG.1/2014/3, para. 63).

2. The aim of the present document is to present the CoP with an overview of the existing compliance mechanisms under other ECE multilateral environmental agreements (MEAs), and to provide elements for discussion and a decision on the way forward.

I. Implementation and compliance

3. In the text of the Industrial Accidents Convention, there is no mention of compliance. This situation is similar to many other MEAs including ECE MEAs.

4. Article 23 of the Convention refers to implementation by stipulating that “The Parties shall report periodically on the implementation of this Convention”. References to a review of implementation are, for instance, included in the ECE Convention on Long-range Transboundary Air Pollution (Air Convention, article 10), and the ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention, article 17).

5. The CoP, at its first meeting (Brussels, 22–24 November 2000) established the Working Group on Implementation as a subsidiary body to review the status of implementation of the Convention and adopted its terms of reference (ECE/CP.TEIA/2, annex III, Decision 2000/2, appendix).

6. The main tasks of the Working Group on Implementation, according to the original wording of its terms of reference, were to: (a) monitor the implementation of the Convention (which could include activities such as the creation of legislation, institutions, or other measures that would enable a Party to apply the Convention); and (b) prepare the report on the implementation of the Convention on the basis of the individual country reports. The Working Group on Implementation has, since its establishment, biannually monitored the implementation of the Convention through the assessment of the national implementation reports submitted by Parties. Over the years, the Working Group’s mandate has evolved to also include the provision of guidance to the implementation of the Assistance Programme.

¹ Article 18 provides that the CoP may establish, as appropriate, working groups and other appropriate mechanisms to consider matters related to the implementation and development of the Convention.

7. Different from monitoring implementation, a review of compliance concerns an assessment of the state of conformity between a Party's behaviour and the text of the Convention itself. That is, the fulfilment by the contracting Parties of their obligations under a multilateral agreement.²

8. The Working Group on Implementation has until now reviewed the Convention's implementation by Parties and drawn up conclusions and made recommendations to the CoP with the aim of improving the implementation of the Convention. In its reports to the CoP, the Working Group has also included suggestions for relevant support activities. So far, the Working Group has not addressed allegations of non-compliance concerning individual Parties, with the exception of compliance with reporting obligations.

9. All other issues were brought to the attention of the CoP by the Working Group on Implementation as overall considerations, rather than individual cases. The establishment of a compliance mechanism would modify this procedure.

10. During its third (Geneva, 3–4 September 2013) and fourth meetings, the Working Group on Development was provided with examples of the functioning of the compliance mechanisms established under other MEAs. Representatives of other MEAs and selected Governments stressed the relevance and usefulness of compliance mechanisms, which allow Parties to address issues concerning non-compliance with those agreements, and to receive advice on how to implement specific provisions or to comply with them. Moreover, it was recognized that the existence of compliance procedures and the possibility of submitting cases of non-compliance helped to raise awareness among Parties on their specific obligations under the various treaties. Further elements of the discussion on compliance are set out in the report of the fourth meeting of the Working Group on Development (ECE/CP.TEIA/WG.1/2014/3, paras. 48–52 and 63–64).

11. Budgetary implications related to the establishment of a compliance mechanism merit consideration. First of all, there might be budgetary implications linked to the functioning of the mechanism. These would notably pertain to the meetings organized by the compliance body, and the workload for the secretariat to service those meetings and to implement decisions of the body.

12. In this context, existing mechanisms and procedures under the Industrial Accidents Convention need to be considered. Meetings of the Working Group on Implementation and related work of the secretariat to service it are already foreseen as per the workplan. Enhancing or modifying the mandate of the Working Group on Implementation to absorb elements on compliance, should the CoP so decide, would ensure that additional costs are minimized.

13. Budgetary implications also differ in accordance with the type of membership of the compliance body. If members are nominated as representatives of Parties, the cost of their participation would be covered by the Parties concerned, as is currently the case for the members of the Working Group on Implementation (apart from the support provided to the representatives of Eastern Europe and South-Eastern Europe, the Caucasus and Central Asia). If members of the body are elected in their personal capacity, their participation in meetings of the body would be financially supported through the Convention's trust fund, thus potentially having higher budgetary implications.

² See Kal Raustiala and Anne-Marie Slaughter, "International Law, International Relations and Compliance", Princeton Law & Public Affairs Paper No. 02-2, in *The Handbook of International Relations*, Walter Carlsnaes, Thomas Risse and Beth Simmons, eds. (Los Angeles: Sage Publications, Ltd., 2002). Available from <http://ssrn.com/abstract=347260>.

II. Compliance mechanisms under other United Nations Economic Commission for Europe multilateral environmental agreements

14. The following compliance mechanisms have been established under ECE MEAs:

(a) The Implementation Committee for the Espoo Convention and its Protocol on Strategic Environmental Assessment (Protocol on SEA);³

(b) The Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)⁴ and the Compliance Committee of its Protocol on Pollutant Release and Transfer Registers (Protocol on PRTRs);⁵

(c) The Water Convention Implementation Committee,⁶ and the Compliance Committee of the ECE/World Health Organization Regional Office for Europe (WHO/Europe) Protocol on Water and Health;⁷

(d) The Air Convention Implementation Committee.⁸

15. Of the ECE MEAs, only the Aarhus Convention (article 15), the Protocol on PRTRs (article 22) and the Protocol on Water and Health (article 15) introduced provisions specifically concerning compliance in their original texts. Compliance mechanisms have been created either by decisions of the governing bodies (as was done by the Air Convention Executive Body in 1997 and by the Meeting of the Parties of the Water Convention in 2012) or through an amendment (as was done by the Meeting of the Parties to the Espoo Convention, in what is currently article 14 bis adopted in 2004).

16. Key features of the above-mentioned ECE MEA compliance and implementation bodies are summarized in a table annexed to this document.

³ The Implementation Committee is a joint body for both instruments since the Protocol's entry into force. The structure and functions of the Implementation Committee as amended by decision VI/2, annex I; and Operating rules of the Implementation Committee, as per Decision IV/2, annex IV, as amended by decisions V/4 and VI/2, annex II are available from http://www.unece.org/env/eia/implementation/implementation_committee.html. **Error! Hyperlink reference not valid.**

⁴ See structure and functions of the Compliance Committee and procedures for the review of compliance (ECE/MP.PP/2/Add.8, decision I/7, annex), available from <http://www.unece.org/env/pp/ccbackground.html>.

⁵ See structure and functions of the Compliance Committee and procedures for the review of compliance (ECE/MP.PRTR/2010/2/Add.1, decision I/2, annex), available from <http://www.unece.org/env/pp/prtr-cc.html>.

⁶ See mechanism to support implementation and compliance (ECE/MP.WAT/37/Add.2, decision VI/I, annex I), available from <http://www.unece.org/env/water/mop6/documents.html> (see post session documentation, "Decisions and vision for the future of the Convention").

⁷ See Compliance Procedure (ECE/MP.WH/2/Add.3–EUR/06/5069385/1/Add.3, decision I/II, annex), available from http://www.unece.org/env/water/pwh_bodies/cc.html.

⁸ See Implementation Committee, its structure and functions and procedures for review (ECE/EB.AIR/113/Add.1, decision 2012/25, annex), available from http://www.unece.org/env/lrtap/executivebody/eb_decision.html.

III Questions and issues arising from discussions held by the Working Group on the Development of the Convention

17. At its third and fourth meetings the Working Group on Development considered the experience of the other ECE MEAs with regard to compliance or implementation mechanisms and came to the following conclusions:

(a) That the practice of other MEAs in this area demonstrates the relevance and usefulness of compliance mechanisms, which allow Parties to address issues concerning the MEA and to receive advice on how to implement it;

(b) That the existence of compliance procedures and the possibility of submitting cases of non-compliance helps to raise awareness among Parties on their specific obligations;

(c) That, in view of the existence of different options for creating compliance bodies, the creation of an additional subsidiary body under the Convention might not be functional or effective;

(d) That the Working Group on Implementation could take on the functions of a compliance mechanism. In that respect, it was also observed that the tasks currently assigned to the Working Group on Implementation are quite relevant and numerous. At the same time, it was considered that an increase of the number of the members of the Working Group on Implementation would facilitate the distribution of work among the members.

IV Objectives of compliance procedures

18. The Working Group on Development, when discussing the possibility of establishing a compliance mechanism within the Convention, clearly expressed the view that it would serve to provide advice on the implementation of and compliance with the Convention. It was also stressed that it would have to be non-confrontational in nature, recognizing that judicial means of dispute settlement and other methods of law enforcement would most likely be without effect in the framework of MEAs. It is accepted in international environmental law⁹ that the purpose of non-compliance procedures is to identify Parties' compliance difficulties and to facilitate better compliance in a non-adversarial manner.

19. A compliance mechanism could be a means for the potential body in charge of the compliance mechanism to request Parties whose compliance was under review to identify suitable measures to enhance compliance in certain areas of the Convention, and to review, through periodical updates from the Party(ies) in question, the application and effects of such measures. Furthermore, the potential body in charge of compliance could propose that specific capacity-building, or assistance activities be carried out to support Parties facing difficulties in complying with the Convention's provisions.

20. In this context, it is important to consider the role and functioning of the Working Group on Implementation when considering the terms of a compliance mechanism for the Convention, as stressed by the Working Group on Development.

⁹ See United Nations Environment Programme, *Compliance Mechanisms Under Selected Multilateral Environmental Agreements* (Nairobi, 2007). Available from http://www.unep.org/publications/search/pub_details_s.asp?ID=3926.

21. The Working Group on Development considered that a compliance mechanism should have the objective of supporting compliance and implementation by means of assessing the reasons leading to non-compliance and providing advice on possible solutions or approaches to addressing it. In no way should a compliance mechanism function as a punitive instrument or be confused with settlement of disputes (article 21 of the Industrial Accidents Convention).

V Elements for consideration

22. Should the CoP decide to establish a compliance mechanism, the following elements, analysed in an informal document prepared for the eighth meeting of the CoP,¹⁰ should be considered by the body delegated to take this issue forward:

- (a) Triggering of the compliance procedure;
- (b) The membership of the compliance body;
- (c) The outcome of the procedure;
- (d) Budgetary implications.

VI The way forward and next steps with regard to the possible introduction of a compliance mechanism

A. Identification of a subsidiary body to lead the discussions

23. The Working Group on Development, at its fourth meeting, recommended that the issue of establishing a compliance mechanism be further investigated. Therefore it invited the Conference of the Parties to consider and possibly decide on the introduction of a compliance mechanism and to possibly mandate a suitable subsidiary body or group to consider the terms of reference for such a mechanism, with due regard for the mandate of the Working Group on Implementation.

24. The Bureau to the Convention recommended that the Working Group on Development should organize the work related to the preparation of CoP guidance on numerous matters, including the considerations of the terms of a compliance mechanism (see ECE/CP.TEIA/2014/9, para. 13).

25. The Working Group stressed in its recommendation that due account be given to the mandate and institutional set-up of the Working Group on Implementation, and that the Chair of the Working Group on Implementation should participate in the discussions by the Parties on the establishment of a compliance mechanism.

¹⁰ Informal document symbol COP.TEIA/2014/INF.2, available from <http://www.unece.org/env/teia/cop8.html>.

B. Elements for consideration with regard to the mandate by the Conference of the Parties

26. The CoP might wish to consider several possibilities concerning the mandate for the body delegated to pursue the discussions related to the terms of a compliance mechanism. The mandate could pertain to the following elements:

(a) Preparation of a draft decision on a compliance mechanism that could be adopted at the ninth meeting of the CoP in 2016 (timing in line with the recommendation of the Bureau);

(c) The applicability of the compliance mechanism, once in place, to protocols that might enter into force in the future under the Convention;

(d) Consideration of the terms of reference of the Working Group on Implementation in view of considering a harmonization of the functioning of this body with a possible compliance mechanism.

27. The nature, objective and focus of the compliance mechanism, along with its detailed provisions and the elements set out in section IV above, could be considered by the body mandated to take the discussions forward.

Annex

Key features of the United Nations Economic Commission for Europe multilateral environmental agreement compliance and implementation bodies

<i>Details of practice</i>	<i>Implementation Committee under the Air Convention</i>	<i>Implementation Committee under the Espoo Convention and its Protocol on SEA</i>	<i>Implementation Committee under the Water Convention</i>	<i>Compliance Committee under the Protocol on Water and Health</i>	<i>Compliance Committee under the Aarhus Convention</i>	<i>Compliance Committee under the Protocol on PRTRs</i>
Year established/objectives	1997/to review compliance under the Protocols to the Convention	2001/to review compliance under the Convention and, since 2011, under the Protocol	2012/to facilitate, promote and safeguard the implementation and application of and compliance with the Convention	2007/to facilitate, promote and aim to secure compliance with the obligations under the Protocol	2003/to promote and improve compliance with the Convention	2010/to promote and improve compliance with the Protocol
Membership	Nine members representing Parties to the Convention and being Party to at least one of the three most recent Protocols. ^a Persons with technical and/or legal expertise.	Eight members representing Parties to both the Convention and the Protocol.	Nine members serving in their personal capacity. Persons with experience and recognized expertise in the fields related to the Convention, including legal and/or scientific and technical expertise.	Nine members serving in their personal capacity. Persons of high moral character and having recognized expertise in the fields to which the Protocol relates, including legal and/or technical expertise.	Nine members, nationals of Parties or signatories to the Convention, serving in their personal capacity. Persons of high moral character and recognized competence in the fields to which the Convention relates, including legal experience.	Nine members, nationals of Parties or signatories to the Convention, serving in their personal capacity. Persons of high moral character and recognized competence in the fields to which the Protocol relates, including technical or legal experience.
Election of members	For a term of two years renewable for one consecutive term	For two terms (intersessional periods) with the possibility of re-election once	For one term (two intersessional periods) with the possibility of re-election once	For one term (two intersessional periods) with the possibility of re-election once	For one term (two intersessional periods) with the possibility of re-election once	For one term (two intersessional periods) with the possibility of re-election once

<i>Details of practice</i>	<i>Implementation Committee under the Air Convention</i>	<i>Implementation Committee under the Espoo Convention and its Protocol on SEA</i>	<i>Implementation Committee under the Water Convention</i>	<i>Compliance Committee under the Protocol on Water and Health</i>	<i>Compliance Committee under the Aarhus Convention</i>	<i>Compliance Committee under the Protocol on PRTRs</i>
Election of chair and vice-chair	Chair is elected by Convention's governing body.	Chair and vice-chair are elected by Committee members.	Chair and vice-chair are elected by Committee members.	Chair and vice-chair are elected by Committee members.	Chair and vice-chair are elected by Committee members.	Chair and vice-chair are elected by Committee members
Functions and triggers of the compliance procedure	Committee reviews the compliance with reporting obligation; considers submissions (self or Party-to-Party) or referrals (by the secretariat) of possible non-compliance; carries out reviews of specified obligations, as requested by the governing body; can draw the attention of the secretariat to possible cases of non-compliance	Reviews compliance on the basis of submissions (self or Party-to-Party) and on the basis of Committee initiatives (on the basis of other sources than Parties)	Considers requests for advice by Parties; considers submissions (self or Party-to-Party); might take a Committee initiative (including on the basis of information received from the public); examines specific issues for implementation/ compliance at the request of the governing body; carries out any other function assigned by the governing body	Considers submissions (self- or Party-to-Party), referrals (by the secretariat) or communications from the public; prepares, at the request of the governing body, a report on compliance; monitors, assesses and facilitates the implementation of and compliance with the reporting requirements of Parties; assists Parties in developing analysis of their needs, assists Parties in seeking support from donors	Considers issues of compliance raised through submissions (self or Party-to-Party), referrals by the secretariat and communications from the public; prepares reports on compliance/ implementation; monitors, assesses and facilitates the implementation of/ compliance with the reporting obligations of Parties; may examine compliance issues, as appropriate	Considers issues of compliance raised through submissions (self and Party-to-Party), referrals from the secretariat and communications from the public; prepares reports on compliance/ implementation; monitors, assesses and facilitates the implementation of/ compliance with the reporting obligations of Parties; may examine compliance issues as appropriate

<i>Details of practice</i>	<i>Implementation Committee under the Air Convention</i>	<i>Implementation Committee under the Espoo Convention and its Protocol on SEA</i>	<i>Implementation Committee under the Water Convention</i>	<i>Compliance Committee under the Protocol on Water and Health</i>	<i>Compliance Committee under the Aarhus Convention</i>	<i>Compliance Committee under the Protocol on PRTRs</i>
Meetings	Closed sessions.	Open to the public or closed sessions.	Meetings usually open to the public.	Meetings usually open to the public. Observer status can be granted to stakeholders on a case-by-case basis.	Meetings usually open to the public.	Meetings usually open to the public.

^a By decision 2012/25, the Executive Body decided that “The rule that all members of the Committee shall be Party to at least one of the following protocols to the Convention — the Protocol on Heavy Metals, the Protocol on Persistent Organic Pollutants or the Protocol to Abate Acidification, Eutrophication and Ground-level Ozone — shall become effective on 1 January 2017” (see ECE/EB.AIR/113/Add.1), available from <http://www.unece.org/index.php?id=28315>.