

# Working Group on Environmental Impact Assessment and Strategic Environmental Assessment

Eighth meeting

Geneva, 26–28 November 2019

**Romas Švedas**  
**Chair of the Implementation Committee**  
**19-11-2019**

## **Agenda item 4 A. Compliance with and implementation of the Convention and the Protocol**

**The Chair of the Implementation Committee** will be invited to report on the Committee's 44<sup>th</sup> and 45<sup>th</sup> sessions<sup>1</sup>; the main objectives for the 46<sup>th</sup> session; and the plans for preparing draft MOP decisions on the review of compliance of the Convention and the Protocol. **The Working Group** will be invited to take note of the report.

### **I. Introduction**

**The agenda of the Committee continues to expand** because of constantly increasing number of compliance issues and their complexity. At its 44<sup>th</sup> and 45<sup>th</sup> sessions held after the intermediary session of the meeting of the Parties in February 2019, the Committee has been considering 32 compliance issues (5 follow-ups to MOP decisions, 5 specific compliance issues arising from reviews of implementation of the Convention, 22 information gathering cases, 2 of which are new cases opened in 2019). This is almost 30% more than in the 2014-2017 intersessional period (25 cases on total) and 60% more than in the 2011-2014 intersessional period (17 cases in total) (see Section II -VI listing all the compliance issues).

At its subsequent sessions, the Committee will start considering two new submissions by Parties:

- (a) Submission by Bulgaria having concerns about Serbia's compliance with its obligations under the Convention regarding several mining activities received in May 2019 (46<sup>th</sup> session in December 2019); and
- (b) Submission by Montenegro having concerns about Albania's compliance with its obligations under the Convention in respect of the construction of a number of small hydro-power plants at the Cijevna River received in September 2019 (47<sup>th</sup> session in March 2020).

---

<sup>1</sup> Report of the Implementation Committee's 45th meeting (ECE/MP.EIA/IC/2019/4, advance copy) online available at: [http://www.unece.org/fileadmin/DAM/env/eia/documents/WG2.8\\_Nov2019/official\\_docs/ece.mp.eia.ic2019.4e\\_advance\\_copy.pdf](http://www.unece.org/fileadmin/DAM/env/eia/documents/WG2.8_Nov2019/official_docs/ece.mp.eia.ic2019.4e_advance_copy.pdf) ;

Report of the Implementation Committee's 44th meeting ((ECE/MP.EIA/IC/2019/2) online available at: [http://www.unece.org/fileadmin/DAM/env/eia/documents/WG2.8\\_Nov2019/1822162E\\_2\\_3\\_.pdf](http://www.unece.org/fileadmin/DAM/env/eia/documents/WG2.8_Nov2019/1822162E_2_3_.pdf)

Part of its 47<sup>th</sup> session the Committee will dedicate to preparations of draft decisions on compliance for the consideration of the Meeting of the Parties to the Convention at its 8<sup>th</sup> session (MOP8) and the Meeting of the Parties to the Protocol at its 4<sup>th</sup> session (MOP/MOP4) (8 – 11 December 2020). It will finalise these draft decisions at its 48<sup>th</sup> session according to the schedule provided in the Section II below.

In addition, at its subsequent sessions, the Committee will continue exploring ways how to increase efficiency of its working methods and practice to tackle the constantly growing number of compliance cases before it.

## II. Preparation of draft MOP decisions on the review of compliance of the Convention and the Protocol

### A. Initial list of draft compliance decisions

<i>Title</i>	<i>MOP8</i>	<i>MOP/MOP4</i>
<i>Review of compliance with the Convention</i>		
General issues of compliance with the Convention	VIII/2	
Follow-up to decision IS/1a on compliance by Armenia with its obligations under the Convention in respect of its national legislation	VIII/2 a	
Follow-up to decision IS/1c on compliance by Azerbaijan with its obligations under the Convention in respect of its national legislation	VIII/2 b	
Follow-up to decision IS/1d on compliance by Belarus with its obligations under the Convention in respect of the Belarusian nuclear power plant in Ostrovets	VIII/2 c	
Follow-up to decision IS/1f Compliance by Ukraine with its obligations under the Convention in respect of the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta	VIII/2 d	
Follow-up to decision IS/1g Compliance by Ukraine with its obligations under the Convention in respect of extension of the lifetime of the Rivne nuclear power plant	VIII/2 e	
[Compliance by ....]	VIII/2 f	
<i>Review of compliance with the Protocol</i>		
General issues of compliance with the Protocol		IV/2
[Compliance by .... with its obligations under the Protocol in respect of...]		IV/2 a

**B. Schedule of preparations of draft compliance decisions on follow-up to decisions IS/1a, IS/1c, IS/1d, IS/1f, IS/1f**

At its 44<sup>th</sup> session in March 2019, the Committee discussed a schedule of its preparatory work in advance of MOP8 and MOP/MOP4, in particular regarding preparations of draft compliance decisions on follow-up to decisions IS/1a, IS/1c, IS/1d, IS/1f, IS/1f, as presented below.

<b>1.</b>	<b>IC-44</b>			Mar 12-15, 2019
		Bureau		Jun 17-18, 2019
<b>2.</b>	<b>IC-45</b>			Sep 10-13, 2019
		WG8		Nov 26-28, 2019
<b>3.</b>	<b>IC-46</b>			Dec 10-13, 2019
		Bureau		Feb 25-26, 2020
<b>4.</b>	<b>IC-47</b>		1st draft MOP decisions	Mar 16-19, 2020
			Comments by Parties concerned	
		<b>WG9</b>	Comments by WG	Jun 9-11, 2020
			Comments by Parties concerned	
<b>5.</b>	<b>IC-48</b>		Final draft MOP decisions	Sep 1-4, 2020
		<b>Secretariat</b>	Preparation of MOP documents: 15 Sep 2020 deadline to submit draft MOP decisions as official documents	
	<b>MOP8</b>			Dec 8-11, 2020

Based on the information to be provided by the Parties concerned,

- (a) The Committee will prepare the first draft decisions of the Meetings of the Parties' on compliance at its 47<sup>th</sup> session (16-19 March 2020);
- (b) These draft decisions would be shared with all Parties for information and possible comments in advance of the meeting No 9 of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 9-11 June 2020);
- (c) Additional comments may be provided by the Parties concerned in advance of the 48<sup>th</sup> IC session (1-4 September 2020);
- (d) Based on all comments received, the Committee would then finalize the draft decisions at its 48<sup>th</sup> session (1-4 September 2020).

**III. Overview of compliance cases before the Committee**

**A. Information gathering**

In addition to discussions on follow-up to the previous MOP decisions, the Committee, at its 44<sup>th</sup> session and 45<sup>th</sup> sessions, continued its consideration of the following information-gathering cases:

*Concerning compliance with the provisions of the Protocol by:*

- (a) Serbia, regarding its Government's Energy Strategy, the programme for its implementation and the related Spatial Plan;

- (b) Ukraine, concerning the Programme of Ukraine for Hydro Energy Development for the Period until 2026.

*Concerning compliance with the provisions of the Convention by:*

- (a) Belarus, regarding its law on State ecological expertise, strategic environmental assessment and environmental impact assessment;
- (b) Bosnia and Herzegovina, in respect of the planned activities at Banovici, Stanari, Tuzla and Ugljevik thermal power plants;
- (c) Serbia, in relation to the extension of the Drmno lignite pit mine;
- (d) Serbia, in relation to the extension of the production of zinc, lead and other metals at the Grot mine;
- (e) Spain, concerning the planned construction of the temporary storage for radioactive waste at the Almaraz nuclear power plant;
- (f) Switzerland concerning the planned changes at the Zurich airport;
- (g) Ukraine, regarding the planned construction of nuclear reactors 3 and 4 at the Khmelnytsky nuclear power plant
- (h) Ukraine, regarding the planned construction of a tourism complex in Svydovets.

The Committee also considered information from Ukraine concerning the Nord Stream 2 project carried out by Denmark, Finland, Germany, and Sweden and discussed the seven cases related to the lifetime extension of nuclear power plants. Based on its previous decision to focus on any information gaps identified by the curators, it agreed to request additional information regarding two cases, notably the Kozloduy nuclear power plant in Bulgaria and 11 power units located at the Rivne, South-Ukrainian, Zaporizhzhya and Khmelnytsky nuclear power plants in Ukraine.

The Committee will consider deliberations on these compliance cases at its 46<sup>th</sup> session in December 2019.

## **B. Examination of general and specific compliance issues from the fifth review of implementation of the Convention and the second review of implementation of the Protocol**

At its 44<sup>th</sup> and 45<sup>th</sup> sessions, the Committee resumed its consideration of the general and specific compliance issues identified in the 5<sup>th</sup> review of implementation of the Convention (ECE/MP.EIA/2017/9) and in the 2<sup>nd</sup> review of implementation of the Protocol (ECE/MP.EIA/SEA/2017/9).

### *General compliance issues identified in the 5th review of implementation of the Convention*

The Committee noted some weaknesses and shortcomings in the Convention's implementation by Parties, including regarding:

- (a) different definitions of and approaches to key terms;
- (b) late reporting;
- (c) a lack of standardized practice regarding the organization of transboundary consultations and public participation; and
- (d) uncertainty regarding translation requirements.

Since those issues had already been identified in previous reviews, the Committee decided to propose to the Bureau and the Working Group the inclusion, in the next work plan, activities to update the relevant parts of the available guidance documents on application of the Convention, starting with the Guidance on Public Participation in Environmental Impact Assessment in a Transboundary Context (ECE/MP.EIA/7)<sup>2</sup>.

*General compliance issues identified in the 2<sup>nd</sup> review of implementation of the Protocol*

The Committee noted some possible weaknesses and shortcomings regarding the general issues of implementation of the Protocol, including regarding

- (a) public participation in screening and scoping;
- (b) incorporation of health aspects into environmental reports; and
- (c) the carrying out of transboundary consultations in line with article 10 of the Protocol.

The Committee highlighted the need for guidance or good practice recommendations on transboundary consultations under the Protocol and invited the secretariat to bring that matter to the attention of the Bureau and the Working Group<sup>3</sup>.

*Specific compliance issues identified in the 5th review of implementation of the Convention*

The Committee examined a number of specific compliance issues identified in the 5th review of implementation of the Convention and requested clarifications from the Parties concerned. The results of the Committee's considerations are as follows:

- (a) 19 Parties (Albania, Austria, Azerbaijan, Croatia, Czechia, Denmark, Finland, Greece, Ireland, Italy, Latvia, Liechtenstein, Luxembourg, Norway, the Republic of Moldova, Slovakia, Spain, Sweden and Ukraine) provided satisfactory clarifications on how they, as affected Parties, ensured public involvement in the environmental impact assessment procedure under articles 3 (8) and 4 (2) of the Convention. One Party (Montenegro) was asked to provide additional clarification. Its responses will be considered by the Committee at the 46th session along with the delayed responses from Belgium and Portugal will be considered at the Committee 46th session. Cyprus and North Macedonia failed to provide its answers to the Committee questions.
- (b) Italy, Luxembourg and Malta provided satisfactory clarifications how article 4 (1) was implemented within their national legal and administrative frameworks, and;
- (c) France clarified – to the satisfaction of the Committee – how article 6 (1) of the Convention was implemented in its national legislation.

*Specific compliance issues identified in the 2<sup>nd</sup> review of implementation of the Protocol*

The Committee expressed satisfactions with the clarifications from Italy on its implementation of article 7 (3) of the Protocol, particularly on how Italy ensured that environmental reports were of sufficient quality, and whether the procedure followed in practice met the requirements of the Protocol. It will examine the delayed response form Serbia at its next session.

**C. Specific compliance issue under the Protocol identified in the first review of implementation of the Protocol regarding the European Union**

There are three main aspects of the matter considered by the Committee:

---

<sup>2</sup> ECE/MP.EIA/IC/2019/2, para. 106

<sup>3</sup> ECE/MP.EIA/IC/2019/2, para. 110.

- (a) Limited applicability of the current reporting format on the implementation of the Protocol by individual Parties for reporting by the regional economic integration organizations referred to in article 21 of the Protocol, such as the European Union;
- (b) Possible discrepancies between the Protocol and the European Union Strategic Environmental Assessment Directive;
- (c) Possible applicability of the Protocol to plans/programmes adopted at the European Union level.

The Committee shared with the European Union a proposal for a possible reporting format for regional economic integration organizations and invited it to comment on that format before its subsequent consideration by the Working Group.

## VI. Working methods and operating rules

At both 44<sup>th</sup> and 45<sup>th</sup> sessions the Committee discussed ways to increase the effectiveness and efficiency of its working methods to tackle the constantly growing number of compliance cases before it.

### A. Prerequisites for efficient work of the Committee

- (a) Understanding by the Parties of their obligations when nominating representatives to serve on the Committee ensuring that appropriate time and resources are allocated to allow their nominated members to accomplish their tasks as Committee members. The Committee Members require time to:
  - (i) Participate in the Committee sessions;
  - (ii) Prepare for the sessions:
    - Review the information available on all compliance cases and other agenda items to be considered;
    - As an assigned curator for some of the cases, thoroughly analyse those cases and prepare written in-depth reports in a timely manner.
- (b) Good preparation for the sessions. Practice shows that preparation for the sessions was more time-consuming for the Committee Members than participation therein.
- (c) Respect for deadlines by Parties concerned when providing information, responding to the Committee's inquiries and delivering progress reports is crucial for the Committee's work. Several Parties do not provide the requested information or provide information with delay. Late submission of information or submission of information of insufficient quality significantly hinders the Committee's work.

### B: Agreed methods for improving its preparations for the sessions

- (a) Requesting the Parties to provide the required information no later than four weeks before the session at which it was to be considered;

- (b) Requesting the Committee members, as curators, to prepare their reports at least two weeks before the session.
- (c) And thus, making available for the Committee members all the materials at least two weeks before the session in order to enable their proper preparation.

In this context, the Committee is going to propose to adjust its operating rule 11 (4) regarding the deadline for the delivery of information by the Parties.

- (d) Making available to all Parties concerned, whenever necessary:
  - (i) Correspondence from Parties to the Committee regarding compliance matters;
  - (ii) Correspondence further to information from other sources, such as NGOs, based on the correspondent's consent.

This would promote transparency and consistency and would increase the efficiency of the Committee's work.

### **C. Other ways to improve methods and practice**

- (a) Making every effort to ensure that the Committee's members avoid direct or indirect conflicts of interest regarding matters considered by the Committee.
- (b) Accelerating the consideration of new information received from other sources by inviting the Committee Chair to request, without delay, the Parties concerned to provide the Committee with the basic initial information.
- (c) To further enhance the cost-effective time management of its sessions, the Committee agreed to increasingly use videoconference/teleconference facilities whenever possible, including for consultations with the Parties. For example, at its December session, the Committee will hold an informal video/audio consultation meeting with Ukraine on its follow-up with MOP decision IS/1f regarding Bystroe Canal Project.
- (d) With a view to ensuring the continuity of the Committee's deliberations, particularly when a permanent Committee member was unable to participate in a session, the Committee agreed that the alternate Committee members should be provided with access to its files upon request by the permanent member.

The Committee will continue the discussion on possible shortcomings in its proceedings at its subsequent sessions, with a view to preparing practical guidance on the Committee's working methods and, as required, draft proposals for amendments to the Committee's structure, functions and operating rules, for consideration of the Meetings of the Parties, including regarding quorum requirements.