

Economic Commission for Europe / Environment
Informal network of the Chairs of compliance/implementation bodies
under the Multilateral Environmental Agreements
First meeting, Geneva, 25 March 2013
Palais des Nations, SALLE VIII

Chair's Summary

The meeting was initiated and chaired by Prof. Jonas Ebbesson, Chair of the Compliance Committee under the Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (Aarhus).

The list of participating Chairpersons of the compliance/implementation bodies of the MEAs is attached. All Chairpersons were present with the exception of the Chair of the Air Convention and its Protocols, who was represented by the Chair of the Protocol on Pollutant Release and Transfer Registers. The list also contains the names of the ECE secretariat staff.

The purpose of the meeting was to launch an informal network of the Chairs of the implementation/compliance bodies under the ECE MEAs that will allow for exchange of information and of lessons learned through the Chairs and ultimately explore ways for improved implementation and effectiveness of the implementation/compliance mechanisms in the region. It was also noted that the Parties' decisions establishing at least four mechanisms (Aarhus, PRTR, Water, Water & Health)¹ referred to the enhancement of synergies among compliance procedures, either at the request of the Meeting of the Parties or at the Committee's initiative, but it was stressed that the intention at this stage was that the network remain informal in character.

The first part of the meeting was held in closed session, followed by a brief session open to the public, before the meeting was closed.

1. Examination of compliance and implementation – composition - methods of procedure

The Chairpersons described the main features of the way each body carries out its work (see also background note). The following points were in particular discussed:

- Membership:
 - o Criteria for membership vary. In some bodies, members represent Parties, in other bodies they operate independently from the Party that nominated them and serve in their personal capacity. There is no common practice, however, on what "servicing in their personal capacity" means: working for the executive branch of the Government

¹ For the sake of brevity, the note refers to the compliance/implementation procedures as follows: Implementation Committee under the Convention on Long-range Transboundary Air Pollution and its Protocols: *Air*; Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context and its Protocol on Strategic Environmental Assessment: *EIA/SEA*; Implementation Committee under the Convention on the Protection and Use of Transboundary Watercourses and International Lakes: *Water*; Compliance Committee under the Protocol on Water and Health: *Water & Health*; Working Group on Implementation under the Convention on the Transboundary Effects of Industrial Accidents: *Industrial Accidents*; Compliance Committee under the Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters: *Aarhus*; Compliance Committee under the Protocol on Pollutant Release and Transfer Registers: *PRTR*.

- does not impede membership in most bodies, but for one (Aarhus). In one case (Air), Parties have considered that to represent a Party, a Committee member should be employed by the Government; nomination by the Government does not suffice.
- Members are usually nationals of Parties, but this is not always a requirement, since presently two bodies include members non-nationals of Parties (Water and Water & Health).
 - There is typically a mixture of legal and technical expertise of the members. Technical expertise is especially useful, when the body considers technical issues. In its present composition, one Committee (Aarhus) includes legal professionals only, but this does not constitute a formal requirement.
 - “High moral character” is a formal criterion in some bodies (Aarhus, PRTR, Water & Health).
- Conflict of interest:
- When members serve in their personal capacity, being the national of a Party does not per se imply a conflict of interest. Some bodies (Aarhus, PRTR, Espoo/SEA, Water & Health) have more detailed rules on conflict of interest.
 - There is a clear distinction between the notion of conflict of interest and integrity (including the “high moral character”). Disclosing a situation that may lead to or may be perceived as potential conflict of interest does not attack the integrity of a member. Rather, disclosing and declaring a conflict of interest in a specific case, and thus not partaking in that case, is a sign of integrity.
- Triggers of the mechanisms of compliance (where applicable):
- Submissions by Parties concerning their own or other Parties’ compliance is a common possibility to trigger the mechanisms. While not frequently used in most bodies, such submissions have increasingly been used to trigger the mechanism under Espoo/SEA.
 - Communications from members of the public are possible either directly (Aarhus, PRTR, Water & Health) or indirectly, through information to the Committee that may lead to a Committee initiative (Espoo/SEA and Water).
 - Referrals by the secretariat are possible under most mechanisms, but not the newly established Committee under the Water Convention. The trigger is mainly used when failure to comply with/implement the Convention/Protocol relies on objective measurements and technical data (e.g. Air). The trigger has not been used under the mechanisms of the instruments that require an assessment of a situation in order to establish failure to comply/implement (Aarhus, Espoo/SEA), in which case secretariats avoid making referrals to preserve their neutrality.
 - According to the newly established mechanism under the Water Convention, there is the possibility for a request for advice, and a State non-party may be involved, subject to its consent. In addition, the Committee under the Water and Health Protocol has designed a consultation process, and may invite the Party to embark on it. The process, however, does not constitute a part of the compliance review mechanism.
- Procedure:
- The bodies usually adopt their own rules of procedure, some are provided with procedural rules when established by the Parties.
 - For bodies providing for open sessions, these sessions are intercepted by closed sessions, when the bodies deliberate on findings and conclusions. Open sessions of some bodies are quite popular and attended by many observers (Aarhus, Espoo/SEA), but this is not the case for newly established bodies (PRTR and Water & Health).

- The meetings of two bodies are carried out in closed session only (Industrial Accidents and Air).
- The working language in all bodies is English (also stated in most rules of procedure). In one Committee (Espoo/SEA), simultaneous interpretation between English and Russian is provided for each session. In this Committee, technical and regional expertise of the members has been a priority over fluency in English, a factor complicating the ability of some members to contribute to the work under the Committee outside the sessions. When needed, one Committee (Aarhus) provides simultaneous interpretations between the official ECE languages in discussions with communicants and the Party concerned with respect to a specific case.
- There are different policies with respect to the disclosure of the related documentation in the public domain, ranging from absolute non-disclosure of important documentation upon which the body decides on issues of implementation (national implementation reports for the Industrial Accidents) to publication of the complete documentation (Aarhus). There is an indication that restrictive policies may be revised.
- Most bodies make recommendations to the Parties (Conference of the Parties, Meeting of the Parties, Executive Body, as the case may be), which tend to adopt them without further amendment/revision, but the final decisions may be subject to extensive negotiations during the meetings. Three Committees can make recommendations directly to the Party concerned, either with the agreement of the Party concerned to the Committee making recommendations (but not to whether they accept the content of the recommendations (Aarhus); or without the need for the Party's agreement (Water & Health, PRTR).

2. Parties' reaction to findings/conclusions of non-compliance/implementation failure

Parties take the issue of compliance and implementation with the legal frameworks seriously. In Committees with experience of making conclusions and recommendations, there is also a sense that Parties demonstrate in general a positive attitude to conclusions and recommendations, especially when the reasons (on e.g. technical, interpretive and policy issues) are well explained to establish failure to implement/comply. There have been some cases, where the Parties reacted to the conclusions of the body and tried to influence the outcome through political means, but the Committee members and later the Parties resisted.

3. Possible improvement of compliance/implementation, especially with Parties that demonstrate continuous non-compliance

Despite the acknowledged positive reaction by Parties, there are cases of persistent non-compliance/implementation. It was discussed how to respond to such cases in order to effectively reduce the number of persistent non-compliance/implementation.

The response of the international community to persistent non-compliance/failure to implement ranges from assistance to sanctions in some cases. The former bears financial costs. The latter puts pressure on Parties, which may push for compliance/implementation, but it may also affect the general relations and attitude to cooperation among the Parties.

Under the ECE MEAs, Parties have the following tools at their disposal to improve implementation/reach compliance:

- new technologies inventories (Air);

- capacity building, including technical assistance for policy making and/or legislative review and training (e.g. Assistance Programme / Industrial Accidents; inventory adjustment procedure / Air; legislative reviews, training, pilots/Espoo/SEA);
- country visits in order to engage the right people on the ground (Air, Aarhus).

The availability of the tools and the involvement of the compliance/implementation body and/or the secretariat vary across the instruments, depending on resources and programme of work, but various assistance tools, including country visits, are available for most of the other compliance mechanisms

As for the sanctions, these seem to be more suitable in regimes establishing reciprocal obligations, such as in trade relations and, possibly, in the case of environmental impact assessment. Sanctions, through cautions, have been issued by the Parties to the Espoo Convention, but also by the Parties to the Aarhus Convention to Parties demonstrating continuous non-compliance. It was agreed that Committee examinations which prominently disclose failure of compliance/implementation might be a factor prompting a Party to take effective measures.

It was reported that due to the ever-increasing workload, there was a challenge for the Committee under the Aarhus Convention to properly follow up, in particular with Parties demonstrating continuous non-compliance. It is hoped that the MOP will address the issue at its next session.

4. The role of the secretariats

The work of the secretariats was in general appreciated for their supporting role to the bodies in carrying out their functions in a smooth way. This includes organization of meetings, processing and distributing relevant documentation, correspondence, ensuring that the procedures are followed etc. In some cases, secretariats may have a more functional role, by referring cases of non-compliance/implementation or by providing substantive input during the deliberations.

It was recognized that the role of the secretariat may be pivotal in cases where diplomatic relations are tense. At the same time, due to the delicate political situation, secretariats may also be concerned about maintaining their neutrality among the Parties (Espoo/SEA).

The secretariat may also provide advice and capacity building to assist Parties in fulfilling their obligations.

5. The role of civil society

Information received from members of the public, either directly (communications) or indirectly (triggering possibly an initiative), is a very important aspect of several mechanisms. In some compliance/implementation mechanisms civil society organizations and individuals may develop expertise and provide assistance/training to interested members of the public (Aarhus, Espoo/SEA). In the case of the Aarhus Convention, essentially all reviews of compliance have been triggered by communications from the public. Some of the recently established compliance/implementation committees (PRTR, Water & Health) still foresee a role for the civil society, whereas under other mechanisms (Air, Industrial Accidents), civil society has not be an actor at all.

6. Conclusions (in open session)

Observers had the opportunity to attend and participate in the last session of the meeting. In that session, the Chair summarized the discussion that had taken place in closed session. He also expressed the Chairs' appreciation to the role of observers, in the mechanisms where this is possible. He moreover advised that the information submitted to the Committees should be well-prepared, -structured, and -presented.

Whether mandated to review "compliance" or promote "implementation", the mechanisms share many common features, but are also very different. Different practice and traditions in the methods of working are dictated by the nature of the instrument and the culture developed within the respective body. Yet, there is room for exchange of ideas among the bodies, and there is a trend for review of the more conservative and restrictive positions. For instance, disclosure and the right to know of the public are seen to outweigh non-disclosure for concern for "protection from terrorism" (Industrial Accidents). It was also noted that there is currently no formal way of dealing with a Party that fails to comply the provisions of more than one ECE MEA. It remains to be seen, however, whether the fact that a case is sub judice by a compliance body prevents another compliance body to consider the case.

The observers present at the meeting welcomed the initiative of the network and stressed its importance in strengthening environmental policy with the ECE; noted that many NGOs have capacity issues that do not permit for their full involvement especially to the "younger" mechanisms; suggested that he participation in similar initiatives under global MEAs should be explored, as well as under the human rights instruments, where relevant; suggested that the following meeting be entirely open for observers.

The Chairs welcomed the initiative and showed a lot of interest and enthusiasm for their first meeting.

It was agreed that they would continue the exchange of ideas by electronic means.

It was also agreed that they would endeavour to hold a follow-up one-day meeting in an informal context in spring 2014 (preliminarily scheduled to take place on 24 March 2014).

List of Participants



Network of the ECE compliance/implementation bodies

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