

Economic Commission for Europe / Environment

Informal network of the Chairs of compliance/implementation bodies  
under the Multilateral Environmental Agreements  
Second meeting, Geneva, 24 March 2014

**Note prepared by the Chair  
of the Aarhus Convention Compliance Committee  
with the assistance of the secretariat**

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## **Introduction**

The compliance and implementation bodies under the ECE multilateral environmental agreements (MEAs) are quite different with respect to their mandate, structure and functions. The purpose of the informal network of these bodies through the Chairs is to allow for exchange of information and lessons learned, with the objective of developing operational procedures through successful examples of other bodies and ultimately exploring ways for improved implementation of the MEAs in the region.

It was agreed that at its second meeting, the following will be discussed:

1. Methods and processes for examining non-compliance;
2. Reactions and responses to findings and recommendations; improving compliance and implementation;
3. Openness, transparency and involvement of different actors, e.g. public administration, members of the public and private sector;
4. Compliance checking of reporting obligations;
5. “Different degrees of non-compliance” (from minor to severe cases);
6. Non-compliance and capacity building.

The aim of the present note is not to provide direct answers to the above, but to present an overview of information that may be useful for the Chairs in considering these issues. The information is further exemplified by the attached table.

## **AIR Convention and its Protocols**

The 1979 Convention on Long-range Transboundary Air Pollution (Air Convention) (entered into force on 16 March 1983) is the first MEA negotiated under the auspices of the UNECE. Parties undertake to endeavor to limit and, as far as possible, gradually reduce and prevent air pollution including long-range transboundary air pollution, through scientific collaboration and policy negotiation. In particular, Parties undertake to develop policies and strategies to combat the discharge of air pollutants through exchange of information, consultation, research and monitoring.

The Convention serves as a framework Convention that has been supplemented by eight protocols, all of which are in force, and identify specific measures to be taken by Parties to cut their emissions of air pollutants:

1. The 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone (Gothenburg Protocol) (entered into force on 17 May 2005).
2. The 1998 Protocol on Persistent Organic Pollutants (POPs) (entered into force on 23 October 2003).
3. The 1998 Protocol on Heavy Metals (entered into force on 29 December 2003).
4. The 1994 Protocol on Further Reduction of Sulphur Emissions (entered into force 5 August 1998).
5. The 1991 Protocol concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes (entered into force 29 September 1997).
6. The 1988 Protocol concerning the Control of Nitrogen Oxides or their Transboundary Fluxes (entered into force 14 February 1991).

7. The 1985 Protocol on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 per cent (entered into force 2 September 1987).
8. The 1984 Protocol on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP) (entered into force 28 January 1988).

The POPs Protocol, Gothenburg Protocol and Heavy Metals Protocol have recently been amended.

### *Implementation Committee under the Convention and the Protocols*

The Implementation Committee was established in 1997 to review compliance by Parties with their obligations under the protocols to the Convention. At the recommendation of the Committee, the Executive Body at its thirty-first session (Geneva, 11-13 December 2012), adopted decision 2012/25 on improving the functioning of the Implementation Committee.

The Committee consists of nine Parties to the Convention. Members of the Committee are therefore State representatives rather than individuals acting in their personal capacity. Each member must also be Party to at least one of the Protocols. From 1 February 2017, each member should be Party to at least one of the following Protocols: the Protocol on Heavy Metals, the Protocol on POPs and the Gothenburg Protocol. It is expected, that until this rule becomes operational, most States of the Eastern parts of the region will join at least one of these Protocols. In appointing Committee members, the Executive Body should take into account geographical representation as well as a mixture of technical and legal expertise. A member is elected for a term of two years, renewable once, unless otherwise decided by the Executive Body. The Executive Body elects the Chair of the Committee among the members for a term of two years, renewable once unless otherwise decided by the Executive Body.

The Committee:

- (i) reviews periodically compliance with Parties' reporting requirements under the protocols (the review of the obligation to report emission data is based on the emission data submitted to EMEP and available on a database at [www.ceip.at](http://www.ceip.at));
- (ii) considers any submission or referral of possible non-compliance by an individual Party with any of its obligations under a given protocol;
- (iii) considers, as necessary, systemic issues relating to compliance that have been identified in the course of its work;
- (iv) Prepares, at the request of the Executive Body, a report on compliance with or implementation of specific obligations in an individual protocol.

Submissions may be received from a Party concerning its own compliance or concerning the compliance of another Party. In addition, the Committee may consider referrals from the secretariat, in particular on the basis of reporting by Parties or information received from technical bodies under the Convention. Since the adoption of decision 2012/25, "where the secretariat, in particular upon reviewing the reports submitted in accordance with a protocol's reporting requirements or on receipt of information from a technical body or centre under the Convention, becomes aware of possible non-compliance by a Party with any of its obligations, it shall promptly request the Party concerned to furnish necessary information about the matter. 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, the secretariat shall bring the matter to the attention of the Committee.” In accordance with this decision, the secretariat initiates contact with Parties with respect to any possible non-compliance comprising its compliance with emission reduction and with reporting obligations, and subsequently refers these matters to the Committee, unless they are resolved. The Committee may also draw the attention of the secretariat to possible cases of non-compliance that have not been identified by the secretariat but are evident from the documentation prepared by the secretariat for the Committee’s meetings.

To date, the work of the Committee focuses primarily on referrals from the secretariat and as such, on emission reduction obligations and reporting obligations. Submissions by Parties are rare.

The secretariat sends letters to the Parties soliciting submission of data and then presents the information to the Committee. The Committee meets twice a year. The first meeting serves to gather and review the information concerning implementation; the second meeting serves to consider any additional information and to draft the report to the Executive Body. The Executive Body makes decisions based upon the Committee’s recommendations.

Before it adopts its report or recommendation on a submission or referral, the Committee has to verify that the quality of data reported by a Party has been evaluated by a relevant technical body under the Executive Body and/or an expert body nominated by the Bureau. In addition, the Committee commits to ensure confidentiality of information that has been provided to it in confidence.

The Committee meets in closed sessions only and in principle it follows a paper-based approach in considering a case, based both on reports and on additional information provided by the Party whose compliance is under consideration. The Party whose compliance is under consideration has the right to be represented at the Committee’s meeting, when the case is examined, and may additionally be invited to attend the meeting to address specific questions from the Committee. The Party cannot participate in the elaboration of any recommendation to the Executive Body. In addition, at the invitation of a Party whose compliance is at issue, some (generally three) Committee members may go on mission to gather information within the territory of the Party. To date, two such missions for information-gatherings have been carried out and have proved to be highly beneficial both for the Committee and the Party concerned. The Committee members who gather the information prepare a report for consideration by the whole Committee.

The recommendations of the Committee are set out in reports to the Executive Body once annually. The reports are public documents and are available on the Convention’s website, as are the decisions adopted by the Executive Body.

Civil society stakeholders are not involved in the process.

*Upcoming developments and future plans:*

The CLRTAP Implementation Committee will, in line with the 2014-2015 workplan (ECE/EB.AIR/122/Add.2), continue to review the progress made by the Parties in response to decisions taken by the Executive Body based upon the Committee’s recommendations, as well as the need for possible additional measures for dealing with non-compliance on a case-by-case basis. The majority of the substantive compliance-related considerations are expected to concern the Gothenburg Protocol since the availability of 2010 data corresponding to the 2010 ceilings as of 2012. Further, in accordance with its functions, the Implementation

Committee will consider, as necessary, systemic issues relating to compliance that have been identified. On the basis of information provided by the secretariat, the Committee will evaluate the reporting by Parties on their emission and projection data. The Committee will continue its dialogue with appropriate bodies and experts, with a focus on improving communication with the technical bodies under the Convention.

### **EIA Convention and SEA Protocol**

The 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo or EIA Convention) entered into force on 10 September 1997. Parties acknowledged that environmental threats are not confined to national borders and thus undertake to notify and consult each other and the public on planned activities on their territory which may have a significant environmental impact across borders.

There are two amendments to the Convention. The first amendment (2001) provides for accession to the Convention of non-UNECE member States upon approval by the Parties. The second amendment (2004) clarifies the legal basis of the procedures for the review of compliance and for reporting; extends the list of development activities that are subject to the Convention's provisions and improves the alignment with the corresponding legislation in the European Union. Neither one of the two amendments are in force (three further ratifications are required for the entry into force of the first amendment and eleven for that of the second amendment).

The EIA Convention has been supplemented by the 2003 Protocol on Strategic Environmental Assessment (Kyiv or SEA Protocol), which entered into force on 11 July 2010. The Protocol expands the scope of environmental assessment by calling Parties to integrate it to their plans and programmes, and to the extent appropriate also to policies and legislation, as early as possible in the decision-making. The Protocol also sets out obligations for the consideration of health effects and involvement of health authorities. Both the Convention and the Protocol provide for extensive public participation in the EIA- and SEA-processes (see also MOP decision II/3).

#### ***Implementation Committee under the Convention and the Protocol***

The Implementation Committee was established by the MOP to the Convention in 2004 to review compliance by the Parties with their obligations under the Convention with a view to assisting them fully to meet their commitments. With the entry into force of the Protocol, the Committee's mandate was extended to review compliance under the Protocol as well (Convention decision V/6, Protocol decision I/6).

The Committee comprises eight members, representing Parties both to the Convention and the Protocol, and elected by the MOPs. In case a member represents a Party to only one of the two instruments, additional members need to be nominated. In its current composition, the Committee has 11 members, with three members nominated for Protocol matters only. In line with decisions I/6 and V/6, when the Committee considers issues relating to the Convention, it comprises only Parties to the Convention; when it considers issues relating to the Protocol, it comprises only Parties to the Protocol. However, at its twenty-fourth session in March 2012, the Committee agreed that, provided that there were no objections, a member nominated for Protocol matters might provide information, opinions and advice on an issue related to compliance with the Convention but should not take part in decision-making or act as a curator. The Committee elects its own Chair and Vice-Chair. Members serve for two

terms (intersessional periods) and may be re-elected once. The Committee adopts its own procedural rules, which are subject to revision based on practice and experience.

The Committee reviews Parties' compliance:

- (a) On the basis of submissions (Party-to-Party- submission or self- referrals); or
- (b) Based on Committee initiatives, which it may decide to undertake:
  - (i) Further to information from other sources (most often NGOs) followed by correspondence with the Party concerned to gather further information;
  - (ii) As a result of specific compliance issues arising from the period reviews of implementation, followed by correspondence with the Party concerned to define whether the Committee should further examine the matter.

The meetings include open and closed sessions. When the Committee considers a submission, a Committee initiative or information gathering, the Party whose compliance is at issue has the right to participate in, or at least be present during, the consideration of the Committee, but cannot participate or be present in the preparation and adoption of the report, findings and recommendations of the Committee. The draft findings are sent to the parties, which have the possibility to comment within a two-month deadline. At its next session, the Committee after taking into account the comments, if any, it finalizes and adopts its findings.

With respect to other observers, such as other Parties, States non-party to the Convention, civil society representatives, and other stakeholders, the Committee meetings are in principle open, unless the Committee decides otherwise. In particular parts of the meetings dealing with specific submissions are not open to observers, unless the Committee and the Party, whose compliance is at issue, decide to hold an open session (Operating Rule 17).

Documents on the file of a submission or initiative become publicly available through the Convention's web site at different stages of the procedure, depending on the type of the document, unless there was a confidentiality request (Operating Rule 16):

- a submission and a reply: within one month of receipt
- information by which the Committee becomes aware of a possible non-compliance, any reply to a Committee initiative, corroborating/supporting information, correspondence by the Committee and draft findings and recommendations, and ensuing representations from the Parties involved: once the Committee has concluded consideration of the issue. It should be noted that in the case of self-referrals, such information does not become publicly available, unless agreed by the Committee and the Party concerned.
- other documents: upon request

Pending consideration of the case, the secretariat prepares (i) a short summary of the issue (including the name(s) of the Party/ies involved, date of submission/information/Committee initiative, name and type of activity in case of submission or Committee initiative; and (ii) a list of relevant documentation/information (but not the content). Then, subject to agreement by the Committee, the information is posted on the Convention's website.

The Committee reports on issues of implementation and makes recommendations to the MOP.

*Upcoming developments and future plans:*

The Committee is expected to keep under review and, if necessary, to develop its structure and functions as well as its operating rules in the light of experience it has gained, including recommendations to the MOP (decision V/4, para. 15). On the basis of that mandate, the Committee is proposing some changes in its structure and functions and operating rules. The proposals will be considered for adoption by the MOP and the MOP/MOP at their upcoming sessions (MOP-6 and MOP/MOP-2, Geneva, 2-5 June 2014). In relation to the issues discussed in the present paper, proposed changes relate to:

- (a) Membership: Parties elected to serve to the Committee should nominate one permanent and one alternate member. To ensure continuity of the Committee's work, alternate members would participate in exceptional circumstances only and permanent members are expected to brief alternate members.
- (b) Participation in Committee sessions:
  - (i) Clarity in the rules about the participation of Committee members representing Parties to the Protocol only in discussion relating compliance with the Convention and vice-versa;
  - (ii) Parts of meetings dealing with "*any matter concerning*" (*new text*) specific submissions relating to compliance shall not be open to other Parties or to the public, unless the Committee and the Party whose compliance is in question agree otherwise. If adopted, it remains to be seen how the rule will be applied.

## **Water Convention and Protocol on Water and Health**

The 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) entered into force on 6 October 1996. It calls Parties to strengthen of national measures for the protection and ecologically sound management of transboundary surface waters and groundwaters. Specifically, Parties should prevent, control and reduce transboundary impact, use transboundary waters in a reasonable and equitable way and ensure their sustainable management. In addition, Parties bordering the same transboundary waters should cooperate by entering into specific agreements and establishing joint bodies. The Convention includes provisions on monitoring, research and development, consultations, warning and alarm systems, mutual assistance, and exchange of information, as well as access to information by the public.

The 2003 amendment to the Convention allowing for accession by all UN Member States and shifting the Convention from a regional to a global instrument entered into force on 6 February 2013.

The Convention has been supplemented by two Protocols, the 1999 Protocol on Water and Health and the 2003 Protocol on Civil Liability for Damage and Compensation for Damage Caused by Transboundary Effects of Industrial Accidents on Transboundary Waters (also to the Convention on Industrial Accidents). The Protocol on Water and Health entered into force on 4 August 2005. The Protocol aims to protect human health and well-being through better water management for drinking water and adequate sanitation, including the protection of

water ecosystems, and through prevention, control and reduction of water-related diseases. Parties to the Protocol commit to set targets in relation to the entire water cycle. UNECE and WHO Regional Office for Europe jointly serve as the secretariat.

The Convention and the Protocol have separate implementation/compliance bodies.

### ***Implementation Committee under the Water Convention***

The Implementation Committee under the Convention was established by the Meeting of the Parties at its sixth session (Rome, 28-30 November 2012) through its decision VI/1 to support implementation and compliance, further to the proposal negotiated by the Legal Board in 2010-2012. The objective of the mechanism is to facilitate, promote and safeguard implementation and application of and compliance with the Convention (see preamble to the annex I to the decision VI/1 “Support to implementation and compliance”). The mechanism is to be simple, non-confrontational, non-adversarial, transparent, supportive and cooperative in nature, building on the distinctive collaborative spirit of the Convention.

The Committee consists of nine members serving in their personal capacity, which does not exclude the possibility that members work for the executive branch of the Government. Almost half of the members are legal professionals, others are technical experts. One member is not a national of any Party to the Convention.

Members serve for one term of office (i.e. two intersessional periods) with the possibility of re-election once. The Committee elects its own Chair and Vice-Chair.

Since its establishment, the Committee has been meeting two times a year for one day each time. However, the frequency/length of meetings might be reduced/increased depending on the workload.

Specifically, the Committee has the following main functions:

- (i) Considers requests for advice made by a Party or Parties jointly, relating to specific issues/difficulties in implementing the Convention. Participation in the advisory procedure of Parties that are not requesting Parties or by States non-party to the Convention is subject to their consent, in absence of which, they remained informed about the process;
- (ii) Considers submissions (self- and Party-to-Party submissions);
- (iii) Considers undertaking a Committee initiative (taking after the model of the Implementation Committee under the Espoo Convention and its Protocol on SEA);
- (iv) Examines specific issues of implementation/compliance at the request of the MOP;
- (v) Carries out any other functions assigned to it by the MOP, including examination of general issues of implementation and compliance that may be of interest to all Parties.

The MOP has adopted core rules of procedures in order to make the Implementation Committee immediately operational. The Committee was expected to develop these core rules further and propose the rules of procedure for adoption by the MOP. At its second meeting (Geneva, 12 December 2013), the Committee decided to review this matter at a later stage since developing its rules of procedure should take into account the experience in their application.



According to the core rules, the Committee holds its meetings in public for observers, unless it decides otherwise. However, parts of the meeting when the Committee deliberates on findings and measures and adopts its decisions should be closed.

Essential information concerning any request for advice, submission or Committee initiative should be made available on the Convention's web site, unless a request for confidentiality had been made. Decisions and recommendations of the Committee and related decisions of the MOP should also be available on the web site. Discussion papers prepared by the secretariat or by members of the Committee, however, should not be publicly available, unless the Committee decides otherwise.

The Committee reports to the MOP and makes recommendations for specific measures. However, no measures can be taken by the MOP as a result of the advisory procedure.

*Upcoming developments and future plans:*

Analysis of the possible need for the introduction of reporting under the Convention:

The Working Group, at its eighth meeting (Geneva, 25–26 September 2013), requested the Bureau of the Convention, with the help of the secretariat, to prepare a draft analysis on the need for reporting, to be submitted for comments to the Implementation Committee and to the ninth meeting of the Working Group and, depending on the outcomes of the draft analysis, to prepare a rough proposal for a reporting mechanism.

At its second meeting, the Committee discussed its involvement in the development of the draft analysis and agreed that it would provide comments to the draft prepared by the Convention's Bureau. The comments will be subsequently submitted to the ninth meeting of the Working Group (Geneva, 25–26 June 2014).

***Compliance Committee under the Protocol on Water and Health***

The Compliance Committee to the Protocol on Water and Health was established at the first session of the Meeting of the Parties following entry into force (MOP decision I/2).

The Committee consists of nine members elected by the MOP and serving in their personal capacity. At its present composition, one member belongs to the executive branch of the government and three members are not nationals of any Party to the Protocol. Committee members are elected for a term of office (i.e. two intersessional periods) and may be re-elected once.

The Committee:

- (i) Considers submissions, referrals or communications relating to specific issues of compliance;
- (ii) Prepares, at the request of the MOP, a report on compliance with or implementation of specific provisions of the Protocol; and
- (iii) Monitors, assesses and facilitates the implementation of and compliance with the reporting requirements of the Parties under the Protocol.

The Committee adopts its own procedural rules, on the basis of the general rules of procedure approved by the Meeting of the Parties, which are subject to revision based on practice and experience.

The Committee meets once or twice per year.

All meetings are normally open to the public, with the exception of parts of the meeting when the Committee prepares and adopts findings, decisions on measures or recommendations that are closed and attended only by the Committee. In addition, the Committee meets in closed session when this is necessary to preserve confidentiality of information.

Parties may participate as observers, while non-Parties, intergovernmental and non-governmental organizations enjoying observer status with the Meeting of the Parties, have observer status within the Committee. Observer status may be granted to other stakeholders on a case-by-case basis.

To help the general public in understanding the compliance mechanism and to explain how a communication from the public may be submitted, the Committee elaborated Guidelines on communications from the public.

The first reporting exercise under the Protocol, conducted during autumn 2009/spring 2010, demonstrated that a number of Parties were facing difficulties in implementing the Protocol, in particular with its core obligation to set targets and target dates. To enhance its facilitation and assistance functions the Compliance Committee at its 6<sup>th</sup> session in March 2011 adopted Terms of Reference for a new consultation process geared to help Parties implement their obligations under the Protocol. Under the auspices of the new consultation process, the Committee will:

- (i) Assist Parties in developing an accurate analysis of their situation (enabling them to set targets under the Protocol);
- (ii) Provide recommendations to the Parties on how to improve their situation;
- (iii) Assist Parties in seeking support from donors, specialized agencies and other competent bodies.

Consultations do not have an inquisitive nature, and will be initiated by a request from a Party. The Committee may also officially invite a Party to embark on the consultation process. Sessions can be held in confidence, if so requested. Civil society will also have the possibility to engage in the consultation process.

To date, the Committee has received no communications, submissions or referrals, nor requests for consultation process, although Parties are strongly encouraged to make use of that possibility. Therefore, the focus has been placed primarily on the review of reporting obligations and also in efforts to strengthen cooperation with the relevant human rights bodies.

The Committee itself can issue recommendations, without prior agreement of the Party concerned and can issue cautions. The Committee reports to the MOP and makes recommendations for specific measures.

The second reporting exercise under the Protocol, conducted in 2013, demonstrated an overall improved quality of the reports compared with the first reporting cycle in terms of their content and alignment with the reporting guidelines and template. However, a number of Parties failed to submit their reports and/or failed to establish and publish targets and dates for achieving them in accordance with article 6.

Based on the report submitted by the Compliance Committee to the third session of the Meeting of the Parties (Oslo, 25-27 November 2013), the MOP adopted decision III/1 on general issues of compliance, which inter alia, supported the decision of the Committee that it may, based on its assessment of the results of the second reporting exercise under the Protocol or other information available to the Committee, invite a Party or a small group of

Parties having identical or almost identical implementation problems to engage in a consultation within the Consultation Process established by the Committee.

*Upcoming developments and future plans:*

The work of the Compliance Committee in 2014-2016 is expected to focus on the implementation of decision III/1, specifically focusing on strengthening the facilitative role of the Committee by engaging a number of Parties in the Consultation Process.

### **Industrial Accidents Convention**

The 1992 Convention on the Transboundary Effects of Industrial Accidents entered into force on 19 April 2000. It aims to protect people and the environment against industrial accidents that can have transboundary effects through prevention and mitigation measures. It also promotes international cooperation, including on research and development and on information and technology sharing, before, during and after an industrial accident, including cooperation on research and development, sharing information and technology.

The Convention has been supplemented by the 2003 Protocol on Civil Liability for Damage and Compensation for Damage Caused by Transboundary Effects of Industrial Accidents on Transboundary Waters (joint instrument to the Water Convention, see above). The Protocol has not entered into force.

#### ***Working Group on Implementation***

There are two working groups under the Convention: (i) the Working Group on the Development of the Convention (WGD) reviews developments in the legal instruments in other international fora and convenes as needed to consider possible amendments; (ii) the Working Group on Implementation (WGI) is the body established by the Conference of the Parties (COP) to review implementation. It consists of a maximum of ten members representing Parties to the Convention who serve for one term (i.e. one intersessional period) and may be re-elected. The Group elects its own Chair and Vice-Chair for the period.

The main purpose of the WGI is to promote international cooperation, information and technology-sharing. The WGI:

- (i) Monitors implementation and reports to the COP;
- (ii) Reviews the national implementations reports submitted by Parties and non-Parties participating in the Assistance Programme under the Convention (States interested in becoming Parties are also expected to submit a report), and prepares an overall report;
- (iii) Assists the Bureau in facilitating implementation and/or ratification of the Convention by UNECE member States;
- (iv) Monitors the Strategic Approach (i.e. implementation of the Assistance Programme) and the review of self-assessments and action plans;
- (v) Carries out any other task at the request of the COP.

The WGI does not consider compliance by Parties, but only makes general observations on the Parties' responses to the questionnaire on implementation. The periodic review of implementation identifies those Parties that completed the questionnaire and those that did not. It also makes observations about other countries' completed questionnaires, or rather absence thereof, as these countries committed also to report on implementation even though not party. Otherwise the WGI names countries to identify successes or difficulties, but without putting their compliance in question.

Parties have requested that reports are not publicly available. At its last session, the COP decided to look at the present policy with a view to revising it.

The WGI meets in closed sessions and its deliberations are based on the Parties' reports. The rules of procedure apply *mutatis mutandis*. National reports are treated as confidential. There is ongoing discussion on whether the reports should become publicly available.

The COP takes note of the reports by the WGI. In case of implementation challenges, the WGI may "express regret", but it does not take any other measures. The WGD will convene in April 2014 and will consider *inter alia* possible sanctions to address implementation failures.

#### *Upcoming developments and future plans:*

The WGD has a mandate from the COP to evaluate the possible amendment of the Convention to address a number of other provisions and issues (ECE/CP.TEIA/24, para. 66). It was anticipated that the COP would then prioritize issues at its eighth meeting, in autumn 2014, with a view to adopting the amendment at its ninth meeting in autumn 2016.

The WGD was, *inter alia*, requested to address the issues of provisions on the review of compliance and to consider possible remedies for non-compliance with the reporting requirement. It was anticipated that the COP would discuss and prioritize all these issues at its eighth meeting (December 2014) with a view to adopting an amendment at its ninth meeting (2016).

During the third meeting of the WGD in September 2013, the above-mentioned issues were discussed with the assistance of an external consultant engaged by the UNECE Industrial Accidents Convention. The fourth meeting of the WGD (April 2014) should decide whether to recommend to the eighth meeting of the COP to further elaborate legal texts with a view to adopting an amendment at its ninth meeting. Also, an Informal document on non-reporting has been prepared for the fourth WGD meeting, based on the feedback received from the WGD members.

### **Aarhus Convention and PRTR Protocol**

The 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) entered into force on 30 October 2001. Unlike the other UNECE MEAs which focus on the prevention and mitigation of transboundary effects on the environment and create inter-state obligations, the Aarhus Convention focuses on procedural rights (for access to information, public participation and

access to justice in environmental matters) of the individuals and groups of individuals, including NGOs, with the ultimate aim of protecting the right to sustainable development and intergenerational equity. As such, the Convention is positioned at the crossroads on environmental concerns and human rights.

The Convention has been supplemented by the 2003 Protocol on Pollutant Release and Transfer Registers (PRTR Protocol), which entered into force on 9 October 2009. The Protocol builds on the obligation of authorities enshrined in the Aarhus Convention to proactively provide environmental information to the public, inter alia through the use of electronic tools. Its objective is “to enhance public access to information through the establishment of coherent, nationwide pollutant release and transfer registers,” i.e. of inventories of pollution from industrial sites and other sources. Although regulating information on pollution, rather than pollution directly, the Protocol is expected to exert a significant downward pressure on levels of pollution, as no company will want to be identified as among the biggest polluters.

The Convention and the Protocol have separate compliance bodies.

### ***Compliance Committee under the Aarhus Convention***

Article 15 of the Convention requires the MOP to establish “on a consensus basis, operational arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to the Convention”. The Aarhus Convention Compliance Committee was established in 2003 by the MOP (decision I/7). It consists of nine experts, nationals of Parties or Signatories, who serve in their personal capacity. According to decision I/7, the Committee should be composed of “persons of high moral character and recognized competence in the fields to which the Convention relates, including persons having legal experience”. To date the great majority of the Committee members have been legal professionals, and the present Committee consists of nine lawyers. Members sign a solemn declaration, at the first meeting in which they participate, that they will perform their functions as member of the Compliance Committee impartially and conscientiously.

Members are elected by the MOP to serve for one term of office (two intersessional periods) and may be re-elected once (for a further two intersessional periods). The Committee elects its own Chair and Vice-Chair.

The Committee:

- (i) considers issues of compliance raised in submissions (Party-to-Party and self-submissions), referrals from the secretariat and communications from members of the public;
- (ii) prepares reports on compliance/implementation, at the request of the MOP;
- (iii) monitors, assesses and facilitates implementation of/compliance with the Parties’ reporting obligations
- (iv) may examine compliance issues, as appropriate.

The Committee adopts its own procedural rules (*modus operandi*), which is a live document and may be changed according to the developing practice. The Committee has also prepared a guidance document (which nowadays incorporates the *modus operandi*) that aims among others to assist members of the public that interested in submitting communications.

The Committee regularly meets four times a year for four days each time (the length of the meetings was extended from 3 to 4 days in 2009 to address increase workload). The meetings are principle open to the public, with the exception of those parts of the meeting when the Committee is preparing its findings, recommendations and other measures.

To date, the great number of compliance issues examined by the Committee have been triggered by communications from members of the public. There has been only one submission by a Party concerning another Party's compliance, while there have been no referrals from the secretariat or submissions by Parties concerning their own compliance.

The quality of communications varies. Some are very well drafted, while others are not well structured and miss important elements. The secretariat usually resolves preliminary issues of structure and primary information, before a communication is considered by the Committee.

For every communication, a curator is assigned. However, all decisions are taken collectively. Until now all decisions have been made by consensus.

Once a communication is admissible on a preliminary basis, it is forwarded to the Party concerned, which is invited to respond to the allegations, and any other additional questions put by the Committee, within five months. Additional questions may also be sent to the communicant for clarification. After the lapse of the 5-month deadline and the receipt of the Party's response, a discussion is organized with the communicant and the Party concerned. The discussion is held in open session. Thereafter, the Committee deliberates on the case in closed sessions, until it finalizes the draft findings, which are sent to the Party and the communicant, and also posted on the Convention's website shortly after they are sent. The parties have to comment on the draft within four weeks. Comments to the draft findings are also published on the website immediately after receipt by the secretariat. At its subsequent meeting, the Committee after considering the comments received, makes changes as necessary and adopts its findings in closed session. The findings are then communicated with the parties and published on the Convention's website.

All documentation relating to a case under consideration is publicly available on the Convention's website, unless a person who submitted information has requested confidentiality because there are concerns that he or she may be penalized, persecuted or harassed.

The Committee's considerations are primarily based on the written and oral submissions by the parties. There is possibility for information gathering through missions in the territory of the Party concerned with the latter's consent or through other experts and advisers, but due to capacity constraints this tool has been rarely used.

The Committee makes recommendations to the MOP for a number of measures to be adopted concerning individual Parties. Subject to agreement of the Party concerned, the Committee may also make direct recommendations to the Party to improve compliance with the Convention on the basis of identified weaknesses.

*Upcoming developments and future plans:*

At its forty-fourth meeting (Geneva, 25-28 March 2014), the Committee will finalize and adopt its reports to the fifth session of the Meeting of the Parties (Maastricht, 30 June-2 July 2013), including reports on the implementation of decisions on compliance concerning individual Parties as well a report on compliance under the Convention generally. At its fifth session, the Meeting of the Parties is expected to adopt a decision on compliance generally, as well as a number of decisions concerning the compliance of individual Parties.

### ***Compliance Committee under the PRTR Protocol***

The PRTR Compliance Committee was established in 2010 by the Protocol's MOP (decision I/2). It closely follows the Aarhus Convention Compliance Committee model, but has some distinct features. It consists of nine members of Parties of Signatories who serve in their personal capacity, that are elected by the MOP to serve for one term of office (two intersessional periods) and may be re-elected once. Most current members are legal professionals and belong to the executive of a Party to the Convention. The Committee elects its own Chair and Vice-Chair. It adopts its procedural rules, which are developed on the basis of practice and experience.

The Committee:

- (i) considers issues of compliance raised in submissions (Party-to-Party and self-submissions), referrals from the secretariat and communications from members of the public;
- (ii) prepares reports on compliance/implementation, at the request of the MOP;
- (iii) monitors, assesses and facilitates implementation of/compliance with the Parties' reporting obligations;
- (iv) take measures and make recommendations directly with the Party concerned (provide assistance, request the preparation of an action plan or a progress report);
- (v) carries out any other function assigned by the MOP;
- (vi) may examine any other compliance issue

The Committee makes recommendations to the MOP for a number of measures to be adopted concerning individual Parties. The Committee may also make direct recommendations to the Party to facilitate compliance with the Convention on the basis of identified weaknesses.

Since its establishment, the Committee has met only once. At its first meeting the Committee adopted its "methods of work". Its second meeting will be held in April 2014, and is expected to prepare a synthesis of the national implementation reports submitted by Parties for the consideration at the second session of the Meeting of the Parties to the Protocol (Maastricht, 2-4 July 2014).

The meetings should in principle be open to the public, with the exception of part of the meeting when the Committee is preparing its findings, measures or recommendations.

All documentation relating to a case under consideration should become publicly available on the Convention's website, unless information was provided in confidence on a number of grounds listed in MOP decision I/2.

#### *Upcoming developments and future plans:*

The work of the Compliance Committee to date will be reviewed by the second session of the Meeting of the Parties to the Protocol.

### **Chair's Summary**

A Chair's Summary of the network meeting of 24 March 2014 will be posted on the ECE website after the meeting.



	BODIES	MAIN FUNCTIONS AND TRIGGERS (if relevant) (implementation-related body)	MEMBERSHIP (implementation-related body)
<b>1. AIR</b>			
<p><b><u>Convention on Long-range Transboundary air pollution</u></b> (1979, entered into force in 1983)</p> <p><b><u>(as extended by eight protocols)</u></b></p>	<p>1) Executive Body (meets once a year)</p> <p><b>2) Implementation Committee</b></p> <p>3) Working Group on Effects</p> <p>4) Steering body to EMEP</p> <p>5) Working group on Strategies and Review</p>	<p>- <b>Established in 1997</b> (dec. 1997/2 as amended, see esp. dec. 2012/25)</p> <p>- The Committee considers compliance on the basis of:</p> <p style="padding-left: 20px;"><b>a</b>) the review of Party's <b>reporting obligations</b> (emission data, strategies and policies) / considers systemic issues that may arise.</p> <p style="padding-left: 20px;"><b>b</b>) any <b>submission</b> by a Party (concerning own or another Party's compliance) or <b>referral</b> by the secretariat of possible non-compliance by an individual Party with any of its obligations under a Protocol, and considers systemic issues that may arise.</p> <p style="padding-left: 20px;"><b>c</b>) a <b>request by the Executive Body</b> for <b>in-depth review</b> of specified obligations in a Protocol</p> <p>- <b>reports annually to the Executive Body</b> which makes decisions upon <b>recommendations</b> by the Committee</p>	<p><b>9 Parties</b> to the Convention and at least one of the most recent Protocols (1998 Protocol on Heavy Metals, 1998 the Protocol on POPs and the 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone) elected for a period of 2 years (may be re-elected for another term of office)</p> <p>Chair elected annually by the EB</p>
<b>2. EIA/SEA</b>			
<p><b><u>Convention on Environmental Impact Assessment in a Transboundary Context</u></b> (Espoo Convention) (1991, entered into force in 1997)</p>	<p>1) Meeting of the Parties to the Convention (MOP) serving also as MOP to the Protocol (ordinary meetings usually once every three years)</p> <p><b>2) Implementation</b></p>	<p>- <b>Established in 2001</b> (MOP decision II/4, as revised through MOP decision III/2)</p> <p>- The Committee considers compliance on the basis of:</p> <p style="padding-left: 20px;">...<b>a</b>) <b>submissions</b> by a Party (concerning own or another Party's compliance)</p>	<p><b>8 Parties</b> for a term of office (two intersessional periods) (may be re-elected for another term of office)</p> <p>Currently <b>11 Parties</b> (3 members for the Protocol only)</p>

<p><b><u>Protocol on Strategic Environmental Assessment</u></b> (2003, entered into force in <b>2010</b>)</p>	<p><b><u>Committee</u></b></p> <p>3) Working Group on EIA and SEA</p> <p>4) Bureau</p> <p>5) Inquiry Commission (not permanent, ONLY to the Convention)</p>	<p>...<b>b</b>) Committee <b>initiatives</b>, which it may decide to undertaken on the basis of: information from <b>other sources</b> (such as NGOs), or as a result of specific compliance issues arising from the period reviews of <b>implementation</b></p> <p>- <b>reports to each MOP</b> which makes decisions upon the Committee's <b>recommendations</b> for measures to be taken</p>	<p>When the Committee considers issues relating to the Convention, it comprises only Parties to the Convention; when it considers issues relating to the Protocol, it comprises only Parties to the Protocol. However, provided that there are no objections, a member nominated for Protocol matters only, may provide information, opinions and advice on matters relating to the Convention. The Committee elects its own Chair and Vice-Chair</p>
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### 3. WATER

<p><b><u>Convention on the Protection and Use of Transboundary Watercourses and International Lakes</u></b> (1992, entered into force in <b>1996</b>)</p>	<p>1) Meeting of Parties</p> <p>2) Bureau</p> <p>3) Working group on Integrated Water Resources Management</p> <p>4) Working Group on Monitoring and Assessment</p> <p><b><u>5) Implementation Committee</u></b></p> <p>6) Legal Board</p> <p>7) Task Force on Water and Climate</p> <p>8) Task Force on the Water-Food-Energy-Ecosystems Nexus</p> <p>9) Joint Ad hoc expert group on Water and Industrial Accidents</p> <p>10) International Water</p>	<p>- <b>Established</b> through MOP-decision VI/1 on support to implementation and compliance</p> <p>The Committee reviews implementation and compliance on the basis of:</p> <p><b>a)</b> Any <b>request for advice</b> concerning difficulties in implementation and application made by a Party, or Parties jointly, vis-à-vis each other, other Parties and/or non-Parties</p> <p><b>b)</b> Any <b>submission</b> made by a Party (concerning own or another Party's compliance)</p> <p><b>c)</b> its <b>own initiative</b> where there is an issue of apparent difficulties in the implementation or possible non-compliance</p> <p><b>d)</b> a <b>request by the MOP</b> to examine specific issues of implementation/compliance or general issues of implementation and compliance</p> <p>The Committee takes <b>measures</b>, including recommendations, to facilitate and support implementation and compliance and to address cases of non-compliance. The MOP may take measures upon report and recommendations by the Committee. The Committee monitors follow-up.</p>	<p><b>9 members in their personal capacity</b></p> <p>Committee elects its own Chair and Vice-Chair</p>
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	Assessment Center		
<b><u>Protocol on Water and Health</u></b> (1999, entered into force in <b>2005</b> )	1) MOP 2) Bureau 3) Working Group on Water and Health <b>4) Compliance Committee</b> 5) Task Force on Target Setting and Reporting 6) Task Force on Surveillance 7) Project Facilitation Mechanism	<b>Established</b> through MOP decision I/2 - The Committee reviews compliance on the basis of: <b>a) submissions</b> by Parties concerning own or another Party's compliance and <b>communications</b> by members of the public <b>b) referrals</b> by the secretariat  The Committee also reviews <b>national implementation reports</b> submitted by Parties to each MOP, and monitors and facilitates compliance  The Committee engages in a <b>consultation process</b> to assist in the implementation of the Protocol	<b>9 members in their personal capacity</b>  Committee elects its own Chair and Vice-Chair

#### 4. INDUSTRIAL ACCIDENTS

<b><u>Convention on the Trans boundary Effects of Industrial Accidents</u></b> (1992, entered into force in <b>2000</b> )	1) Conference of the Parties (meets once every two years) 2) Bureau <b>3) Working Group on Implementation</b> 4) Working group on development 5) Points of Contact	<b>Established</b> by COP 1 in 2000 (decision on the implementation of the Convention)  The WGI does not review compliance per se, but its role is to: <b>a) Monitor</b> the <b>implementation</b> of the Convention and report to the COP <b>b) Review</b> national implementation reports and <b>prepare an overall report</b> on the implementation of the Convention; <b>c) Assist the Bureau</b> in facilitating ECE member States to <b>implement</b> and/or <b>ratify</b> the Convention; <b>d) Monitor</b> the <b>Strategic Approach</b> (implementation of the Convention's Assistance Programme) and the <b>review of self-</b>	<b>Maximum of ten members nominated</b> from amongst representatives of the Parties to the Convention
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	<p>6) Joint Expert Group on Water and Industrial Accidents</p> <p>7) Inquiry Commission (ad hoc body)</p>	<p><b>assessments and action plans;</b></p> <p>The WGI carries out other tasks assigned by the COP</p>	
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**5. Access to information, public participation, access to justice**

<p><b><u>Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental matters</u></b> (Aarhus) (1998, entered into force in <b>2001</b>)</p>	<p>1) Meeting of Parties (ordinary meetings once every three years)</p> <p>2) Working Group of the Parties</p> <p>3) Bureau</p> <p><b>4) Compliance Committee</b></p> <p>5) Task Force on Public Participation in Decision Making</p> <p>6) Task Force on Access to Information</p> <p>7) Task Force on Access to Justice</p>	<p>- <b>Established</b> in 2002 through MOP decision I/7 (as amended with regard to membership)</p> <p>- The Committee reviews compliance on the basis of:</p> <ul style="list-style-type: none"> <li><b>a) submissions</b> by Parties (concerning their own or other Parties' compliance) and <b>referrals</b> by the secretariat</li> <li><b>b) communications</b> by members of the public</li> </ul> <p>The Committee also reviews compliance with the <b>reporting obligations</b>, prepares reports <b>at the request of the MOP</b> and <b>may examine compliance issues</b>, as appropriate. Subject to agreement by the Party concerned, the Committee may make recommendations to the Party.</p> <p>It reports to the MOP and recommends a number of measures to be taken by the MOP</p>	<p><b>9 members in their personal capacity</b> The Committee elects its Chair and Vice-Chair</p>
<p><b><u>Protocol on Pollutant Release and Transfer Registers</u></b> (2003, entered into force in <b>2009</b>)</p>	<p>1) MOP</p> <p>2) WGP</p> <p>3) Bureau</p> <p><b>4) Compliance Committee</b></p>	<p>- <b>established</b> in 2010 through MOP decision I/2 (closely follows decision I/7 of the MOP to the Convention)</p> <p>- The Committee reviews compliance on the basis of:</p> <ul style="list-style-type: none"> <li><b>a) submissions</b> by Parties (concerning their own or other Parties' compliance) and <b>referrals</b> by the secretariat</li> <li><b>b) communications</b> by members of the public</li> </ul> <p>The Committee takes measures directly with the Party concerned. It also reviews compliance with the <b>reporting obligations</b>, carries out any other function assigned by the MOP, and <b>may</b> examine any other compliance issue</p>	<p><b>9 members in their personal capacity</b> Elects its Chair and Vice-Chair</p>