



Economic and Social Council

Distr.: General
21 September 2015

Original: English

Economic Commission for Europe

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

Working Group on the Development of the Convention

Sixth meeting

Geneva, 30 November–2 December 2015

Item 4 (a) of the provisional agenda

**Guidance by the Conference of the Parties:
review of compliance**

Elements for a possible compliance mechanism for the Convention

**Note by the Chair of the Working Group on Implementation, prepared
in cooperation with the secretariat**

Summary

At its eighth meeting (Geneva, 3–5 December 2014), the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents requested the Working Group on the Development of the Convention (Working Group on Development), in cooperation with the Working Group on Implementation, to consider the introduction of a compliance mechanism and to prepare a draft decision on the matter (ECE/CP.TEIA/30, para. 47).

The present note by the Chair of the Working Group on Implementation reports on that Working Group's deliberations and recommendations on a possible compliance mechanism, as requested by the Working Group on Development at its fifth meeting (ECE/CP.TEIA/WG.1/2015/2, para. 39). Taking this information into account, the Working Group on Development is requested to further deliberate on the introduction of a compliance mechanism and decide on the next steps.



I. Introduction

1. At its seventh meeting (Stockholm, 14–16 November 2012), the Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention) requested the Working Group on the Development of the Convention (Working Group on Development) to evaluate a possible amendment to the Convention to address, among others, provisions on the review of compliance (ECE/CP.TEIA/24, para. 66 (j)).

2. During its third (Geneva, 3–4 September 2013) and fourth (Geneva, 28–29 April 2014) meetings, the Working Group on Development was provided with examples of the functioning of the compliance mechanisms established under other United Nations Economic Commission for Europe (ECE) multilateral environmental agreements (MEAs). It considered 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 and comply with them. The conclusions of the Working Group regarding the functions and objectives of compliance procedures are summarized in the document “Approaches to compliance mechanisms under United Nations Economic Commission for Europe multilateral environmental agreements: an overview” (ECE/CP.TEIA/2014/10, paras. 17–21).

3. At its fourth meeting, the Working Group on Development agreed that no amendment of the Industrial Accidents Convention with regard to compliance was needed, as the Conference of the Parties had sufficient powers to establish a compliance mechanism through a decision. On that basis, the Working Group suggested that the Conference of the Parties consider introducing a compliance mechanism through a decision and mandate a subsidiary body or group to develop the terms of reference for such a mechanism, with due regard for the mandate of the Working Group on Implementation (ECE/CP.TEIA/WG.1/2014/3, para. 52).

4. Several other ECE MEAs have established a compliance procedure through a decision by their governing bodies.¹ In 1997, the ECE Convention on Long-Range Transboundary Air Pollution was the first ECE MEA to establish a compliance body by means of a decision of the Executive Body, and subsequently amended that decision by another decision in 2012 (see ECE/EB.AIR/113/Add.1, decision 2012/25). The Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), at its second session (Sofia, 26–27 February 2001), established an Implementation Committee (ECE/MP.EIA/4, annex IV, decision II/4), amending its structures and functions in 2014 (ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1, decision VI/2).² Most recently, the Implementation Committee under the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) was established at the sixth session of the Meeting of the Parties to that Convention (Rome, 28–30 November 2012), through a decision on support to implementation and compliance (ECE/MP.WAT/37/Add.2, decision VI/1).

¹ Other ECE MEAs provided for a compliance mechanism as part of their treaty text, such as the ECE/World Health Organization Regional Office for Europe Protocol on Water and Health and the ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. At its third session of the Meeting of the Parties, the Convention on Environmental Impact Assessment in a Transboundary Context also introduced provisions on compliance in its treaty text, through an amendment (ECE/MP.EIA/6, decision III/7).

² Since the entry into force of the Protocol on Strategic Environmental Assessment in 2010, the mandate of the Implementation Committee of the Espoo Convention was extended to include the Protocol (ECE/MP.EIA/SEA/2, decision V/6–I/6).

5. The Conference of the Parties to the Industrial Accidents Convention, at its eighth meeting (Geneva, 3–5 December 2014), requested the Working Group on Development, in cooperation with the Working Group on Implementation, to consider the introduction of a compliance mechanism and to prepare a possible draft decision on the matter for review and adoption by the Conference of the Parties at its ninth meeting, paying due regard to the mandate and functioning of the Working Group on Implementation (ECE/CP.TEIA/30, para. 47).

6. At its fifth meeting (Geneva, 11–13 May 2015), the Working Group on Development discussed the issue, on the basis of a presentation by the secretariat that provided an overview of existing compliance mechanisms of ECE MEAs and the objectives of compliance procedures.³ The Working Group on Development then requested the Chair of the Working Group on Implementation to report back on the outcome of discussions on this topic by the Working Group on Implementation, to enable the Working Group on Development to further deliberate on the possible introduction of a compliance mechanism (ECE/CP.TEIA/WG.1/2015/2, para. 39). The present document responds to that request.

II. Consideration by the Working Group on Implementation of the introduction of a compliance mechanism

A. Third meeting of the informal network of the Chairs of the multilateral environmental agreement compliance and implementation bodies

7. The Chair of the Working Group on Implementation attended the third meeting of the informal network of the Chairs of the ECE MEA compliance and implementation bodies (Geneva, 29 June 2015), with the objective of assessing the lessons learned from the compliance mechanisms of the other ECE MEAs. During a special session dedicated to the possibility of introducing a compliance mechanism for the Industrial Accidents Convention, she exchanged views with the Chairs of the ECE MEA compliance and implementation bodies, including on the criteria for establishing compliance and how to ensure that a compliance mechanism would play the same supportive role for Parties in implementing the Convention that the Working Group on Implementation has been playing since its establishment.

8. The Chairs of the ECE MEA compliance and implementation bodies agreed that the key role of the body charged with compliance should be to assist Parties in the implementation of the respective treaty. Once non-compliance was established, the compliance body should consider the measures to be taken in order to receive more information on the reasons and extent of the non-compliance (e.g., through official correspondence and fact-finding missions) and consider whether non-compliance was systemic or incidental. On this basis, the compliance body should consider the measures to be taken with a view to further monitoring progress made by Parties in addressing the causes of non-compliance and supporting them in reaching compliance.

³ More information about compliance mechanisms for ECE MEAs is available from the informal document prepared for the attention of the eighth meeting of the Conference of the Parties (COP.TEIA/2014/INF.2), available from www.unece.org/env/teia/cop8.html.

B. Compliance-related functions currently carried out by the Working Group on Implementation

9. At its twenty-eighth meeting (Geneva, 30 June–1 July 2015), the Working Group on Implementation continued to consider compliance-related aspects of its work in the light of the possible introduction of a compliance mechanism, on the basis of a report by its Chair that took account of the discussions by the Chairs of the ECE MEA compliance and implementation bodies.

10. The Working Group concluded that it was already carrying out, although mostly on an ad hoc basis, some tasks undertaken by compliance bodies, such as:

- (a) Reviewing compliance with reporting obligations;
- (b) Providing information on the implementation of the Convention by Parties, committed countries⁴ and other reporting countries;
- (c) Communicating with Parties and committed countries;
- (d) Assisting Parties and committed countries in implementing the Convention's provisions.

1. Review of compliance with reporting obligations

11. In its reports on the implementation of the Convention, the Working Group on Implementation names the Parties and committed countries that have, or have not, submitted national reports on the implementation of the Convention. As such, the Working Group is already reviewing the compliance of Parties with their reporting obligations under article 23 of the Convention. On this basis, the Conference of the Parties has issued decisions urging Parties and committed countries to comply with their reporting obligations and commitments, respectively.

2. Information on the implementation of the Convention

12. National implementation reports submitted by Parties, committed and other reporting countries provide the Working Group on Implementation with a general indication of implementation of the Convention. On this basis, the Working Group has prepared and presented reports on the implementation of the Convention to the Conference of the Parties. In its reports, the Working Group has highlighted the challenges faced by countries and made recommendations with a view to improving the implementation of the Convention. However, such recommendations have been made to address general implementation issues, rather than specific issues regarding individual Parties; so far, the Working Group has not specifically reviewed the compliance by individual Parties with their obligations under the Convention, other than those related to reporting.

3. Communication with Parties and committed countries

13. The Working Group on Implementation has on an ad hoc basis communicated with Parties and non-Parties that are beneficiaries of the Convention's Assistance Programme. In the light of the request by the Conference of the Parties at its eighth meeting to consider

⁴ Countries from Eastern and South-Eastern Europe, the Caucasus and Central Asia participating in the Assistance Programme and having committed to enhance industrial safety through their participation in the Assistance Programme and the implementation of the Convention, as well as to submit national implementation reports, by adopting the High-level Commitment Declaration (ECE/CP.TEIA/2005/12, annex).

engaging in a dialogue with Parties and committed countries submitting implementation reports (ECE/CP.TEIA/30, para. 30), the Working Group is looking at enhancing its communication with Parties and committed countries as of the eighth reporting round for the years 2014–2015.

4. Assisting Parties and committed countries in implementing the Convention

14. The Working Group on Implementation is already carrying out several functions to support Parties and committed countries in their implementation of the Convention, for example, through:

(a) Highlighting areas for improvement and follow-up, as well as listing good practices in its reports on the implementation of the Convention;

(b) Providing advice and guidance with regard to the implementation of the Convention to beneficiary countries of the Assistance Programme, for example, by reviewing and providing comments on national self-assessments and action plans prepared in accordance with the Strategic Approach.⁵

5. Charging the Working Group on Implementation with compliance review functions

15. In view of its present role of monitoring the implementation of the Convention, providing guidance and assistance, the Working Group on Implementation would stand ready to take up compliance-related functions and become the body charged with compliance monitoring and review, subject to changes in the workload as proposed in paragraph 25 below. Such a set-up would be in line with the positions expressed by the Working Group on Development and the Conference of the Parties in earlier meetings, wishing also to avoid establishing a separate subsidiary body with related resource implications. In practice, this would be achieved by inserting a cross reference in the Working Group on Implementation's terms of reference⁶ to a decision by the Conference of the Parties introducing a compliance mechanism.

C. Benefits of introducing a compliance mechanism

16. The Working Group on Implementation considered that introducing a compliance mechanism would yield numerous benefits for Parties and committed countries and for the implementation of the Convention overall. On this basis, it recommends the Working Group on Development to consider positively the introduction of such a mechanism.

1. Reviewing Parties' compliance with Convention obligations

17. Introducing a compliance mechanism would allow for the introduction of procedures to review the compliance by Parties with their obligations under the Convention further to their reporting obligations, similar to the compliance mechanisms under other ECE MEAs. In addition to the information contained in the national implementation reports, the Working Group on Implementation would be in a position to request additional information from Parties and committed countries on the development, functioning and effect of

⁵ An overview of the role of the Working Group on Implementation with regard to the Assistance Programme and its Strategic Approach is set out in table format in the report of the Conference of the Parties on its seventh meeting (see ECE/CP.TEIA/24, p. 11).

⁶ At its eighth meeting the Conference of the Parties requested the Bureau to prepare revised terms of reference for the Convention's subsidiary bodies, including the Working Group on Implementation, for review and adoption at its ninth meeting.

national legislation, policies and measures, as well as the application of legislation implementing the Convention's provisions. To that effect, the Working Group could request additional information from countries on the actions undertaken to ensure the implementation of and compliance⁷ with the Convention. Should the Working Group find that Parties are in non-compliance with their obligations, it could request that additional measures be taken, as appropriate, and offer assistance and support. Introducing a compliance mechanism would also enable the review of selected thematic compliance issues.

18. Following its contacts with Parties in potential non-compliance, the Working Group could then issue recommendations to the Conference of the Parties, which could discuss and adopt decisions on non-compliance by individual Parties. Such a procedure would be in line with the practice of other ECE MEAs, whose governing bodies take decisions on the basis of recommendations by their implementation or compliance bodies. Introducing a compliance mechanism would thus provide the Conference of the Parties, on the basis of the Working Group's recommendations, with additional information on the effectiveness of the Convention's implementation and ways to consider how it might be improved.

19. In addition, as previously considered by the Working Group on Development, the existence of compliance procedures and the possibility of identifying potential cases of non-compliance can help raise awareness among Parties of their specific obligations.

2. Providing a vehicle for Parties to highlight non-compliance and request assistance

20. Moreover, the introduction of a compliance mechanism would provide Parties with a vehicle to raise their difficulties in implementing the Convention and complying with its provisions, bringing their potential non-compliance to the attention to the compliance review body in order to request assistance. It may also provide for the possibility for Parties potentially affected by another Party's difficulties in implementing and/or complying with the Convention, to bring the potential non-compliance by another Party to the attention of the compliance review body.

21. In this respect, possible situations of non-compliance and their causes could be addressed at an early stage, and the Party or Parties in non-compliance could be assisted in rectifying the situation. Following its formal contacts with Parties in potential non-compliance and its assessment of the state of (non-)compliance, the compliance review body, i.e., the Working Group on Implementation, could formulate appropriate responses and suggest measures, addressing and/or correcting the state of non-compliance. Such responses would be adjusted to meet the varying degrees of non-compliance, and could include facilitative measures.

3. Enhancing assistance functions for Parties and committed countries

22. Charged with compliance review functions, the Working Group on Implementation could expand its present role of providing substantive guidance to the activities under the Assistance Programme, by assisting not only Assistance Programme beneficiary countries, but all Parties, in their implementation of and compliance with their obligations 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. More information is available in the secretariat's note on approaches to compliance mechanisms under ECE MEAS (ECE/CP.TEIA/2014/10, paras. 3–13).

23. Assistance and advisory functions are part of the compliance mechanisms established under other ECE MEAs, for example under the Water Convention and its Protocol on Water and Health.⁸ Drawing on the example of the advisory procedure of the mechanism to support implementation and compliance under the Water Convention (ECE/MP.WAT/37/Add.2, decision VI/1, annex I), assistance and advice by the Working Group could, for example, encompass the following elements:

(a) Providing advice and facilitating assistance, including technical assistance and capacity-building, to individual Parties or groups of Parties in order to support their implementation of the Convention, which may include suggesting that domestic regulatory regimes and inter-institutional coordination mechanisms be set up and strengthened and relevant domestic resources be mobilized, as appropriate;

(b) Requesting the Party or Parties concerned to develop an action plan to facilitate the implementation of the Convention within a time frame to be agreed by the Working Group and the Party or Parties concerned, and assisting the Party or Parties concerned in developing such a plan;

(c) Inviting the Party or Parties concerned to submit progress reports to the Working Group on the efforts being made to implement their obligations under the Convention.

D. Characteristics of a possible compliance mechanism for the Industrial Accidents Convention

24. The Working Group on Implementation considered that the main emphasis of the compliance mechanism should be to assist Parties in meeting their obligations under the Convention. As such, the compliance mechanism should be non-adversarial, assistance-oriented, supportive and cooperative.

25. A decision by the Conference of the Parties to enhance the mandate of the Working Group on Implementation with compliance review functions will have implications for the work of its members. The additional work related to the compliance function could be absorbed through a change in the length of the reporting cycle from two to four years⁹ and an associated reduction in the Working Group's workload related to the review of national implementation reports. In this way, the number of members could remain the same, with not more than 10 members representing and nominated by Parties, as per the current terms of reference of the Working Group. In order to align the membership of the Working Group on Implementation with the reporting cycle, elections of members by the Conference of the Parties could be for one term of office comprising two intersessional periods, i.e., four years, with the possibility of re-election. Principles of geographical representation and

⁸ Decision I/2 on the review of compliance adopted by the Meeting of the Parties of the Protocol on Water and Health at its first meeting (ECE/MP.WHO/2/Add.3–EUR/06/5069385/1/Add.3) foresees that the Compliance Committee may provide advice and facilitate assistance to individual Parties. Furthermore, the Committee later agreed to introduce a consultation process as of 2013, in order to assist Parties in developing an accurate analysis of their situation and provide recommendations to the Parties on how to improve their situation. The terms of reference of the consultation process, as amended by the Committee at its tenth meeting, are available from the main page for the Committee at http://www.unece.org/env/water/pwh_bodies/cc.html.

⁹ Such a reduction will be proposed by the Working Group on Implementation to the Conference of the Parties at its ninth meeting through the draft decision on reporting obligations with regard to periodicity, public accessibility and other issues.

rotation would need to be respected, as for all bodies established under the umbrella of the United Nations.

26. Members of the Working Group would continue to be elected by the Conference of the Parties as representatives of Parties. Consideration would need to be given to achieve a balance between technical, policy and legal expertise of the members elected, as customary for ECE MEA compliance mechanisms.

27. The Working Group on Implementation reviewed possible means by which a compliance procedure could be initiated, including: self-submission (i.e., submission by a Party concerning its own compliance); submission by a Party concerning another Party's compliance; communications from the public; Committee initiatives; and referrals by the secretariat.¹⁰ On this basis, it considered that the following means should be envisaged as part of the compliance mechanism:¹¹

(a) Self-submission by a Party raising a question of implementation or compliance with respect to itself, if it concludes that, despite its best endeavours, it is or will be unable to comply fully with the Convention and to seek advice from the compliance body. The possibility of self-submission by Parties is provided by all ECE MEA compliance mechanisms;

(b) Submission by a Party concerning another Party, in case a Party (or Parties) is (are) affected or may be affected by another Party's difficulties in implementing and/or complying with the Convention. Any Party intending to make such a submission should, before doing so, inform the Party whose implementation and/or compliance is in question. The possibility for a Party to make a submission concerning the compliance of another Party is provided by all ECE MEA compliance mechanisms;

(c) A committee initiative, which provides for the compliance body, where it becomes aware of possible difficulties in implementation by a Party or the possible non-compliance of a Party with the Convention, to request the Party concerned to provide the necessary information on the matter. A Committee initiative is part of the compliance mechanisms of the Espoo and Water Conventions. Both mechanisms provide for the possibility to engage in information gathering, in order to collect further information on matters under consideration.

28. For the Industrial Accidents Convention, a Committee initiative — or an initiative by the Working Group on Implementation — would appear particularly suitable, in the light of the current role and functions of the Working Group. The Working Group could consider the national implementation reports as a main source of information regarding possible difficulties of Parties in implementing the Convention and potential cases of non-compliance.

29. Information from the public may also be considered as part of a Committee initiative, as another source of information. This would be at the discretion of the compliance body, as envisaged in the case of the Implementation Committees of the Espoo and Water Conventions. Other ECE MEA compliance mechanisms, such as under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MP.PP/2/Add.8, decision I/7), the Protocol on Pollutant Release and Transfer Registers (ECE/MP.PRTR/2010/2/Add.1, decision I/2) and the Protocol on Water and Health (ECE/MP.WHO/2/Add.3–EUR/06/5069385/1/Add.3,

¹⁰ See the informal document providing complementary information on approaches to compliance mechanisms (COP.TEIA/2014/INF.2) presented at the eight meeting of the Conference of the Parties, available from www.unece.org/env/teia/cop8.html.

¹¹ Ibid.

decision I/2), envisage direct communications from the public as a means to initiate the compliance review procedure.

30. The Working Group on Implementation considered that referrals by the secretariat could undermine its independence and should not be envisaged. The Water Convention also decided to introduce a Committee initiative in its compliance mechanism rather than secretariat referrals. Furthermore, providing for secretariat referrals as part of the compliance procedure would have further resource implications for the secretariat.

III. Next steps towards the establishment of a compliance mechanism

31. Should the Working Group on Development agree with the Working Group on Implementation's recommendation that the Working Group on Implementation should be charged with the functions of the compliance mechanism, the Working Group on Development could request the small group of legal experts, in cooperation with the secretariat, to prepare a draft decision on implementation and compliance for review at its seventh meeting (Geneva, 11–14 April 2016), with a view to submitting the draft decision to the Conference of the Parties for consideration at its ninth meeting.

32. The draft decision introducing a compliance mechanism could set out in its annex the structure, procedure and functioning of the mechanism.¹² As per the ECE Guidelines for Strengthening Compliance with and Implementation of MEAs in the ECE Region (ECE/CEP/107) prepared in the framework of the Committee on Environmental Policy, the following features commonly found in compliance mechanisms and procedures should be included:

- (a) Objective(s);
- (b) Size and composition of membership;
- (c) Functions and mandate;
- (d) Actors entitled to raise compliance issues in the procedures (triggers);
- (e) Potential measures;
- (f) Sources of information;
- (g) Procedural safeguards.

¹² See the example from the Implementation Committee of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (ECE/MP.WAT/37/Add.2 decision VI/1), or the Implementation Committee of the Convention on the Long Range Transboundary Air Pollution (ECE/EB.AIR/113/Add.1, decision 2012/25)