

Economic Commission for Europe
Meeting of the Parties to the Convention
on Environmental Impact Assessment
in a Transboundary Context

Meeting of the Parties to the Convention
on Environmental Impact Assessment in
a Transboundary Context serving as the
Meeting of the Parties to the Protocol on
Strategic Environmental Assessment

**Working Group on Environmental Impact Assessment
and Strategic Environmental Assessment**

Seventh meeting

Geneva, 28–30 May 2018

Item 3 of the provisional agenda

Compliance and implementation

**A template for draft decision IS/1 on the general issues of
compliance with the Convention**

Proposal by the Implementation Committee¹

Summary

This note presents a template for draft decision IS/1 of the Meeting of the Parties to the Convention at its intermediary session (Geneva, 5–7 February 2019) on the general issues of compliance with the Convention, which the Committee will prepare at its next session (forty-second session, Geneva, 11–14 September 2018) prior to its submission for consideration and adoption by the Meeting of the Parties to the Convention at its intermediary session.

As mandated by the Meeting of the Parties at its seventh session (Minsk, 13–16 June 2017), the Implementation Committee has been preparing a revised draft decision on compliance with the Convention based on its review of draft decision VII/2 and taking into account the progress made before, during and after the seventh session.

An account of the Committee's deliberations and changes proposed to draft decision VII/2 is presented in track changes in informal document ECE/MP.EIA/WG.2/2018/INF.4h.

As suggested by the delegation of Ukraine in June 2017, the Committee decided to present the general and the country specific draft decisions in separate documents to facilitate their subsequent consideration and adoption by the Meeting of the Parties.

¹ The present decision relates to an Implementation Committee initiative (reference EIA/IC/CI/1). More information on Committee initiatives can be found at <http://www.unece.org/environmental-policy/conventions/environmental-assessment/areas-of-work/review-of-compliance/committee-initiative.html>.

Further to the mandate, the Committee prepared the draft decisions IS/1a – IS/1g regarding Armenia, Azerbaijan, Belarus, Serbia, and Ukraine. These draft decisions have been submitted for information and views of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment, prior to their finalization by the Committee at its next session. See informal documents ECE/MP.EIA/WG.2/2018/INF.4 a-g.

The country-specific draft decisions will be complemented by draft decision IS/1 h regarding the United Kingdom and Northern Ireland, which the Committee will finalize, along with the revised findings and recommendations, at its forty-second session based on the pending information from the potentially affected Parties and the comments and representations to be provided by the United Kingdom.

Owing to time constraints, the Committee agreed to revise the general part of draft decision VII/2, to be presented in the current template, at its next session taking into account the deliberations on draft decision VII/2 during, in the margins of and after the seventh session of the Meeting of the Parties. In the meantime, the present note only replicates the original text of decision VII/2 without yet reflecting any changes.

The Chair of the Committee will present the template for the draft decision for information to the Working Group. The delegates may wish to present their views on the draft.

The Meeting of the Parties to the Convention,

Recalling article 11, paragraph 2, of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), and decisions III/2, IV/2, V/4 and VI/2 of the Meeting of the Parties to the Convention on the review of compliance,

Recalling further article 14 bis of the Convention,

Determined to promote and improve compliance with the Convention,

Seeking to promote the identification, as early as possible, of compliance difficulties encountered by Parties and the adoption of the most appropriate and effective solutions for resolving those difficulties,

Having considered the analysis made by the Implementation Committee on general compliance issues contained in the fourth review of implementation of the Convention in document ECE/MP.EIA/2014/3 adopted by decision VI/1,

Having also considered the findings and recommendations of the Implementation Committee on two Committee initiatives since the six session of the Meeting of the Parties further to paragraph 6 of the appendix to decision III/2,² as set out in the reports of the Committee on its thirty-fifth, thirty-sixth, and [forty-second sessions],³

Having reviewed the structure and functions of the Committee, as described in the appendix to decision III/2⁴ and annex I to decision VI/2,⁵

² ECE/MP.EIA/6, annex II.

³ ECE/MP.EIA/IC/2016/2, annex; ECE/MP.EIA/IC/2016/4, paras 40-44; and ECE/MP.EIA/IC/2018/4, paras [...], annex.

⁴ ECE/MP.EIA/6, annex II.

⁵ See ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

Having also reviewed the operating rules adopted in decision IV/2,⁶ as amended by decisions V/4,⁷ annex, and VI/2,⁸ annex II, and recognizing the importance of improving the efficiency of the working methods of the Committee in view of the growing number and complexity of compliance issues brought before the Committee,

Having further reviewed the opinions of the Committee,

Recognizing the importance of rigorous reporting by Parties on their compliance with the Convention, and noting the fifth review of implementation of the Convention⁹ based on the answers of Parties to the questionnaires on the implementation of the Convention adopted in decision VII/1,

Recalling its related decisions IS/1a, IS/1b, IS/1c, IS/1d, IS/1e, IS/1f, IS/1g, IS/1h concerning compliance by Armenia, Azerbaijan, Belarus, Serbia, Ukraine and the United Kingdom of Great Britain and Northern Ireland, adopted at the intermediary session,

Recalling that the compliance procedure is assistance-oriented, and that Parties may make submissions to the Committee on issues regarding their own compliance with the Convention,

Adopts the report of the Implementation Committee on its activities contained in document ECE/MP.EIA/2017/4–ECE/MP.EIA/SEA/2017/4, welcomes the reports of the Committee on its meetings in the period after the sixth session of the Meeting of the Parties to the Convention, and requests the Committee:

- (a) To keep the implementation and application of the Convention under review;
- (b) To promote and support compliance with the Convention, including by providing assistance in this respect, as necessary;

2. *Welcomes* the examination by the Committee of specific compliance issues identified in the fourth review of implementation of the Convention¹⁰ regarding Cyprus, which resulted in the Committee declaring its satisfaction with the clarifications provided by the Party;

3. *Welcomes also* the examination by the Committee of information received from other sources, including the public, in one case regarding Serbia and twice regarding Ukraine, which in both instances regarding Ukraine resulted in the Committee declaring its satisfaction with the clarifications provided by the Party at the time, and in the case of Serbia led both to a Committee initiative, regarding which the Committee is now satisfied with the clarifications provided and the actions taken by the Party,¹¹ and also to information gathering by the Committee regarding compliance with the Protocol that is to be continued at its upcoming sessions;

4. *Notes* the information received from other sources regarding Belgium, Belarus, Bosnia and Herzegovina, Czechia, the Netherlands, Spain and Ukraine that are to be further considered by the Committee at its forthcoming sessions;

5. *Considers*, following the opinions of the Committee, that:

⁶ ECE/MP.EIA/10, annex IV.

⁷ See ECE/MP.EIA/15.

⁸ See ECE/MP.EIA/20/Add.1–ECE/MP.EIA/SEA/4/Add.1.

⁹ ECE/MP.EIA/25.

¹⁰ See paras. 66–69 below.

¹¹ ECE/MP.EIA/IC/2014/6, para. 35; see also ECE/MP.EIA/IC/2014/2 paras. 33–35.

(a) The opportunity provided by the Party of origin to a Party that considers that it would be affected by a significant transboundary environmental impact of a proposed activity listed in appendix I to the Convention, for which no notification has taken place in accordance with article 3, paragraph 1, demonstrates the agreement of the two Parties that a likely significant environmental impact on the territory of the potentially affected Party cannot be excluded according to article 3, paragraph 7, of the Convention;¹²

(b) The mere notification of possibly affected Parties, regardless of their number, does not impose an excessive burden on Parties of origin;¹³

(c) For certain activities, in particular nuclear energy-related activities, while the chance of a major accident, accident beyond design basis or disaster occurring is very low, the likelihood of a significant adverse transboundary impact of such an accident can be very high; therefore, on the basis of the principle of prevention, when considering the affected Parties for the purpose of notification, the Party of origin should be exceptionally prospective and inclusive, in order to ensure that all Parties potentially affected by an accident, however uncertain, are notified. The Party of origin should make such consideration using the most careful approach on the basis of available scientific evidence, which indicates the maximum extent of a significant adverse transboundary impact from a nuclear energy-related activity, taking into account the worst-case scenario;¹⁴

(d) Procedural and substantive aspects of environmental impact assessment procedures cannot necessarily be treated separately when assessing compliance, in particular if the essence of the compliance case in question pertains to substantive aspects;¹⁵

6. *Reiterates* that:

(a) The procedure in article 3, paragraph 7, does not substitute for the obligations of a Party of origin deriving from the Convention to notify possibly affected Parties, or to fulfil any other step of the transboundary environmental impact assessment procedure in compliance with the Convention in case transboundary environmental impacts cannot be excluded;¹⁶

(b) While the primary aim of the Convention, as stipulated in article 2, paragraph 1, is to “prevent, reduce and control significant adverse transboundary environmental impact from proposed activities”, even a low likelihood of such an impact should trigger the obligation to notify affected Parties in accordance with article 3. This is in accordance with paragraph 28 of the Guidance on the Practical Application of the Espoo Convention, endorsed by decision III/4.¹⁷ This means that notification is necessary unless a significant adverse transboundary impact can be excluded;¹⁸

7. *Encourages* Parties to bring issues concerning their own compliance before the Committee;

8. *Requests* the Committee to provide assistance to Parties in need of such assistance, as appropriate and to the extent possible, and in this respect refers to decision VII/3 on the adoption of the workplan, recommending general requirements to be met by Parties wishing to receive technical advice from the Convention;

¹² ECE/MP.EIA/IC/2016/2, annex, para. 59 and footnote k.

¹³ *Ibid.*, para. 62.

¹⁴ See ECE/MP.EIA/IC/2017/2, forthcoming.

¹⁵ See decision VI/2, para. 5 (h).

¹⁶ ECE/MP.EIA/6, annex IV.

¹⁷ ECE/MP.EIA/10, decision IV/2, annex I, para. 54.

¹⁸ See ECE/MP.EIA/20/Add.3–ECE/MP.EIA/SEA/4/Add.3.

9. *Urges* Parties to take into account in their future work the recommendations for further improving the implementation of and compliance with the Convention, including by strengthening national legislation, based on but not limited to the analyses on general compliance issues from the reviews of implementation, adopted by decisions III/1, IV/1, V/3 and VI/1, in conjunction with the general guidance on enhancing consistency between the Convention and environmental impact assessment within the framework of State ecological expertise in countries of Eastern Europe, the Caucasus and Central Asia adopted by decision VI/8;

10. *Also urges* Parties to ensure the application of the Convention in nuclear energy-related activities, and in that respect recalls the 2014 Geneva Declaration¹⁹ (Part A) on the application of the Convention and the Protocol to nuclear energy issues, and in particular:

(a) Emphasizes that Parties to the Convention that carry out nuclear energy-related activities should do so in accordance with the Convention, in a sustainable manner, taking into consideration the precautionary and polluter pays principles, and respecting international nuclear safety standards and relevant environmental legislation;

(b) Also emphasizes that close cooperation and improved mutual understanding of the practices and needs of other Parties in the field of nuclear energy will facilitate the application of transboundary environmental procedures in full compliance with the Convention and the Protocol;²⁰

(c) Encourages effective cooperation among Parties, the secretariats of all relevant international treaties and international organizations to maximize synergies and strengthen capacities with a view to ensuring the highest possible quality of environmental assessment and level of safety in the nuclear energy field;²¹

11. *Urges* Parties to take into account in their further work the opinions of the Committee in the period from 2001 to 2017, and requests the secretariat to arrange for the revision of the informal electronic publication of these opinions to include the opinions of the Committee from 2014–2017;

12. *Decides* to keep under review and to develop, if necessary, the structure and functions of the Committee and its operating rules at its eighth session, in the light of experience gained by the Committee in the interim, and requests the Committee to prepare any proposals, as it deems necessary, for submission to the Meeting of the Parties at its eighth session.

¹⁹ Declaration, para. A9.

²⁰ Declaration, para. A10.

²¹ ECE/MP.EIA/IC/2016/6, para. 13; see ECE/MP.EIA/IC/2017/2, forthcoming.