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Items 3 (b) and 8 (b) of the provisional agenda

Outstanding issues: draft decisions by the Meeting of the Parties to the Convention

**Adoption of decisions: decisions to be taken by the Meeting of
the Parties to the Convention**

Draft decision VIII/4 on general issues of compliance with the Convention

Proposal by the Implementation Committee

Summary

The present document contains draft decision VIII/4 on general issues of compliance with the Convention. It was finalized by the Implementation Committee under the Convention on Environmental Impact Assessment in a Transboundary Context and its Protocol on Strategic Environmental Assessment at its forty-eighth session (Geneva, 1–4 September 2020) having taken into account the comments provided by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment during and after its ninth meeting (Geneva, 24–26 August 2020).

The Meeting of the Parties to the Convention is expected to review the draft decision and agree on its adoption.



The Meeting of the Parties to the Convention,

Recalling article 11, paragraph 2, and article 14 bis of the Convention on Environmental Impact Assessment in a Transboundary Context,

Recalling also the general parts of decisions III/2,¹ IV/2,² V/4³ and VI/2⁴ of the Meeting of the Parties to the Convention on the review of compliance, and decision IS/1 on general issues of compliance with the Convention,⁵

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 and recommendations made by the Implementation Committee on general compliance issues contained in the fifth review of implementation of the Convention (ECE/MP.EIA/2017/9), adopted by decision VII/1,⁶

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

Having reviewed also the operating rules adopted by decision IV/2, as amended by decisions V/4, annex, and VI/2, annex II,

Recognizing the importance of improving the efficiency of the working methods of the Committee in view of the growing number and increasing complexity of compliance issues brought before the Committee and the role of the Parties concerned in facilitating the Committee's work,

Having reviewed the opinions of the Committee,

Recognizing the importance of rigorous reporting by Parties of their compliance with the Convention, and noting the sixth review of implementation of the Convention⁷ based on Parties' answers to the questionnaires on the implementation of the Convention, as adopted in its decision VIII/5,⁸

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

Noting that several compliance issues considered by the Committee related to or revealed shortcomings in the concerned Parties' national legislation to implement the Convention and/or the Protocol,

Acknowledging the secretariat's long-standing, donor-funded, technical assistance to countries in Eastern Europe, the Caucasus and Central Asia for aligning their legislation with the Convention and the Protocol, and encouraging the beneficiary countries of that assistance to bring their legislation into full compliance with the two treaties and, if not yet Parties, to ratify them,

1. *Adopts* the Implementation Committee's report on its activities contained in document ECE/MP.EIA/2020/4–ECE/MP.EIA/SEA/2020/4;

2. *Welcomes* the Committee's reports on its sessions in the period following the seventh session of the Meeting of the Parties to the Convention (Minsk, 13–16 June 2017);

3. *Requests* the Committee to continue to:

¹ See ECE/MP.EIA/6.

² See ECE/MP.EIA/10.

³ See ECE/MP.EIA/15.

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

⁵ See ECE/MP.EIA/27/Add.1–ECE/MP.EIA/SEA/11/Add.1.

⁶ See ECE/MP.EIA/23/Add.2–ECE/MP.EIA/SEA/7/Add.2.

⁷ ECE/MP.EIA/2020/8.

⁸ [Symbol of the adopted decision].

(a) Keep the implementation and application of the Convention under review;

(b) Promote and support compliance with the Convention, including by providing assistance in this respect, as necessary.

4. *Welcomes* the follow-up by the Committee to previous decisions of the Meeting of the Parties on compliance with the Convention's obligations by individual Parties as reflected in decisions VIII/4a concerning Armenia,⁹ VIII/4b concerning Azerbaijan,¹⁰ VIII/4c concerning Belarus,¹¹ and VIII/4d¹² and VIII/4e¹³ concerning Ukraine, adopted by the Meeting of the Parties at its eighth session;

5. *Also welcomes* the examination by the Committee of specific compliance issues identified in the fifth review of implementation of the Convention regarding:

(a) Albania, Austria, Azerbaijan, Croatia, Cyprus, Czechia, Denmark, Finland, France, Greece, Ireland, Italy, Latvia, Liechtenstein, Luxembourg, Malta, Montenegro, Norway, Portugal, the Republic of Moldova, Slovakia, Spain, Sweden and Ukraine, which resulted in the Committee declaring its satisfaction with the clarifications provided by the Parties;

(b) North Macedonia, which will require further consideration by the Committee at its upcoming sessions due to the lateness of responses by the Party concerned.

6. *Further welcomes* the examination by the Committee of information received from other sources, including the public, regarding Belarus, Belgium, Bosnia and Herzegovina (on five issues), Bulgaria, Czechia, Denmark, France, the Netherlands, Serbia, Spain (on three issues), Switzerland and Ukraine (on four issues), which:

(a) In one instance regarding Bosnia and Herzegovina, two instances regarding Spain, and one instance regarding Serbia resulted in the Committee declaring its satisfaction with the clarifications provided by the Parties concerned at the time;

(b) In one case concerning Serbia was superseded by a submission initiated by Bulgaria;

(c) In the cases concerning Belarus, Bosnia and Herzegovina (four issues), Bulgaria, Czechia, Denmark, France, the Netherlands, Spain, Switzerland and Ukraine (four issues) will require further consideration by the Committee at its upcoming sessions;

7. *Acknowledges* that several information gathering cases before the Committee (as referred to in paragraphs 4 and 5 above) relate to concerns of the public regarding the applicability of the Convention to lifetime extensions of nuclear power plants – by Belgium (three units of two nuclear power plants), by Bulgaria (two units of one nuclear power plant), by Czechia (four units of one nuclear power plant), by France (thirty-two units of eight nuclear power plants), by the Netherlands (one unit of one nuclear power plant), by Spain (two units of one nuclear power plant) and by Ukraine (eleven units of four nuclear power plants) – and that the Committee's deliberations have been delayed pending the development of guidance on that topic by an ad hoc working group of Parties to the Convention;

8. *Notes* the submissions initiated by Bulgaria and Montenegro that are to be considered by the Implementation Committee at its forthcoming sessions;

9. *Welcomes* the efforts undertaken by the Committee thus far to review the effectiveness and efficiency of its working methods and practice with a view to addressing

⁹ [Symbol of the adopted decision].

¹⁰ [Symbol of the adopted decision].

¹¹ [Symbol of the adopted decision].

¹² [Symbol of the adopted decision].

¹³ [Symbol of the adopted decision].

the growing number and increasing complexity of compliance issues brought before it; and invites the Committee to pursue this work in its subsequent sessions;

10. *Notes with regret* that the Committee's work is hindered by lateness and insufficient quality of responses by some Parties concerned, and, in some cases, also by their refusal to respond and to cooperate;

11. *Strongly urges* Parties to facilitate the Committee's work in good faith by providing it with the requested information in a timely manner and in good quality;

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

(a) Appendix IV of the Convention regarding the inquiry procedure is not applicable unless the preconditions in article 3 (7) had been met,¹⁴ namely:

(i) When a Party considers that it would be affected by a significant adverse transboundary impact of a proposed activity listed in appendix I, and when no notification has taken place in accordance with article 3 (1), it may, in accordance with article 3 (7), request exchange of sufficient information for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact. The affected Party should make its request as soon as it becomes aware of a proposed activity that it considers to have a likely significant adverse transboundary impact. The subsequent exchange should be conducted within a reasonable time frame;

(ii) Moreover, to implement article 3 (7) the concerned Parties should:

- Exchange information that is sufficient and within the scope of the Convention for the purposes of holding discussions on whether there is likely to be a significant adverse transboundary impact. Moreover, if available, the Party of origin should provide the environmental impact assessment documentation for the proposed activity to the Party that considers itself affected;
- Hold discussions on whether a significant adverse transboundary impact on the territory of the affected Party is likely; and document the outcomes of those discussions, preferably as joint statements or meeting minutes signed by the Parties concerned, but as a minimum, as part of official correspondence;
- Endeavour to agree on another method of settling that question;¹⁵

(b) A notification by a Party of origin regarding a proposed activity under articles 2 (4) and 3 (1) of the Convention, followed by the indication by the affected Party of its intent to participate in the environmental impact assessment procedure further to article 3 (3) of the Convention, constitutes a mutual agreement between the Parties concerned to apply the Convention. Consequently, and following the mutual agreement among the concerned Parties, the subsequent steps of the transboundary procedure should be finalized in accordance with the Convention prior to a decision to authorize or to undertake the proposed activity;¹⁶

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

14. *Requests* the Implementation Committee to assist Parties in aligning their legislation with the Convention and the Protocol, as needed, and to the extent possible, including through cooperating with the secretariat in the context of the technical assistance provided by the secretariat in accordance with the workplan for 2021–2023 adopted through decision VIII/2–IV/2;¹⁷

¹⁴ See ECE/MP.EIA/IC/2019/6, para. 86.

¹⁵ Ibid, paras. 87 and 88.

¹⁶ Ibid, para. 80.

¹⁷ [Symbol of the adopted decision].

15. *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 of general compliance issues from the reviews of implementation, adopted by decisions III/1,¹⁸ IV/1,¹⁹ V/3,²⁰ VI/1,²¹ VII/1²² and VIII/5;²³

16. *Also urges* Parties to take into account in their further work the opinions of the Committee in the period from 2001 to 2020, 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 2019 and 2020;

17. *Adopts* the amendment to the operating rules of the Implementation Committee set out in the annex to this decision, which should be applied to any meeting and to any other conduct of business of the Committee and should be read together with and in furtherance of the structure, functions and procedures described in the appendix to decision III/2²⁴ of the Meeting of the Parties to the Convention, as amended through decisions V/4 and VI/2, as well as decision V/6–I/6²⁵ of the Meeting of the Parties to the Convention and the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol, and requests the secretariat to arrange publication of the amended operating rules in electronic or paper format, as appropriate;

18. *Decides* to keep under review and to further develop the structure and functions of the Committee and its operating rules at its ninth session, in the light of experience gained by the Committee in the interim, and with a view to enhancing the coherence and reducing duplication between the two sets of rules and to increasing use of videoconferencing and other online and electronic communication tools as effective means for managing the Committee's workload; and requests the Committee to prepare proposals, as it deems necessary, for submission to the Meeting of the Parties at its ninth session.

¹⁸ See ECE/MP.EIA/6, annex I.

¹⁹ See ECE/MP.EIA/10.

²⁰ See ECE/MP.EIA/15.

²¹ See ECE/MP.EIA/20.Add.1–ECE/MP.EIA/SEA/4.Add.1.

²² See ECE/MP.EIA/23.Add.2–ECE/MP.EIA/SEA/7.Add.2.

²³ [Symbol of the adopted decision].

²⁴ See ECE/MP.EIA/6, annex II.

²⁵ See ECE/MP.EIA/SEA/2.

Annex

Draft decision VIII/4: Amendment of the operating rules of the Implementation Committee

Considering that the deadline for the distribution of meeting documents to the Committee members is at least two weeks before the Committee's session at which they will be considered (as provided for in rule 10 of the operating rules of the Implementation Committee (decision IV/2, annex IV, as amended by decisions V/4 and VI/2, annex II)), adjust the deadline for Parties' submission of information to the Committee, as referred to in paragraph 4 of rule 11, from two to four weeks in advance of that session, so that that paragraph reads as follows:

“4. Generally, the Parties involved should present any new substantial information to the Committee through the secretariat at least four weeks in advance of the meeting at which the matter will be discussed.”