

# **Convention on Environmental Impact Assessment in a Transboundary Context and its Protocol on Strategic Environmental Assessment**

Meeting of the Parties to the Convention on Environmental Impact Assessment  
in a Transboundary Context

**Eighth session**

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

**Fourth session**

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Romas Švedas

Chair of the Implementation Committee

Maria do Carmo Figueira

First vice-Chair of the Implementation Committee

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This note contains the talking points of the Chair of the Implementation Committee at the eighth session of the Meeting of the Parties to the Convention and the fourth session of the Meeting of the Parties to the Protocol under the following agenda items:

## **I. Agenda item 3 B. Outstanding issues: draft decisions by the Meeting of the Parties to the Convention**

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## **I. Agenda item 3 C. Outstanding issues: draft decisions by the Meeting of the Parties to the Protocol**

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## **I. Agenda item 3. Outstanding issues/ B Draft decisions by the Meeting of the Parties to the Convention**

*Sub-item: (i) Draft decisions on the review of compliance with the Convention;*

The Chair and the First Vice-Chair of the Implementation Committee will present draft decisions VIII/4 and VIII/4a–e on the review of compliance with the Convention, finalized by the Committee at its forty-eighth session (Geneva, 1–4 September 2020), considering, as appropriate, the additional information and comments provided before, during and after the ninth meeting of the Working Group. The Meeting of the Parties to the Convention is expected to discuss and agree on the draft decisions to be forwarded to the high-level segment for adoption (under item 9 (b) below).

### **I.1. Preparation of the draft decisions**

The Committee prepared the draft decisions on compliance at its 47<sup>th</sup> session in March 2020 and finalized them at its 48<sup>th</sup> session in September 2020. In doing so the Committee took into account information and comments provided by the Parties concerned in advance of that session and the comments provided by the Working Group on EIA and SEA during and after its ninth meeting in August 2020.

The draft decisions prepared for the consideration of the Meeting of the Parties to the Convention include:

(a) Draft decision VIII/4 on general issues of compliance with the Convention (ECE/MP.EIA/2020/10);

(b) Five country-specific compliance decisions – all concerning the follow-up to related compliance decisions taken by the MOP to the Convention at its intermediary session:

1. Draft decision VIII/4a on compliance by Armenia with its obligations under the Convention in respect of its national legislation (ECE/MP.EIA/2020/11);
2. Draft decision VIII/4b on compliance by Azerbaijan with its obligations under the Convention in respect of its national (ECE/MP.EIA/2020/12);
3. Draft decision VIII/4c on compliance by Belarus with its obligations under the Convention in respect of the Belarusian nuclear power plant in Ostrovets (ECE/MP.EIA/2020/13);
4. Draft decision VIII/4d on compliance by Ukraine with its obligations under the Convention in respect of the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta (ECE/MP.EIA/2020/14);
5. Draft decision VIII/4e on compliance by Ukraine with its obligations under the Convention in respect of extension of the lifetime of the Rivne nuclear power plant (ECE/MP.EIA/2020/15).

## **I.2. Short presentation of the draft decisions**

### ***A. Draft decision VIII/4a on compliance by Armenia with its obligations under the Convention in respect of its national legislation (ECE/MP.EIA/2020/11)***

This is a decision on the follow-up to decision IS/1a. The Convention's MOP invited Armenia to adopt the proposed amendments to the legislation and the secondary legislation as soon as possible and to inform the Implementation Committee of the progress made.

Further to the reports from Armenia since the intermediary session of the MOP, the Committee concluded that despite steps taken since the intermediary session, Armenia had not yet:

- (a) Adopted the amendments to its legislation and the secondary legislation, and therefore, had not yet
- (b) Fulfilled the requests addressed to it under paragraphs 5 and 6 of decision IS/1a.

In addition, in the absence of official English translations of the adopted amendments and the secondary legislation, the Committee had to postpone the evaluation of the amended legislation referred to in paragraph 7 of decision IS/1a.

### ***B. Draft decision VIII/4b on compliance by Azerbaijan with its obligations under the Convention in respect of its national legislation (ECE/MP.EIA/2020/12)***

This is a draft decision on follow-up to decision IS/1 c. The Convention's MOP urged Azerbaijan to ensure that its environmental impact assessment legislation fully complies with the Convention and requested the Committee to evaluate the compliance of the environmental impact assessment legislation of Azerbaijan with the Convention.

In March 2020, the Committee noted that Azerbaijan had adopted two pieces of secondary legislation and two guiding documents to implement its 2018 framework Law.

The Committee also noted some specific deficiencies of the draft secondary legislation on EIA and on SEA, that was not adopted, notably, including concerning:

- (a) Definition referred to in article 1 (v) of the Convention and
- (b) Ensuring proper public participation under articles 2 (6), 3 (8) and 4 (2) of the Convention.

In September 2020, the Committee confirmed its previous conclusion that Azerbaijan had not to that date:

- (a) Fulfilled the request addressed to it in paragraph 6 of decision IS/1c, and
- (b) Remained in non-compliance with article 2 (2) of the Convention, despite steps taken since the intermediary session of the Meeting of the Parties.

***C. Draft decision VIII/4c on compliance by Belarus with its obligations under the Convention in respect of the Belarusian nuclear power plant in Ostrovets***

*To be presented by the first Vice-Chair*

This is a draft decision on follow-up to decision IS/1 d by which the Convention's MOP:

- (a) Declared that Belarus failed to comply with article 4 (1), article 5 (a), and article 6 (1), of the Convention;
- (b) Urged Belarus to ensure that, in the context of any future decision-making regarding any planned activity that falls under the Convention, the Convention is applied (para 16);
- (c) Encouraged both Parties to:
  - i. Accelerate the preparation of a bilateral agreement for the Convention's implementation under article 8 of the Convention (para. 17);
  - ii. Continue bilateral expert consultations on issues of disagreement, including on matters that were beyond the scope of the Convention (para. 18);
  - iii. Continue working on the post-project analysis regarding the activity (para. 19).

Since the MoP's intermediary session Belarus and Lithuania submitted to the Committee their reports further to paragraph 20 of decision IS/1d. They also copied the Committee on their correspondence.

Based on the analysis of all information provided to by the two Parties until March 2020, the Committee recommends that the MoP:

- (a) Reaffirm its decision IS/1d and urge Belarus to apply the Convention in the future with regard to a proper evaluation of reasonable alternatives further to paragraph 16 of that decision;
- (b) Endorse the finding of the Committee that Belarus and Lithuania have not yet fulfilled the requirements set out in paragraphs 17–19 of decision IS/1d and again encourages both Parties to comply with these requirements by the ninth session of the Meeting of the Parties.

The draft decision lists the concrete steps to be implemented by the two Parties, including with regard to:

- (a) Concluding the bilateral agreement for the implementation further to article 8 of the Convention;
- (b) Carrying out a post-project analysis, involving reaching an agreement on establishing a joint bilateral body and procedures for such analysis;
- (c) Continuing bilateral expert consultations on issues of disagreement, including on matters that are beyond the scope of the Convention;

***E. Draft decision VIII/4d on compliance by Ukraine with its obligations under the Convention in respect of the Danube-Black Sea Deep Water Navigation Canal in the Ukrainian sector of the Danube Delta***

This is a draft decision on follow-up to decision IS/1f by which the Convention's MOP welcomed:

- (a) The adoption by Ukraine of the Law on EIA in May 2017, and
- (b) The declaration of Ukraine of its genuine wish to bring the Bystroe Canal Project into full compliance with the Convention
- (c) The intended steps to be taken by Ukraine listed in the road map developed by Ukraine to bring the project into full compliance with the Convention, such as repealing the final decision, conducting an assessment of damage to the environment and developing a plan for compensatory and mitigation measures.

By decision IS/1f the MOP also provided a number of recommendations and requests for Ukraine to address its long-lasting persistent non-compliance with the Convention with a view to the caution issued at its fourth session being lifted at its eighth session.

The MoP also encouraged Ukraine and Romania to continue their cooperation in preparing a bilateral agreement to support implementation of the Convention further article 8 of the Convention.

After the intermediary session of the MOP, the Committee, as mandated, continued its follow-up on the steps taken by Ukraine to bring about compliance with the Convention.

It also continued taking additional steps to assist Ukraine in addressing its long-standing non-compliance with the Convention, including by:

- (a) Providing Ukraine with a list of specific questions to help it summarize all required information for the reporting on progress made;
- (b) Holding additional informal consultations with Ukraine at its forty-sixth session (Geneva, 10–13 December 2019) and in advance of the Committee's forty-eighth session.

In September 2020, Committee noted that Ukraine had:

- (a) Not adopted all the secondary legislation required to fully align its national legislation with the Convention;

Taken various steps listed in the road map. Among other things Ukraine had:

- (a) Carried out an assessment of damage to the environment resulting from works under Phases I and II of the Bystroe Canal Project;
- (b) Developed a draft plan of compensatory or mitigation measures.
- (c) Begun developing a new "Bystroe Route" project, intended to cover Phases I and II of the Bystroe Canal Project, and had notified Romania under the Convention.

In addition, the Committee found that Romania and Ukraine taken only limited steps towards concluding their bilateral agreement to facilitate the implementation of the Convention.

The Committee concluded, that despite progress made Ukraine had not to date fulfilled all its obligations under paragraphs 9 and 11 of decision IV/2, paragraphs 17 and 19 of decision V/4, paragraphs 24, 25 and 26 of decision VI/2 and paragraphs 5, 14, 15 and 17 of decision IS/1f.

Subsequently, the Committee could not recommend that the Meeting of the Parties lift the caution issued to the Government of Ukraine at its fourth session (ECE/MP.EIA/10, para. 10).

***F. Draft decision VIII/4e on compliance by Ukraine with its obligations under the Convention in respect of extension of the lifetime of the Rivne nuclear power plant***

This is a decision on follow-up to decision IS/1 g by which the Convention's MOP:

- (a) Endorsed the Committee's finding that Ukraine remained in noncompliance with its obligations under the Convention, as referred to in paragraph 70 of decision VI/2, and
- (b) Requested Ukraine to continue the transboundary environmental impact assessment procedure with the Parties wishing to participate in the procedure in order to bring the activity into compliance with the Convention.

In September 2020, the Committee examined information from Austria, Belarus, Hungary, Poland, Romania, Slovakia, and Ukraine. It confirmed its previous findings that Ukraine had not yet:

- (a) Fulfilled all its obligations under paragraph 69 of decision VI/2 and paragraph 4 of draft decision IS/1g pending the adoption of the remaining pieces of secondary legislation on environmental impact assessment;
- (b) Completed the transboundary impact assessment procedure under the Convention as referred to in paragraphs 7 (a), (b) and (c) and 8 of decision IS/1g.

Subsequently, the Committee – in draft decision VIII/4e – recommended that the Meeting of the Parties endorse its finding that Ukraine remained in non-compliance with its obligations under the Convention pending adoption of the remaining pieces of its secondary legislation on environmental impact assessment and completion of the transboundary procedure under the Convention as referred to in paragraphs 4, 7 (a), (b) and (c) and 8 of decision IS/1g.

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

Draft decisions VIII/4 on general issues of compliance with the Convention follows the structure of previous MOP decisions/sections on general compliance matters. Its preamble recalls the related decisions taken by the Meeting of the Parties to the Convention.

Paragraphs 1 and 2 of the draft decision propose that MOP adopt the report of the Committee on its activities and welcome the Committee's reports on its session, the Committee. Paragraph 3 recommends that the MOPs reiterate its request the Committee to continue:

- (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.

In the subsequent operative paragraphs (paras 4–8 of draft decision VIII/4), Committee recommends that the MoPs acknowledge the outcomes of the Committee's work in the

intersessional period 2017-2020 further to the Committee's report to the MOPs, including with regard to follow-up to previous decisions, submissions, Committee initiatives, information gathering procedures and specific compliance issues identified in the fifth review of implementation of the Convention.

In paragraph 7 the Committee recommends that the MoP acknowledge that:

- (a) Several information gathering cases before the Committee relate to concerns of the public regarding the applicability of the Convention to lifetime extensions of nuclear power plants;
- (b) 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.

In paragraph 10 and 11 of draft decision VIII/4 the Committee recommends that the MoPs:

- (a) Note 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 and
- (b) 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.

Paragraph 12 of draft decision VIII/4 recommends the Convention's MOPs to consider its opinions generated since its intermediary session.

Paragraph 12(a) contains the Committee's clarification concerning the application of article 3(7) and Appendix IV.

Under a number of compliance cases before it, the Committee invited potentially affected Parties to indicate whether a significant adverse environmental impact from the proposed activities on their territories was likely and whether they wished to be notified with regard to the proposed activities.

To answer those questions from the Committee, a few Parties attempted to use mechanism provided for in article 3(7), including to exchange sufficient information with the Party of origin and to hold discussions on the likelihood of the significant adverse transboundary impact.

The Committee observed, however, that the Parties had difficulties applying article 3(7) in practice leading to delays in the Committee's further deliberations.

In addition, one Party requested to establish an Inquiry Commission, without meeting preconditions set out in article 3(7).

Consequently, the Committee felt it was important for it to provide clarify with regard to application of that article and the annex IV.

The Committee explained that:

Appendix IV of the Convention regarding the inquiry procedure is not applicable unless the preconditions in article 3 (7) had been met. Notably:

1. In absence of notification, the potentially affected Party might request exchange of sufficient information for the purposes of holding discussions on whether there was likely to be a significant adverse transboundary impact. It should make its request as soon as it

became aware of a proposed activity that it considered to have a likely significant adverse transboundary impact.

2. Subsequently, the concerned Parties should:

- (a) Exchange information that is sufficient and within the scope of the Convention. If available, the Party of origin should provide the EIA documentation for the proposed activity to the potentially affected Party; The exchange of information should be conducted within a reasonable time frame.
- (b) Hold discussions on whether a significant adverse transboundary impact on the territory of the affected Party was likely; and document the outcomes of those discussions, preferably as joint statements or meeting minutes signed by the Parties concerned, or, as a minimum, as part of official correspondence;
- (c) Endeavor to agree on another method of settling that question.

Paragraph 12(b) clarifies a situation when a Party of origin unilaterally decides to terminate an ongoing transboundary procedure. The Committee is of the opinion that by doing so, the Party of origin places itself in a situation of non-compliance with the Convention.

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, constituted 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.

In paragraph 16 of the draft decision, the Committee also recommends that MOPs urge Parties to take into account in their further work the opinions of the Committee in the period from 2001 to 2020.

Last but one paragraph of draft decisions VIII/4 refers to the amendment to the operating rules of the Committee, notably on adjusting the deadline for Parties' submission of information to the Committee, as provided for in paragraph 4 of rule 11. This recommendation addresses the collision of the deadlines for preparation of the unofficial documents for the Committee's sessions further to rule 10.

In the final paragraph of the draft decision, the Committee recommends that the MOPs:

- (a) Keep under review and to further develop the structure and functions of the Committee and its operating rules, in light of experience gained by the Committee in the interim, and with a view to:
  - i. Enhancing the coherence and reducing duplication between the two sets of rules and
  - ii. Increasing use of videoconferencing and other online and electronic communication tools as effective means for managing the Committee's workload.
- (b) Request the Committee to prepare proposals, as it deems necessary, for submission to the Meeting of the Parties at its ninth session.

## **II. Agenda item 3. Outstanding issues.**

### **B: Draft decisions by the Meeting of the Parties to the Convention**

*Sub-item: (ii) Draft decision on the applicability of the Convention to the lifetime extension of nuclear power plants*

Delegations will be invited to discuss and agree on any outstanding issues in the draft guidance on the applicability of the Convention to the lifetime extension of nuclear power plants, prepared by an ad hoc working group co-chaired by Germany and the United Kingdom of Great Britain and Northern Ireland, considering the comments made before and during the ninth meeting of the Working Group. Delegations are also invited to discuss and agree on the related draft decision VIII/6.

The number of information gathering cases related to concerns of the public regarding the applicability of the Convention to lifetime extensions of nuclear power plants before the Committee grows exponentially. Currently the Committee gathers information on lifetime extension of 55 nuclear units of 18 nuclear power in seven countries. 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. The Parties urgently need guidance to properly apply the Convention to their ongoing lifetime extension activities. The Committee also urgently needs guidance to proceed with the consideration and development of findings regarding present and future cases. Many of the current cases had been pending before the Committee for number of years in the absence of guidance and could no longer wait to be concluded.

### **III. Agenda item 3. Outstanding issues/ C. Draft decisions by the Meeting of the Parties to the Protocol**

#### *Sub-item: (i) Draft decision on general issues of compliance with the Protocol*

The Chair of the Implementation Committee will present draft decision IV/4 on general issues of compliance with the Protocol, finalized by the Committee at its forty-eighth session, considering, as appropriate, the comments made before and during the ninth meeting of the Working Group. The Meeting of the Parties to the Protocol is expected to discuss and agree on the draft decision.

#### **Draft decision IV/4 on general issues of compliance with the Protocol**

Proposed decision IV/4 on general issues of compliance with the Protocol as referred to in document ECE/MP.EIA/SEA/2020/9 follows the same structure as decision VIII/4 on the Convention, but is much shorter, since the work of the Committee with respect to the implementation of the Protocol has been less intensive. Notably, the Committee considered:

- (a) 2 specific compliance issues identified in the third review of the implementation of the Protocol
- (b) 4 information gathering procedures, which in case of case of Serbia led to a Committee initiative.

It also followed up on the specific compliance issue identified in the first review of the implementation of the Protocol regarding the European Union.

Similarly, to draft decision VIII/4 the Committee recommends that the MoPs in decision IV/4:

- (a) Note 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 and
- (b) 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.

Paragraph 13 of draft decisions IV/4 refers to the amendment to the operating rules of the Committee as set out in annex to decision VIII/4 of the Meeting of the Parties to the Convention. Finally, paragraph 14 recommends that the MOP request the Committee to prepare any proposals, as it deems necessary, for amending the Committee's structure, functions and operating rules further to the experience gained during this intersessional period.

#### **IV. Agenda item 4. Review of the workplan**

*Sub-item: (a) Compliance with and implementation of the Convention and the Protocol*

The Chair of the Implementation Committee will report on the Committee's activities in the period since the seventh session of the Meeting of the Parties to the Convention and the third session of the Meeting of the Parties to the Protocol (2017–2020).

Delegations and the secretariat will be invited to report on progress in developing and adopting legislation for the implementation of the Convention and the Protocol further to technical assistance facilitated by the secretariat.

Details on the Committee's work during the 2017-2020 intersessional period are provided in the Committee's report on its activities in the intersessional period (ECE/MP.EIA/2020/4–ECE/MP.EIA/SEA/2020/4) and reports on the Committee's individual sessions (see the Convention's website following the link: <https://www.unece.org/environmental-policy/conventions/environmental-assessment/meetings-and-events.html#/0/0/0/28089/19940> ).

The Committee's workload has considerably increased during this last period. By way of indication, the Committee had been considering 36 compliance issues:

- (a) 5 cases to follow-up on previous decisions of the Meeting of the Parties,
- (b) 5 specific compliance issues arising from reviews of implementation of the Convention,
- (c) 2 submissions,
- (d) 24 information gathering cases,
- (e) One Committee initiative.

In the 2017-2020 intersessional period those amounted to 22 cases.

Moreover, the Committee's workload significantly increased further to MOP's request to revise draft decision VII/2 for its intermediary session.

Thus, the Committee's consideration of numerous pending issues and new compliance issues had been delayed for almost a year.

To tackle its considerable workload, the Committee had extended the duration of its sessions from three to four days and held ten sessions, instead of the nine foreseen by the 2017–2020 workplan.

In order to fulfil its mandate, the Committee also carried out, in accordance with its operating rule 19, consultations by email between its sessions and held four additional meetings using videoconferencing, including:

- (a) A half a day session in October 2020 to hold informal consultations with Bosnian and Herzegovina, Croatia and Serbian about application of the Convention to three thermal power plants, and
- (b) A half a day session in November 2020 to hold discussions with Serbia with regard to the Committee Initiative on Protocol matters.

The information on Committee's workload is reported in **chapter IX**. Generally, the Committee's report on its activities in 2017-2020 is divided in **ten chapters**.

**Chapter I** describes the composition, participation, the sessions and the mandate of the Committee.

**Chapter II** reports on:

(a) The revision by the Committee of draft decision VII/2 on the review of compliance with the Convention, and

(b) Preparation for the intermediary session of the Meeting of the Parties of decision IS/1 on general compliance issues and decisions IS/1 (a) – (h) on country-specific compliance issues.

This chapter also draws on the Committee's follow-up to decisions IS/1 a, c, d, g and f and preparation of related draft decisions VIII/4 (a)-(e) for the present Meeting of the Parties. To establish a correlation between country-specific paragraphs of draft decision VII/2, decisions IS/1 (a)–(h) and draft decisions VIII/4 (a)–(e) on its follow-up to decision VI/2, Chapter II of the report contains table 1. The table also refers to decision VI/2, as needed.

**Chapter III** presents the outcome of the Committee's examination of the fifth review of implementation of the Convention and the third review of the implementation of the Protocol. It also contains interim results of the Committee's consideration of the specific compliance issues regarding the European Union identified in the first review of the implementation of the Protocol.

**Chapter IV** draws on submissions by Parties, **chapter V** on information from other sources (information-gathering cases concerning the Convention and the Protocol) and **chapter VI** on Committee initiatives. All these activities represented the bulk of the Committee's work. Tables provide basic information on different cases.

Although the Committee's work on cases regarding the extension of lifetime of nuclear power plants had been delayed pending the preparation of the related Guidance, the Committee continued gathering information on some of the cases. It also provided inputs to the ad hoc working group preparing the draft guidance, including a description of all related compliance cases under the Committee's consideration and clarifications on interpretation of article 2 (2) and (3) of the Convention.

**Chapter VII** describes the work of the Committee related to revision of questionnaires and preparation of reviews of implementation.

The outcomes of the Committee's consideration on the matters have been presented in the context of draft decisions VIII/4, VI/4 and VIII(a) – (e) and VIII/5 and IV/5.

Finally, **Chapters VIII to X** describe the work of the Committee concerning its structure and functions and operating rules; the workload; and outreach.

During this intersessional period the Committee decided not to propose substantive revisions to its structure and functions and procedures for the review of compliance.

However, the Committee:

- (a) Clarified its operating rules on handling conflict of interest by its members;
- (b) Proposed some ways to increase its effectiveness and efficiency to tackle the constantly growing number of compliance cases before it, including through be making available, whenever necessary, the correspondence from Parties to the Committee to all Parties concerned;
- (c) Agreed to continue its efforts with a view to revising, during the 2021–2023 intersessional period, the Committee’s structure and functions and its operating rules for the consideration of the Meeting of the Parties at its ninth session.

In addition, the Committee returned to its previous practice to hold informal consultations with the Parties concerned with a view to facilitating the Parties understanding of the Convention’s provisions and steps to be taken by them to bring about their compliance.

Besides, as mentioned above the Committee held a number of sessions using videoconferencing and found this method rather efficient also for holding the informal consultations and hearings.

On the last point of outreach, the Chair of the Committee, regularly exchanged experiences with the Chair of the Compliance Committee Aarhus Conventions and, together with a Committee member, participated (by videoconference) in a meeting of the Implementation Committee under the Water Convention.

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